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VIA ELECTRONIC FILING

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Dynetics, Inc. - Ex Parte Letter
“Request For Modification Of Freeze” and “Request For Limited Waiver”
WT Docket No. 19-39

Ms. Dortch:

Dynetics, Inc. (“Dynetics”) respectfully requests that the Commission immediately prioritize the protection of domestic critical infrastructure operations by granting the relief requested in the “Request For Modification Of Freeze” or in the alternative the “Request For Limited Waiver” filed in this docket.

While Dynetics appreciates that other matters before the Commission in recent months have necessarily required attention, the overwhelming record in this proceeding and the continued increased risk to critical infrastructure physical site protection demands that the Commission now turn to this ongoing priority and immediately grant the very limited relief requested.

The docket conclusively establishes the following points, with no substantive contradiction:

- The Freeze (as currently imposed) prevents critical infrastructure operators from complying with long-term sector-specific physical site protection requirements by preventing the non-temporary licensing of state-of-the-art radiolocation technologies in the 3.1-3.3 GHz range.
- The inability of critical infrastructure operators to obtain non-temporary licensing of state-of-the-art radiolocation technologies in the 3.1-3.3 GHz range increases the risk of attack on such critical infrastructure operators, and exposes them to increased risk of substantial enforcement penalties from the agencies enforcing these physical site protection standards.

- Active consideration of potential sharing in the 3 GHz band in response to Congress' directive is clearly targeted on the upper portion of the range – namely 3.45-3.55 GHz – not the 3.1-3.45 GHz range addressed in Dynetics' pleadings. As recently confirmed by Commissioner O'Rielly "we shouldn't expect to any substantive work on 3.1 to 3.45 GHz prior to the preparation of the report [due to Congress by March 2020]".¹ This is consistent with NTIA's statements made directly to Dynetics many months ago, namely that no additional frequencies had been identified by NTIA for alternative use beyond the limited 3450-3550 MHz frequency range previously identified in February 2018,² and NTIA is not considering the 3100-3450 MHz range for alternative use for inclusion in the report due in March 2020. Thus, while further active and substantive study in other bands (including but not limited to the 3.1-3.3 GHz range) may be required at some undefined time in the future, it is patently against the public interest to continue to freeze non-temporary licensing in such bands based on a theoretical possibility and uncertain timetable of future active review. Indeed, in issuing the Freeze, the policy of the Commission was clear – namely to "maintain a stable spectral environment in a band that is under *active* consideration for possible alternative use."³ Because it is known now that no substantive action is currently being taken, or is expected to be taken, with respect to the 3.1-3.3 GHz range in connection with the March 2020 report due from NTIA, the Commission must act now to free-up this range for long-term licensing by the critical infrastructure community – either pursuant to a modification of the Freeze, or pursuant to the very limited waiver conditions proposed by Dynetics.
- Notwithstanding the scope of NTIA's current active review, the Commission can and should grant the relief requested by Dynetics on separate grounds in view of the unique/unusual factual circumstances related to the urgent need for continued long-term protection of our nation's critical infrastructure and the potentially devastating (well beyond "inequitable" or "unduly burdensome") impact to the security of such critical infrastructure facilities and therefore our nation's homeland security.⁴ Grant of the requested relief is appropriate and necessary and consistent with the public interest, in order to protect the physical site safety of (i) critical infrastructure operators who have

¹ "Remarks of FCC Commissioner Michael O'Rielly Before the 8TH Annual Americas Spectrum Management Conference", September 24, 2019 accessed at <https://docs.fcc.gov/public/attachments/DOC-359839A1.pdf>.

² "NTIA Identifies 3450-3550 MHz for Study as Potential Band for Wireless Broadband Use", David J. Redl (Feb. 26, 2018).

³ *Temporary Freeze on Non-Federal Applications in the 3100-3550 MHz Band*, WT Docket No. 19-39 (DA 19-105), rel. February 22, 2019, p.2 (emphasis added).

⁴ See e.g., See Dynetics' "Reply Comments" filed June 24, 2019, p. 2-10.

already been issued Part 90 radiolocation licenses in the 3.1-3.3 GHz range and who will continue such non-temporary licensing; and just as importantly (ii) the critical infrastructure community in general, a large percentage of which is still in the planning phase with respect to the implementation of physical site protection plans using radiolocation systems in the 3.1-3.3 GHz range. Such operators (including for example those who have previously installed some 3.1-3.3 GHz systems or have taken delivery of purchased systems, or operators who have placed purchase orders but who cannot now take receipt of these systems, or operators that will purchase such systems but have not yet done so) have been forced to delay very important critical infrastructure protection activities as they await confirmation of regulatory certainty from the Commission,⁵ leaving hundreds of critical infrastructure sites less secure and at risk of non-compliance with federal regulations within their DHS critical infrastructure sector.

