

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

In the Matter of)
)
Request for Licensing Freeze and Petition for) RM-11626
Rulemaking to Amend the Commission’s DTV)
Table of Allocations to Prohibit the Future)
Licensing of Channel 51 Broadcast Stations and)
to Promote Voluntary Agreements to Relocate)
Broadcast Stations From Channel 51)

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

Michael F. Altschul
Senior Vice President and General
Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory
Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION HAS CLEAR AUTHORITY TO IMPOSE IMMEDIATE FREEZES	2
III. EXPEDITIOUS IMPLEMENTATION OF FREEZES WILL SERVE THE PUBLIC INTEREST	4
A. The Requested Freezes Are Consistent with the Commission’s Policy of Promoting Interference-Free Operation in the 700 MHz Band	5
B. Freezes Will Promote The Policy Goals Contained in the National Broadband Plan	6
IV. THE FREEZES ARE NECESSARY TO PROMOTE DEVELOPMENT OF THE 700 MHz SPECTRUM FOR WIRELESS BROADBAND USE	7
V. THE COMMISSION SHOULD REVISE ITS RULES TO FORECLOSE ADDITIONAL LICENSED OPERATIONS ON CHANNEL 51 AND EXPEDITE EXISTING PROCESSES FOR VOLUNTARY CHANNEL REASSIGNMENT	9
VI. CONCLUSION	10

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Request for Licensing Freeze and Petition for) RM-11626
Rulemaking to Amend the Commission’s DTV)
Table of Allocations to Prohibit the Future)
Licensing of Channel 51 Broadcast Stations and)
to Promote Voluntary Agreements to Relocate)
Broadcast Stations From Channel 51)

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY

CTIA—The Wireless Association® (“CTIA”) hereby submits these comments in support of the jointly-filed CTIA-Rural Cellular Association Petition for Rulemaking and Request for Licensing Freezes (“Petition”) on applications for television broadcast stations on Channel 51 (“Channel 51” or “TV 51”).¹ As requested in the Petition, CTIA strongly urges the Commission to act on the Petition. The Commission can do this through two affirmative actions, the first immediate, the second through a quick, but deliberative process. Immediate freezes on licensing activity for TV 51 applications will advance the National Broadband Plan and support the efforts by the wireless industry to deploy mobile broadband services in the 700 MHz band. Further, CTIA asks that the Commission move forward with modifying its rules to preclude further licensing of Channel 51 and accelerate the approval process for any voluntary agreements to relocate incumbent Channel 51 broadcasters to alternative channels.

¹ See Petition for Rulemaking and Request for Licensing Freezes by CTIA – The Wireless Association and Rural Cellular Association, RM-11626, at 1 (March 15, 2011) (“Petition for Rulemaking”).

As is demonstrated in the Petition, the Commission has complete authority to implement freezes on the acceptance, processing and grant of applications for new or modified TV 51 broadcast facilities. The freezes will serve the public interest, first, by easing interference between TV 51 broadcasters and wireless broadband services operating in the adjacent 700 MHz A Block (“A Block”); second, by providing 700 MHz A Block licensees with greater clarity on the interference environment they face, allowing them to move forward with wireless broadband deployment as they await the Commission’s determination on the Petition; and, third, by promoting the policy goals contained in the National Broadband Plan.

Filing freezes are an important first step for the Commission, but the Commission’s efforts to address interference between Channel 51 and the A Block should not stop there. The Commission also should grant the Petition’s request to prohibit further licensing of Channel 51 and expedite the existing process for voluntary channel reassignment as well.

II. THE COMMISSION HAS CLEAR AUTHORITY TO IMPOSE IMMEDIATE FREEZES.

Because the freezes proposed here are procedural in its nature, the Commission may institute freezes on its own authority. Where the purpose of a freeze is to create conditions that allow rulemaking proceedings to be held in an “effective, efficient and meaningful manner,” the freeze is procedural and the Commission need not issue a public notice or conduct a public hearing.² Here, the requested freezes will enable an effective,

² See, e.g., *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 Bands, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Memorandum Opinion and Order, 12 FCC Rcd 2910, 2915 ¶ 10 (1997) (“39 GHz Freeze Order”) (“[i]t is well established that the Commission may initiate a freeze without prior notice and hearing when the purpose is, as here, ‘the creation of conditions under which formal rulemaking

efficient and meaningful rulemaking to occur. First, the freezes will help inform the rulemaking record by providing a stable picture of TV 51 licensees, giving the Commission a clear understanding of the interference environment faced by licensees in the 700 MHz A Block (“A Block licensees”). Second, the freezes will prevent the Commission from taking action that could later undermine its adoption of the rules proposed by Petitioners. Thus, the Commission has clear authority to impose immediate freezes because the freezes will maximize the effectiveness of the rulemaking.

