

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Dynetics, Inc. Request for Modification of)	
Temporary Freeze on Non-Federal)	
Applications in the 3100-3550 MHz Band)	WT Docket No. 19-39
)	
Dynetics, Inc. Request for Limited Waiver of)	
Temporary Freeze on Non-Federal)	
Applications in the 3100-3550 MHz Band)	

**REPLY COMMENTS OF
SOUTHERN COMPANY SERVICES, INC.**

Southern Company Services, Inc., on behalf of itself and its operating affiliates (collectively “Southern”), hereby replies to the comments that were submitted in response to the Commission’s Public Notice inviting comment on two requests filed by Dynetics, Inc., (“Dynetics”) seeking relief from the temporary freeze on non-federal applications in the 3100-3550 MHz band.¹ Southern strongly supports prompt grant of one or both of the requests filed by Dynetics so that Southern and other operators of critical infrastructure facilities may continue to obtain licenses in the Part 90 Radiolocation Service at 3100-3300 MHz for ground-based radar systems needed to protect critical electric infrastructure.

¹ *Wireless Telecommunications Bureau Seeks Comment on Dynetics, Inc. Request for Modification, Waiver of Temporary Freeze on Non-Federal Applications in the 3100-3550 MHz Band*, Public Notice, DA 19-478 (rel. May 28, 2019) (the “Public Notice”).

The record supports prompt grant of the relief requested by Dynetics. Southern, along with other companies that use the Dynetics equipment, filed comments in support of Dynetics' requests. Only two objections were filed, neither of which raised substantive issues with respect to the limited relief requested by Dynetics. The objections were largely procedural in nature, arguing that modification or waiver of a licensing freeze is unwarranted regardless of impact on the licensees affected or the public safety/homeland security issues that are unintentionally jeopardized by the licensing freeze.

CTIA – The Wireless Association (“CTIA”) raised a procedural objection that Dynetics' Request for Modification of Freeze is essentially a late-filed petition for reconsideration of the licensing freeze.² CTIA and the Wireless Innovation Forum (“WinnForum”) argue that the public interest favors study of how the nation's 5G goals can be achieved to the exclusion of any other current use of the spectrum and regardless of the unique factual circumstances cited by Dynetics. WinnForum argues that a licensing freeze across the entire 3100-3550 MHz band is necessary so that further deployment of radiolocation devices will not “preclude or hinder higher and better uses of the spectrum.”³

Neither CTIA nor WinnForum addressed the substantive issue in Dynetics' requests; namely, the need for continuing access to the 3100-3300 MHz band for radiolocation systems used to protect the nation's critical infrastructure. As Dynetics pointed out in its requests, Federal policy on homeland security since 2003 places a priority on protecting critical infrastructure

² Comments of CTIA on the Public Notice, WT Docket No. 19-39 (filed June 12, 2019) at 2.

³ Comments of WinnForum on the Public Notice, WT Docket No. 19-39 (filed June 12, 2019) at 3.

from “incapacitation, exploitation, or destruction” in the interest of the nation’s “security and economic well-being.”⁴

The comments in opposition to Dynetics’ requests do not explain how or why the “global 5G race” should take priority over homeland security. To the contrary, recent federal policy has dramatically and emphatically confirmed that homeland security is always of paramount priority, even if it means that consumers will have fewer competitive options for communications service or that wireless service providers will have fewer, or more costly, options to acquire equipment needed to build out their 5G networks.⁵ Although Southern supports expanded wireless service offerings and the deployment of 5G services and facilities, it does not agree that the nation’s critical infrastructure should be left vulnerable to intrusions, damage, or destruction simply to preserve the *possibility* of future spectrum allocations for 5G.

The relief requested by Dynetics is limited and will have no significant or material impact on the potential deployment of 5G in the United States. Dynetics has proposed very specific conditions on continued licensing and deployment of its GroundAware technology to protect

⁴ Dynetics “Request for Limited Waiver,” filed May 17, 2019, at 2-3.

⁵ *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*, ITC-214-20110901-00289, Memorandum Opinion and Order, FCC 19-38 (rel. May 10, 2019) (denying application to provide international service due to serious national security and law enforcement risks). *Executive Order on Securing the Information and Communications Technology and Services Supply Chain*, E.O. 13873, 84 Fed. Reg. 22689 (pub. May 17, 2019) (finding that open investment in communications technology “must be balanced by the need to protect our country against critical national security threats”). In April 2018, the FCC opened a rulemaking proceeding to consider whether to prohibit use of money from the Universal Service Fund for equipment or services from companies posing a national threat to the integrity of communications networks or the communications supply chain. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, 33 FCC Rcd 4058 (2018).

critical infrastructure. This is a specialty product that is not marketed to the general consuming public, so there is very little risk that further deployment could have any appreciable impact on other potential uses of the band. Moreover, and despite the opponents' belief that the entire 3100-3550 MHz band is under active review, available evidence strongly suggests that the 3100-3300 MHz portion of the band is not being targeted for possible reallocation. For example, in June 2018, the Administrator of the National Telecommunications and Information Administration ("NTIA") publicly described some of the work NTIA was doing to examine possible opportunities for spectrum sharing, including bands adjacent to the Citizens Broadband Radio Service ("CBRS") at 3550-3700 MHz.⁶ The Administrator stated quite pointedly that "the 3450-3550 MHz band has to be studied" to see "whether it is truly possible" to make that band available for sharing and under what conditions.⁷ The Administrator made no reference to the 3100-3450 MHz band.