- In furtherance of longstanding United States policy to “assure the continuity and viability of critical infrastructures”,⁶ the selection of the 3.1-3.3 GHz range was the result of years of careful experimentation, testing, planning, and implementation, and millions of dollars of investment.⁷ Since the Freeze was implemented, however, much of this state-of-the-art technology exists largely as “stranded” inventory in the United States, while other countries avail themselves of the benefits of this technology. Falling behind the curve with respect to the protection of critical structure and homeland security is not an option, and given the leadership’s clear commitments to the safeguarding of the nation’s public safety and critical infrastructure networks (see attached slides excerpted from Dynetics’ ex parte presentation previously submitted to the Commission on June 25, 2019), and the

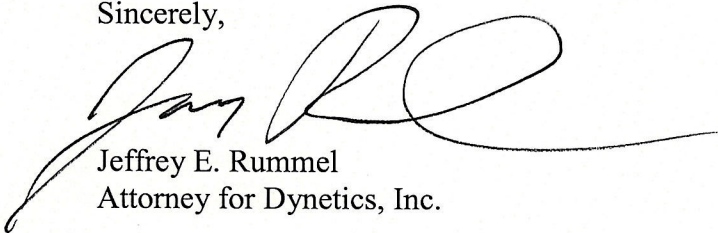
⁵ As Southern Company Services, Inc. recently advised the Commission, “The licensing freeze at 3100-3550 MHz brought a halt to Southern’s deployment of Dynetics security systems at other critical facilities, and it created uncertainty as to when Southern will be able to resume implementation of its security plans. As Southern explained in its earlier filings, these intrusion detection systems require long lead times for planning, licensing, installation, testing and integration with existing security monitoring systems. Thus, even when the freeze is lifted there will be further delay until Southern is able to make its new systems fully operational.” Ex Parte Letter dated September 18, 2019, from Jeffrey L. Sheldon, Counsel for Southern Company Services, Inc., p. 2.

⁶ Presidential Decision Directive/NSC-63, PDD-63, Sections I and II (May 22, 1998) (accessed at <https://fas.org/irp/offdocs/pdd/pdd-63.htm>), See e.g., Dynetics’ “Request for Limited Waiver” p.2-7.

⁷ See Dynetics. “Reply Comments”, p.6-8.

“growing need for enhanced physical security to protect the nation’s critical infrastructure”,⁸ the Commission must act now to avoid potentially disastrous consequences.

Sincerely,



Jeffrey E. Rummel
Attorney for Dynetics, Inc.

cc: (via email):

Aaron Goldberger, Acting Wireless & International Advisor for Chairman Ajit Pai
Erin McGrath, Legal Advisor, Wireless, Public Safety and International for Commissioner Michael O'Rielly
Will Adams, Legal Advisor to Commissioner Brendan Carr
Umair Javed, Legal Advisor, Wireless and International, for Commissioner Jessica Rosenworcel
William Davenport, Chief of Staff and Legal Advisor for Wireless for Commissioner Geoffrey Starks
Rebecca Schwartz, Legal Advisor, Wireless Telecommunications Bureau
Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau
Mike Regiec, Associate Chief, Mobility Division, Wireless Telecommunications Bureau
Paul Powell, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau

⁸ Ex Parte Letter dated September 18, 2019, from Jeffrey L. Sheldon, Counsel for Southern Company Services, Inc., p. 2 (“In its recently-published End of Year Report for 2018, E-ISAC noted significant increases in reported incidents of theft and gunfire at electric transmission facilities.”).

Safeguarding Public Safety and Critical Infrastructure Networks/Facilities

Chairman Pai:

“When it comes to our national security, we cannot afford to make risky choices and just hope for the best. We must have a clear-eyed view of the threats that we face and be prepared to do what is necessary to counter those threats.”

Chairman Pai Statement on Executive Order to Protect America’s Communications Networks – 5/15/19

Accessed at: <https://docs.fcc.gov/public/attachments/DOC-357486A1.pdf>

“The American people want, expect, and deserve the best possible public safety services...” – 2/6/19

Chairman Pai Calls for Continued Progress in Improving Accuracy of Wireless Emergency Alerts

Accessed at: <https://docs.fcc.gov/public/attachments/DOC-356092A1.pdf>

“...it goes without saying that public safety, rather than temporal bright-line rules, must be our paramount goal.”