The imposition of the freezes would be entirely consistent with past precedent. The Commission has instituted application freezes in other proceedings to facilitate its consideration of a reallocation or change in licensing services and to avoid actions that could later undermine a rulemaking. Last year, as the Commission contemplated the adoption of uniform renewal requirements for wireless radio services licenses, the Commission instituted a freeze on new applications that would be mutually exclusive with renewal applications.³ In 2004, the Commission imposed a freeze on the filing of certain analog and digital television requests for changes to existing TV service areas and channels; the Commission adopted the freeze to facilitate its development of a channel election and repacking process for the post-DTV transition.⁴ When considering a petition

proceedings can be held in an effective, efficient and meaningful manner.”) (citing *Kessler v. FCC*, 326 F.2d 673, 679-81 (D.C. Cir. 1963)).

³ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking, FCC 10-86, ¶¶ 98-100 (May 20, 2010).

⁴ *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (2004) (“*DTV Freeze Notice*”). While the Commission lifted the freezes of DTV maximization applications and petitions for rulemaking to change DTV channels, the freeze on petitions for new DTV allotments remained in effect. *Commission Lifts the Freeze on the Filing of*

for rulemaking impacting the 39 GHz band, the Commission placed a freeze on 39 GHz licenses to avoid undermining the rulemaking.⁵ These are just a handful of examples; the Commission has adopted many other freezes for similar reasons.⁶

Thus, given the Commission's clear authority to implement freezes and past Commission action, the Commission should act immediately to freeze new or modified Channel 51 licenses to facilitate and inform the proposed rulemaking.

III. EXPEDITIOUS IMPLEMENTATION OF FREEZES WILL SERVE THE PUBLIC INTEREST.

In addition to facilitating an effective rulemaking, the requested freezes will promote the public interest in at least two ways. First, freezes on new or modified Channel 51 broadcast licenses are consistent with the Commission's policy of promoting interference-free operation in the 700 MHz band. Second, by giving A Block licensees greater clarity on the interference environment, freezes will encourage wireless broadband deployment, thus promoting one of the critical policy goals in the National

Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately, Public Notice, DA 08-1213 (May 30, 2008).

⁵ *Petition for Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Order, 11 FCC Rcd 1156, at ¶ 2 (1995) ("The increasing number of applications constitutes a burden on the Commission's scarce resources and may limit the impact of a Commission rulemaking in response to the petition because applications being filed and processed are not necessarily in conformance with application and technical requirements that may be developed for the 39 GHz bands if the rulemaking petition is granted. Consequently, we find that the public interest will be served by not accepting any further applications for licensing new 39 GHz frequency assignments, pending Commission action on the rulemaking petition.")

⁶ *See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988, ¶¶ 107-108 (1994) (suspending the acceptance of 800 MHz applications on the 280 SMR category channels because the Commission was proposing "fundamental changes" in the service areas and channel blocks for future licensees in the service); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational, and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd 6722, ¶ 229 (2003) ("*ITFS/MMDS Order*") (instituting a freeze on the filing of certain ITFS applications on the basis that the Commission was "undertaking a comprehensive review of [ITFS] services" in the instant proceeding).

Broadband Plan.

A. The Requested Freezes Are Consistent with the Commission’s Policy of Promoting Interference-Free Operation in the 700 MHz Band.

Freezes on new or modified TV 51 license applications would serve the public interest by promoting interference-free operation in the 700 MHz band. Because there is no guard band between Channel 51 and the 700 MHz A Block, mobile wireless systems in the A Block encounter significant interference from Channel 51 broadcast operations. In the past, the Commission has taken measures to promote interference-free operation in the 700 MHz band and it should do so again here.

The Commission’s past efforts to reduce and eliminate interference in the 700 MHz band support the freezes requested in this proceeding. In fact, application freezes are the very tools that the Commission has employed to promote interference-free operation for 700 MHz licensees. In 2008, as the Commission considered a prohibition on wireless microphones in the 700 MHz band, it imposed a filing freeze on new license applications seeking to operate on any 700 MHz band frequency after the DTV transition.⁷ The freeze was in place while the Commission considered an amendment of its rules – which it ultimately adopted – to prohibit low power auxiliary stations within the 700 MHz band after the DTV transition because “such operations could cause harmful interference to new wireless services in the band.”⁸ The Commission invoked the interest of interference-free operation in the 700 MHz band again last year when issuing an order prohibiting the operation of wireless microphones in that band, citing the

⁷ *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Notice of Proposed Rulemaking and Order, 23 FCC Rcd 13106, at ¶ 3, 23-24 (2008) (finding that continued acceptance of new license applications “would impair the objectives in this proceeding”).

