

March 22, 2019

VIA ELECTRONIC FILING

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

Jeffrey E. Rummel

Partner
202.715.8479 DIRECT
202.857.6395 FAX
jeffrey.rummel@arentfox.com

Re: Ex Parte Notice
WT Docket No. 19-39

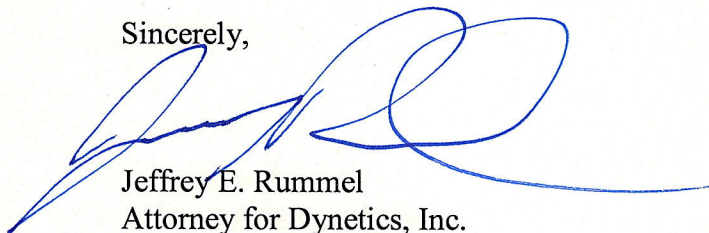
Dear Ms. Dortch:

On March 21, 2019, undersigned counsel for Dynetics, Inc. (Dynetics), along with Allen Wooten (Dynetics' Chief Hardware Engineer), Steve Cook (Dynetics' Executive VP for Strategic Development) and Mike Stokes (Executive Staff, Dynetics and President, Observation Without Limits, LLC) met with the following:

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 Amanda Huetinck. Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau.

During the meeting, Dynetics discussed the logistics and impact of the 3100-3550 MHz application freeze that has been imposed by the Commission in this docket. Dynetics used the attached slide deck and letter to guide the conversation.

Sincerely,



Jeffrey E. Rummel
Attorney for Dynetics, Inc.

cc: w/attachments (via email) to Commission personnel listed above

**TEMPORARY FREEZE
ON NON-FEDERAL APPLICATIONS
IN THE 3100-3550 MHZ BAND
WT Docket No. 19-39**

March 21, 2019

Background - The Company

- **Established/Headquartered in Huntsville, AL with regional offices in:**
 - **Fort Walton Beach, FL**
 - **Dayton, OH**
 - **Arlington, VA**
 - **Charlottesville, VA**
 - **Detroit, MI**
 - **San Antonio, TX**
 - **Ridgecrest, CA**
- **Employee-owned, mid-tier, engineering solutions provider for the defense, aerospace, and commercial industries since 1974**
- **Specializing in intelligence, missiles, aviation, cyber, and space systems, air/ground surveillance radars**

Background - GroundAware Radar

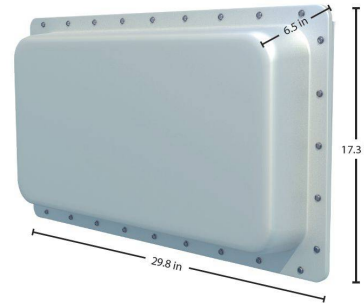
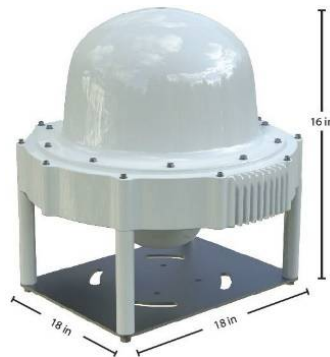
- **All-digital, web-based, ground-based surveillance radar providing real-time situational awareness of property subject to intrusions by humans, vehicles, or animals**
- **Protection of critical infrastructure, including:**
 - **Electric power facilities**
 - **Airport perimeters**
 - **Water reservoirs**
 - **Prisons**
 - **Commercial/Industrial Property**
- **Automates detection, classification, and deterrence of threats to critical infrastructure**

Background - GroundAware Radar



- Browser-based
- Desktop- and smart device- accessible
- Intuitive Google® Maps look and feel
- Integrates other data to meet unique needs

Background - GroundAware Radar



Tunable Band: 3100 MHz – 3300 MHz

Power: 0.342W (Omnidirectional) ; 25W/36W (Directional, 2 variants)

Requirements: Operation on any of 10 channels
Spaced 15.625 MHz apart

Multiple frequencies may be required due to terrain

3100-3300 MHz – Very Active RF Environment

Licenses:

GroundAware - Users hold 10-year Part 90 licenses (RS-Radiolocation)

Ex. Alabama Power Company

Georgia Power

Denver International Airport

Other Part 90 licenses (ex. wireless transmission service)

**Experimental licenses – 100s of licenses issued to major
defense/government contractors and others**

Certifications:

- **Hundreds issued for:**
 - **Wireless USB devices**
 - **Through-wall motion detection/imaging radars**

Potential Impact

- **Risk to Critical Infrastructure**

“There are 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.” (<https://www.dhs.gov/cisa/critical-infrastructure-sectors#> - listing Communications, Energy, Water, Transportation, Nuclear, and Defense sectors, among others)

- **Impeding Innovation and Experimentation**

FCC Experimental License policies are intended to “benefit the development of new technologies, expedite their introduction to the marketplace, and unleash the full power of innovators to keep the United States at the forefront of the communications industry.” (FCC 13-15)