Statement of Commissioner Ajit Pai Approving in Part and Concurring in Part RE: Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012... - 7/31/12

Accessed at: <https://docs.fcc.gov/public/attachments/FCC-12-85A6.pdf>

Safeguarding Public Safety and Critical Infrastructure Networks/Facilities

Commissioner O’Rielly:

“To help frame the discussion, it seems appropriate to touch on why we expend so much energy protecting our national security. Of course, we do so foremost to prevent immediate threats and attacks on our homeland. And, our efforts can certainly reinforce unity and civic pride. Yet preservation of national security involves so much more. I see it as a mechanism and tool to ensure that America’s preeminent value—individual freedom—is not jeopardized or surrendered at the hands of some other nation state or rogue group. Founding father John Adams wrote to his beloved wife, “Posterity! You will never know how much it cost my generation to preserve your freedom. I hope you will make good use of it.” That ominous reminder reaffirms the underlying reasons for investing so much time, money, effort, and precious American lives to protect our national security. America serves as a unique experiment in the history of the world and freedom is at the epicenter of that creative effort.”

Remarks of FCC Commissioner Michael O’Rielly Before the Daniel Morgan Graduate School of National Security – 5/16/19

Accessed at: <https://www.fcc.gov/document/orielly-remarks-daniel-morgan-graduate-school-natl-security>

Safeguarding Public Safety and Critical Infrastructure Networks/Facilities

Commissioner Carr:

“...unleashing the private sector to build and operate networks means that private companies are also charged with defending critical infrastructure....Strengthening our national security will continue to be a top priority for the FCC. Doing so requires timely, accurate information concerning the threats we face and a holistic discussion of potential responses”

Statement of Commissioner Brendan Carr - Re: Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs - WC Docket No. 18-89 – 4/18/18

Accessed at: <https://docs.fcc.gov/public/attachments/FCC-18-42A1.pdf>

“The FAA's NextGen initiative will modernize air travel. But one element, known as ADS-B, could undermine law enforcement & national security by letting criminals track border patrol and military aircraft in real-time, exposing their operations and evading their reach.”

Twitter - [@BrendanCarrFCC](#) – 6/16/19

Safeguarding Public Safety and Critical Infrastructure Networks/Facilities

Commissioner Rosenworcel:

“I believe budgets are not just about accounting. They are a statement of values. And I believe this budget falls short of what is needed to uphold essential values in our communications laws. I believe the most basic values in our laws—consumer protection, universal service, competition, and public safety—need refocus and attention.... Finally, public safety is paramount. In the very first sentence of the Communications Act, Congress instructed the Commission to make available, “to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide radio and communication service” in order to promote the “safety of life and property.”

Statement of Jessica Rosenworcel Commissioner Federal Communications Commission Before the Subcommittee on Financial Services and General Government Committee on Appropriations, United States House of Representatives, Washington, DC, 4/3/2019

Accessed at: <https://docs.fcc.gov/public/attachments/DOC-356850A1.pdf>

Safeguarding Public Safety and Critical Infrastructure Networks/Facilities

Commissioner Starks:

“Given our growing reliance on communications networks to support our critical infrastructure, transportation, health care and financial sector, the need for strong Commission action to address these security vulnerabilities has never been greater. Our authority is clear, beginning with Congress’s explanation in Section 1 of the Communications Act of 1934 that it created the FCC both “for the purpose of the national defense” and “for the purpose of promoting safety of life and property.” While some have suggested that Section 1 is merely a “policy statement,” the Commission has long relied upon it as informing the public interest analyses performed in numerous circumstances under both Democratic and Republican leadership....”

Nor does our authority stop there. The Act expressly gives the Commission the authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,” and to “make such rules and regulations . . . as may be necessary in the execution of its functions.” Protecting our networks from persistent and potentially catastrophic security threats is the essence of “necessary.”

I therefore will approach any matters raising national security concerns with this authority in mind. In any such proceeding, I will review the record before me and independently assess whether the proposed outcome protects the national defense and the safety of life and property”

Statement of Commissioner Geoffrey Starks Re: China Mobile International (USA) Inc. Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended - 5/10/19

Accessed at: <https://docs.fcc.gov/public/attachments/DOC-357372A6.pdf>