⁸ *Id.* at ¶ 2.

need to establish “expeditious time frames and procedures for clearing wireless microphones from the 700 MHz band on our path to providing an interference-free environment for new services in the 700 MHz Band,” given that these other operations could interfere with and disrupt vital “public safety and commercial base and mobile receivers.”⁹ Here, the goal of minimizing interference to A Block licensees is similarly present; indeed, it is at the heart of Petitioners’ request for filing freezes. Thus, the freezes on new or modified Channel 51 license applications would be consistent with the Commission’s stated objective of allowing 700 MHz licensees to operate without interference.

B. Freezes Will Promote The Policy Goals Contained in the National Broadband Plan.

The freezes not only will advance the Commission’s policy of promoting interference-free operation in the 700 MHz band, they also will promote one of the critical policy goals of the National Broadband Plan. The National Broadband Plan seeks to promote mobile wireless communication services by freeing up new spectrum for this use.¹⁰ While CTIA supports wholeheartedly the Commission’s efforts to free up new spectrum, the reality is that this process is not instantaneous. Thus, the Commission should explore ways in which it can encourage mobile wireless communications in the spectrum that is already available and licensed for this purpose. Freezing the acceptance, processing and grant of new and modified TV 51 applications is one way the Commission can do so.

⁹ *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 643, at ¶ 37 (2010).

¹⁰ Federal Communications Commission, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 84 (2010) (“*National Broadband Plan*”).

The 700 MHz A Block already is licensed for mobile broadband service, but interference concerns from Channel 51 have prevented licensees from realizing the A Block's full potential.¹¹ By giving licensees greater certainty regarding the interference environment posed by broadcast operations adjacent to Channel 51, the freezes will encourage A Block licensees to build out their networks. The freezes thus will enable the Commission to realize one of the critical goals of the National Broadband Plan in a more immediate fashion.

IV. THE FREEZES ARE NECESSARY TO PROMOTE DEVELOPMENT OF THE 700 MHz SPECTRUM FOR WIRELESS BROADBAND USE.

Interference from Channel 51 poses a real threat to wireless broadband deployment in the 700 MHz spectrum band. Commissioner Baker has recognized this problem, observing that Channel 51 interference “may foreclose the opportunity to build out a broadband offering in 700 MHz.”¹² And the Commission itself admitted as much in its March 21, 2011 Report and Order substituting channel 23 for channel 51 in Jackson, Mississippi, finding that the public interest would be served by the channel substitution in light of potential interference from the Channel 51 licensee to the Long Term Evolution (“LTE”) cellular base stations operating in the A Block.¹³

At present, it is entirely possible for an A Block licensee to build out its network, only to see its investment undermined by a new Channel 51 licensee whose operations result in significant interference. This fact creates a dangerous opportunity for those who

¹¹ See *infra*, Section IV.B.

¹² *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, FCC 10-196, at Statement of Commissioner Meredith Attwell Baker (2010).

¹³ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Jackson, Mississippi)*, Report and Order, MB Docket No. 11-8, RM-11618 (rel. March 21, 2011).

would seek a Channel 51 license to exploit opportunities for personal gain at the expense of an A Block licensee that built out a network. Further, the risk exposure inherent in 700 MHz A Block build-out may undermine investor confidence. Indeed, what results from a situation, such as in Augusta, Georgia, in which a broadcast licensee that had relocated from Channel 51 to an alternate channel petitions the Commission to *move back* to Channel 51?¹⁴ What implications will such maneuvering have for the increased interference to A Block licensees resulting from the proposed relocation?

Without a freeze on Channel 51 licensing activity, A Block licensees face great uncertainty regarding interference, which in turn frustrates wireless broadband build-out. Furthermore, the threat of interference from new Channel 51 activity undermines investor confidence, making it more difficult for A Block licensees to secure the necessary resources for build-out.

