

October 18, 2019

VIA ELECTRONIC FILING

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

Jeffrey E. Rummel

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

Ms. Dortch:

As the Commission is aware, Dynetics has repeatedly requested that the Commission grant, on an expedited basis, the relief requested in the “Request For Modification Of Freeze” or in the alternative the “Request For Limited Waiver” filed in this docket. Dynetics has demonstrated that the record overwhelmingly supports the substance of Dynetics’ arguments with respect to the impact of the Freeze on critical infrastructure operators related to their obligations to ensure physical site protection.

It must be emphasized that while the facts and arguments presented by Dynetics in this docket clearly meet the legal standards set forth in the Commission’s rules, **granting the relief requested in Dynetics’ pleadings is also fully consistent with the Commission’s statutorily mandated mission to consider and protect public safety in carrying out its regulatory agenda.** While Dynetics has previously raised this issue throughout the proceeding, the DC Circuit Court of Appeals in Mozilla v. FCC recently emphasized the critical importance of incorporating public safety as an unalterable factor in the agency’s decision making process. As noted by the Court:

“Congress created the Commission for the purpose of, among other things, “promoting safety of life and property through the use of wire and radio communications.” 47 U.S.C. § 151. So the Commission is “required to consider public safety by * * * its enabling act.” *Nuvio Corp. v. FCC*, 473 F.3d 302, 307 (D.C. Cir. 2006); see also 47 U.S.C. § 615...”¹

“A “statutorily mandated factor, by definition, is an important aspect of any issue before an administrative agency, as it is for Congress in the first instance to define the appropriate scope of an agency’s mission.” *Public Citizen v. Federal Motor Carrier Safety Admin.*, 374 F.3d 1209, 1216 (D.C. Cir. 2004); accord *Lindeen v. SEC*, 825 F.3d 646, 657 (D.C. Cir. 2016) (“A rule is arbitrary and capricious if an agency fail[s] to consider * * * a factor the agency must consider under its organic statute.”)

¹ Mozilla Corp. v. FCC, No. 18-1051, p. 93 (D.C. Cir. Oct. 1, 2019)

(internal quotation marks omitted). When, as here, “Congress has given an agency the responsibility to regulate a market such as the telecommunications industry that it has repeatedly deemed important to protecting public safety,” then the agency’s decisions “must take into account its duty to protect the public.” *Nuvio*, 473 F.3d at 307.”²

“The Commission’s disregard of its duty to analyze the impact of the 2018 Order on public safety renders its decision arbitrary and capricious in that part and warrants a remand with direction to address the issues raised.”³

Dynetics is aware that the Court in *Mozilla* addressed these issues in the context of a notice-and-comment rulemaking proceeding, and that the Freeze in this docket was issued by the Commission as “exempt from the notice and comment and effective date requirements of the Administrative Procedure Act.”⁴ The Commission’s unilateral decision to dispense with notice-and-comment procedures in this case, however, did not in any manner supersede its overriding responsibility to consider the impact to public safety when restricting the ability of the critical infrastructure community to obtain long-term radiolocation licenses in the 3.1-3.3 GHz band. Now that this docket clearly demonstrates the continuing impact to public safety caused by the Freeze, the Commission must act in furtherance of its core mission and grant the relief requested by Dynetics.

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

² Id. at 94.

³ Id. at 100.

⁴ *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.