Reports/Freeze Logistics and Processes

**2/22/19 Public Notice (DA 19-105)
NTIA Report Due by 3/2020 re: 3 GHz**

- **Continuation of Application Freeze:**
 - **During Agency Analysis?**
 - **During Report Preparation?**
 - **Upon Issuance of Report?**
 - **During/After Commission/Congressional Review?**
- **Status/Anticipated Timing**
- **3100-3300 MHz vs. 3300-3550 MHz**

Critical Continued Need for Operation and Licensing

- Significant unintended consequences already occurring
- Infrastructure protection commitments remain (ex. CIPA)
- Security plans assume long-term deployment
- Consequences of lack of certainty:
 - Delay Implementation of Site Security
 - Non-Compliance
 - Abandon Commitment

New deployments require long-term solutions (vs. typical STA)

- Duration of grants/ technical parameters/ conditions

Thank you!

March 20, 2019

To Whom It May Concern:

Protecting the nation's electric substations and ensuring a reliable supply of energy are top priorities for the electric power industry. Following the coordinated attacks on a substation in California, utility regulators enacted certain standards for physical protection thus the need for an effective solution.

Alabama Power explored numerous options to deploy a layered security architecture for various facilities within its service territory. Ground based radar systems proved to be a valuable component providing the ultimate in early detection, operator awareness, event logging and a comprehensive defense against potential intruders.

Alabama Power selected the GroundAware system developed by Observation Without Limits (OWL). The company has deployed these systems with plans to deploy several more systems around its service territory in 2019. These systems have been proven effective and economical.

With recent Federal Communication Commission actions, the plans for more systems cannot be deployed, creating a gap in the layered security architecture.

We ask the FCC to expeditiously review how these systems use the frequencies within the frozen bandwidths and consider possible exemptions or other solutions to quickly allow new systems to be deployed, not just within our service territory but in other areas around the country. These systems provide a critical component for physical protection of our electric infrastructure.

We thank you for your consideration in this matter.

Sincerely,



Scott Moore

Enclosure



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 19-105
February 22, 2019

TEMPORARY FREEZE ON NON-FEDERAL APPLICATIONS IN THE 3100-3550 MHZ BAND

WT Docket No. 19-39

By this Public Notice, the Wireless Telecommunications Bureau (Bureau), announces a temporary freeze on the acceptance and processing of applications for new or expanded Part 90 Radiolocation Service operations in the 3100-3550 MHz frequency band.¹ The purpose of this freeze is to preserve the current landscape of authorized operations in the 3100-3550 MHz band in light of Congress' mandate that the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), and the Commission consider alternate uses of the band.² The freeze is effective February 22, 2019.

Background

The MOBILE NOW Act mandates that, by March 23, 2020, "in consultation with the Commission and the head of each affected Federal agency (or a designee thereof), the Secretary [of Commerce], working through the NTIA, shall submit to the Commission and the appropriate committees of Congress a report evaluating the feasibility of allowing commercial wireless services, licensed or unlicensed, to share use of the frequencies between 3100 megahertz and 3550 megahertz."³ The MOBILE NOW Act also requires that, by December 31, 2022, "the Secretary [of Commerce], working through the NTIA, and the Commission shall identify a total of at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use." The Act further specifies that "100 megahertz below the frequency of 8000 megahertz shall be identified for use on an unlicensed basis" and that "100 megahertz below the frequency of 6000 megahertz shall be identified for use on an exclusive, licensed basis for commercial mobile use, pursuant to the Commission's authority to implement such licensing in a flexible manner. . . ."⁴

¹ 47 CFR pt. 90, subpt. F.

² Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P (RAY BAUM'S Act of 2018), Title VI (MOBILE NOW Act), §§ 603(a), 605(a), 132 Stat. 348. The Consolidated Appropriations Act, 2018 incorporates the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM'S) Act. Title VI of the RAY BAUM'S Act enacted provisions from the Senate-approved Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless (MOBILE NOW) Act, which directly addresses the 3 GHz band and multiple other spectrum related policies. See MOBILE NOW Act, § 605(a).

³ MOBILE NOW Act, § 605(a).

⁴ *Id.*, § 603(a). In February 2018, NTIA announced that it had identified the 3450-3550 MHz band "for potential repurposing to spur commercial wireless innovation." David J. Redl, NTIA Identifies 3450-3550 MHz for Study as Potential Band for Wireless Broadband Use (Feb. 26, 2018), <https://www.ntia.doc.gov/blog/2018/ntia-identifies-3450-3550-mhz-study-potential-band-wireless-broadband-use>. Following NTIA's announcement, CTIA filed an informal request urging the Commission to adopt an immediate freeze "on the acceptance, processing, or grant of any non-federal applications in the 3450-3550 MHz band." Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, at 1, 2 (filed Apr. 27, 2018) (CTIA Letter).

Filing Freeze in 3100-3550 MHz Band

In light of the statutory mandates upon the Commission, the freeze in the 3100-3550 MHz band is necessary to maintain a stable spectral environment in a band that is under active consideration for possible alternative use.