By providing stability, implementing freezes on new or modified TV 51 applications will ease interference concerns among A Block licensees and aid wireless broadband deployment. As stated in the underlying Petition, both Verizon and Cellular South have indicated that freezes on TV 51 applications would facilitate broadband wireless deployment.¹⁵ Vulcan Wireless, another A Block licensee, recently stressed the

¹⁴ See, e.g., *Amendment of Section 73.622(b); Table of Allotments; Digital Television Broadcast Stations (Augusta, Georgia)*, Notice of Proposed Rulemaking, MB Docket No. 11-54, RM-11624, DA 11-499 (March 16, 2011) (concerning Southern Media Holdings' petition to substitute Channel 51 for Channel 31 in Augusta, GA).

¹⁵ See Letter from Tamara Preiss, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11592 (June 21, 2010) ("We discussed the technical challenges associated with deployment of mobile wireless services in the Lower 700 MHz spectrum bands, including the presence of broadcast TV services on channel 51 and the operation of high power broadcast services in the Lower E block. . . . We suggested that, as an initial step in addressing these technical issues, the Commission place a freeze on any additional authorizations for broadcast TV services in channel 51."); Cellular South 700 MHz Equipment Comments at 8-9 (urging the Commission to place a temporary freeze on the acceptance of new Channel 51 TV applications while potential interference issues are studied and encouraging the

need for TV 51 freezes as well.¹⁶ The interim certainty afforded by the filing freezes will allow A Block licensees to move forward with wireless broadband deployment while the Commission considers the Petition. Thus, the Commission should impose filing freezes on new or modified Channel 51 applications to incentivize A Block licensees to proceed with wireless broadband deployment.

V. THE COMMISSION SHOULD REVISE ITS RULES TO FORECLOSE ADDITIONAL LICENSED OPERATIONS ON CHANNEL 51 AND EXPEDITE EXISTING PROCESSES FOR VOLUNTARY CHANNEL REASSIGNMENT.

While filing freezes are critical to the deployment of mobile wireless broadband, they are just the first step. Filing freezes will temporarily prevent new sources of interference from Channel 51 but will not permanently address the lack of a guard band between Channel 51 and the A Block. To realize the full mobile wireless potential in the A Block, the Commission must revise its rules to prohibit future licensing of TV broadcast stations on Channel 51 and facilitate the clearing of the channel by expediting the existing process for voluntary channel reassignment.

A revision of the rules to prohibit future licensing of TV broadcast stations on Channel 51 will provide greater certainty to A Block licensees deploying wireless broadband networks. The Commission should thus grant the Petition for the same reasons supporting the filing freezes: the rule revision will promote the public interest in interference-free operation in the 700 MHz band and advance wireless broadband

Commission “to pursue a review of [channel sharing] opportunities with a goal of moving TV operations off all or a portion of Channel 51 in order to promote availability of high quality interference-free wireless broadband operations on adjacent Lower Block A spectrum”).

¹⁶ Letter from Michele Farquhar, Counsel to Vulcan Wireless, to Marlene H. Dortch, , Secretary, Federal Communications Commission, RM-11592, RM-11626; WT Docket No. 11-18 (April 1, 2011).

deployment, bringing service that is more reliable to American consumers and providing a stable platform for innovation.

The Commission also should facilitate the clearing of Channel 51 by expediting the voluntary reassignment process. As highlighted in the Petition, the time between the filing of a petition for rulemaking and the issuance of an order amending the Table of Allotments ranges from three to six months, due to the Commission's current framework for channel reassignment. The irony is that while a voluntary reassignment aligns with the Commission's spectrum policy objectives, other Commission policies can slow the process.

Instead of requiring parties to file a petition for rulemaking to change channels, the Commission should make such channel changes immediately effective upon publication in the Federal Register. Section 553(d)(3) of the Administrative Procedure Act grants the Commission the authority to do so; indeed, the Commission has previously invoked this provision to make channel changes effective immediately.¹⁷ By expediting the voluntary reassignment of Channel 51 licensees, the Commission will further alleviate interference to 700 MHz licensees and promote more rapid deployment of wireless broadband services.

VI. CONCLUSION

For the foregoing reasons, the Commission should grant the Petition and (1) implement freezes, effective immediately, on the acceptance, processing and grant of applications for new or modified broadcast facilities seeking to operate on Channel 51, (2) revise its rules to prohibit future licensing of TV broadcast stations on Channel 51,

¹⁷ See, e.g., *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Anchorage, Alaska)*, Report and Order, DA 10-40, ¶ 4 (Jan. 11, 2010).

and (3) accelerate clearance of Channel 51 where incumbent Channel 51 broadcasters reach voluntary agreements to relocate to an alternate channel.

Respectfully submitted,

By: /s/ Brian M. Josef

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President and General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081
Twitter: @CTIAbmj
www.ctia.org

April 27, 2011