The absence of public information about whether NTIA is studying the 3100-3300 MHz band is not surprising. CTIA and WinnForum speculate that the entire 3100-3550 MHz band is probably under review because CTIA referred to this band in comments CTIA filed with NTIA in 2016. However, neither party explains how a filing CTIA made in 2016 means that NTIA is actively considering the entire band today. Far more probative is the fact that in its very recent filings, CTIA has limited its 5G recommendations to the 3450-3550 MHz portion of the band:

⁶ "Building Spectrum Policy to Meet Advanced Communications Capabilities," Remarks of David J. Redl, Assistant Secretary of Commerce for Communications and Information, to the TIA Policy Forum: Federal Spectrum Policy for the 5G Era, June 21, 2018, available at <https://www.ntia.doc.gov/speechtestimony/2018/building-spectrum-policy-meet-advanced-communications-capabilities>.

⁷ *Id.*

- In Comments filed with the FCC in September 2018, CTIA referenced NTIA’s “forthcoming study of the 3450-3550 MHz band” and it commended NTIA for launching a study of the “3450-3550 MHz band for repurposing to commercial services.” CTIA also reiterated its request, from April 2018, to “preserve the promise of this 100-megahertz swath of spectrum by adopting a freeze on the acceptance, processing, or grant of any non-federal applications in the 3450-3550 MHz band.”⁸ CTIA’s Comments made no reference to the 3100-3450 MHz band.
- In February 2019, CTIA presented the FCC with a study on “The Economic Impacts of Reallocating Mid-Band Spectrum to 5G in the United States.” The study, by the Analysis Group, included consideration of the 3.45-3.55 GHz band and the 3.7-4.2 GHz band, which the authors described as “two bands that policymakers are considering for commercial wireless use.” Neither CTIA’s cover letter nor the study itself made any reference to the 3100-3450 MHz band.⁹
- In April 2019, CTIA urged the FCC to “move quickly to make hundreds of megahertz of mid-band spectrum available” for 5G, noting that “the 3.45 GHz band is under NTIA review to consider federal-commercial sharing.”¹⁰ CTIA’s letter transmitted a report, titled, “Global Race to 5G – Update,” by Analysys Mason and dated April 2019. The

⁸ Comments of CTIA on the Public Notice, *Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment Pursuant to the Spectrum Pipeline Act of 2015*, GN Docket No. 14-177, *et al.*, (filed September 11, 2018) at 3, 6.

⁹ *Ex Parte* Submission of CTIA in GN Docket No. 18-122, *et al.*, and the accompanying report of the Analysis Group (Feb. 7, 2019) at 1-2.

¹⁰ *Ex Parte* Submission of CTIA in GN Docket No. 18-122, *et al.*, enclosing the report of Analysys Mason (the “Analysys Mason Report”) and its own report (“CTIA Report”) (Apr. 3, 2019) at 4.

report cited to the 3.45 GHz band and noted “[T]he US is also studying the 3.45-3.55 GHz band and considering other options for use of the 5.925-7.125 GHz range, but specific plans have not been confirmed.”¹¹ CTIA’s letter also transmitted its own report, *A National Spectrum Strategy to Lead in 5G*, which again cited to the 3.45 GHz band, noting that in 2018, “NTIA identified this band for potential 5G use.”¹² Neither CTIA’s cover letter nor the accompanying report referred to the 3100-3450 MHz band.

It is surprising for the opponents to argue so strenuously in this proceeding that the entire 3100-3550 MHz band is under active consideration by NTIA when CTIA has focused its attention over at least the last year on having NTIA study the 3450-3550 MHz band and on urging the FCC to freeze all licensing in the 3450-3550 MHz band. In any event, only NTIA itself can definitively state which bands are under active consideration for possible alternative uses. Southern therefore agrees with and supports Dynetics’ recommendation that the FCC seek direct clarification from NTIA on which portion(s) of the 3100-3550 MHz band are under active consideration for alternative use for its report due in March 2020.¹³

Applications for Part 90 licenses in the 3100-3300 MHz band are already subject to coordination with the Interdepartmental Radio Advisory Committee (“IRAC”), so there will be ongoing coordination between the FCC and NTIA even if the freeze is modified or waived. Southern therefore joins Dynetics in recommending that the FCC seek at least informal

¹¹ Analysys Mason Report at 61.

¹² CTIA Report at 6.

¹³ Ex Parte Submission of Dynetics, Inc. in WT Docket No. 19-39 (filed June 5, 2019).

clarification from NTIA on the scope of its analysis with respect to the 3100-3450 MHz band, or more specifically, the 3100-3300 MHz band.

Finally, and independently of the scope of NTIA review, waiver of the freeze is warranted under Section 1.925(b)(3)(ii), as explained by Dynetics.¹⁴ Because of the “unique or unusual factual circumstances of the instant case,” the freeze “would be inequitable, unduly burdensome or contrary to the public interest,” and because Southern and other critical infrastructure users of this equipment have “no reasonable alternative.”¹⁵

WHEREFORE, THE PREMISES CONSIDERED, Southern Company Services, Inc. respectfully requests that the Commission promptly grant Dynetics’ Request for Modification of Freeze, or, in the alternative, grant a blanket waiver for applicants meeting the conditions suggested by Dynetics in its Request for Limited Waiver.

Respectfully submitted,

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¹⁴ Dynetics’ “Request for Limited Waiver” at 11-15.

¹⁵ 47 C.F.R. §1.925(b)(3)(ii).

CERTIFICATE OF SERVICE

I, Amanda Delgado, a Legal Assistant with Levine, Blaszak, Block & Boothby, LLP, hereby certify that I have caused to be sent, by first class mail, postage prepaid, a copy of the foregoing “Comments of Southern Company Services, Inc.” to the following this 24th day of June, 2019:

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