Effective immediately and until further notice, the Bureau will not accept or process: (1) applications for new licenses; (2) applications that seek to modify existing licenses by adding or changing frequencies or locations; (3) applications that seek to modify existing licenses by changing technical parameters in a manner that expands the station's spectral or geographic footprint, such as, but not limited to, increases in bandwidth, power level, antenna height, or area of operation; and (4) any other application that could increase the degree to which the 3100-3550 MHz band currently is licensed.⁵ Affected applications that are now pending will not be processed further until the Commission decides how to proceed in this band.⁶ We note that the 3100-3550 MHz band freeze does not change the substantive standard by which the Commission evaluates any pending applications for Part 90 Radiolocation Service licenses in the band and does not change the application method for previously filed applications.⁷

This action does not apply to applications that would not materially increase spectral congestion in the band, including: (1) applications to renew existing licenses without modification; (2) applications that seek to modify existing licenses by deleting frequencies or locations; (3) applications that seek to modify existing licenses by changing technical parameters in a manner that does not expand the station's spectral or geographic coverage, such as decreases in bandwidth, power level, or antenna height; (4) applications that seek to modify existing licenses by changing the number of associated mobile units or temporary fixed stations; (5) applications that seek to modify existing licenses by adding or moving control points; (6) applications to assign, transfer, or lease existing licenses; (7) notices of construction or

⁵ Accordingly, these enumerated types of applications should not be filed during the freeze. Applications subject to the freeze that are filed on or after the date of this Public Notice will be dismissed without prejudice and filing fees will not be automatically refunded. Applicants and potential applicants may have recourse to the waiver provisions in Section 1.925 to request an exception to the filing and processing freeze. Parties filing such a request should carefully review the rule's criteria for a waiver and, in their waiver requests, they must provide complete support, including but not limited to documentation, demonstrating that they meet the criteria set out in the rule.

⁶ See Application of Southern California Edison Company, Universal Licensing System (ULS) File No. 0008495115 (filed Jan. 17, 2019); Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed July 12, 2018) (Fort Myers Application); *see also* Informal Objection of CTIA to Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed Aug. 14, 2018); Consolidated Opposition of Fort Myers Broadcasting Company to Informal Objection of CTIA, ULS File No. 0008282472 (filed Aug. 28, 2018); Informal Objection of Nokia, ULS File No. 0008282472 (filed Aug. 28, 2018); Informal Objection of Wireless Innovation Forum (WinnForum) to Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed Aug. 29, 2018); Informal Objection of Federated Wireless, Inc. to Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed Aug. 29, 2018); Response of CTIA to Fort Myers Broadcasting Consolidated Opposition to Informal Objection of CTIA, ULS File No. 0008282472 (filed Sept. 11, 2018); Consolidated Opposition of Fort Myers Broadcasting Company to Informal Objection of Nokia et al, ULS File No. 0008282472 (filed Sept. 11, 2018).

⁷ This approach is consistent with previous Commission freezes. *See, e.g., Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum*, Public Notice, 27 FCC Rcd 4218 (WTB/PSHSB 2012); *General Freeze on the Filing and Processing of Applications for Channel 51 Effective Immediately and Sixty (60) Day Amendment Window for Pending Channel 51 Low Power Television, TV Translator and Class A Applications*, Public Notice, 26 FCC Rcd 11409 (MB 2011).

consummation; (8) requests for extensions of time to construct or consummate previously granted applications; (9) applications to cancel licenses; and (10) applications for special temporary authority for short-term operations. In the future, the Bureau may begin placing a special condition on new, renewed, and modified licenses for stations subject to this action to remind licensees that the stations may be subject to future relocation or other Commission action taken pursuant to or in connection with the MOBILE NOW Act.

The decision to impose this freeze is procedural in nature, and therefore the freeze is exempt from the notice and comment and effective date requirements of the Administrative Procedure Act.⁸ We also find good cause not to use the notice-and-comment procedures and not to delay the effective date of the freeze until after publication in the Federal Register because such delays would be impracticable and contrary to the public interest.⁹ By imposing this freeze immediately, the Bureau will help preserve the options available to the Commission for consideration of additional uses of the band, while limiting the potential for speculative applications that might be filed in anticipation of potential future actions by the Commission.

For further information, contact the FCC ULS Customer Support Hotline at (877) 480-3201 option 2, (717) 338-2888, or (717) 338-2824 (TTY). The Hotline is available to assist with questions Monday through Friday 8:00 a.m. to 6:00 p.m. ET. To provide better service to the public, all calls to the Hotline are recorded.

Action by the Chief, Wireless Telecommunications Bureau.

-FCC-

⁸ See 5 U.S.C. § 553(b)(A), (d); see also *Mendoza v. Perez*, 754 F.3d 1002, 1024 (D.C. Cir. 2014); *JEM Broad. Co. v. FCC*, 22 F.3d 320, 327 (D.C. Cir. 1994); *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984); accord *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673, 681-82 (D.C. Cir. 1963).

⁹ See 5 U.S.C. § 553(b)(B), (d)(3); see also *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001); *Nader v. Sawhill*, 514 F.2d 1064, 1068 (Temp. Emerg. Ct. App. 1975).