

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Wireless Telecommunications Bureau and Public Safety and )  
Homeland Security Bureau Seek Comment on Options for the ) PS Docket No. 13-42  
470-512 MHz (T-Band) Spectrum )

To: Chiefs, Wireless Telecommunications Bureau and  
Public Safety and Homeland Security Bureau

**REPLY COMMENTS OF  
MOBILE RELAY ASSOCIATES**

Mobile Relay Associates (“MRA”), by its attorney and pursuant to the Public Notice, DA 13-187, released February 11, 2013 herein, hereby submit these Reply Comments in this proceeding. MRA previously filed Comments in this proceeding, addressing most of the issues of concern to MRA. However, in reviewing the various comments filed in this matter, there is one important item that appears not to have received enough attention, but which the Commission should consider in making any decisions with respect to the future of the T-Band. Specifically, MRA and others have invested significant amounts of capital in building and operating networks in which the infrastructure equipment and the mobile units trunk channels across *both* the T-Band and the nearby Part 22 454/459 MHz band as part of a single, integrated system. Any ultimate decisions about the future of the T-Band must avoid relocating Industrial/Business T-Band licensees to other frequency bands that are not fungible with the 454/459 MHz band.

This Commission has conducted multiple auctions of the 454/459 MHz band, including, among others, auctions 40 and 48, in which MRA participated vigorously. *MRA acquired a total of 22 licenses from this Commission in those auctions.* The 454/459 MHz band is and was

commercially valuable, and commanded higher auction prices precisely because, a licensee can use the same infrastructure equipment and the same mobile units fungibly in both the 454/459 MHz band and the T-Band. MRA has been able to ameliorate T-Band congestion by adding channel capacity in the form of 454/459 MHz channels. If MRA had been bidding on spectrum not fungible with the T-Band, spectrum which would have required construction of a different network with its own, separate antennas, transmitters, wiring, rack space, etc., and which would have required acquiring an entirely separate inventory of mobile units, MRA could never have bid anywhere near as much as MRA actually bid and paid the Commission for this spectrum.

If MRA and other Industrial/Business licensees in the T-Band, *who are not going to receive any 700 MHz D-block spectrum or other compensation*, are forced to relocate to some other part of the radio spectrum outside of the lower UHF sphere, MRA and other licensees holding both T-Band and 454/459 MHz spectrum would have to buy all new infrastructure and user equipment for the forced-relocation spectrum, would have to replace the customer units of large portions of their customer base while simultaneously re-programming thousands of other customer units to remove the T-Band while leaving in the 454/459 MHz band. All this would occur while more than half the existing infrastructure equipment became useless, as there are only so many channels in the 454/459 MHz band (and no new channels available, since that spectrum has already been auctioned).

Stated otherwise, unless Industrial/Business licensees (or at least those, like MRA, who also hold 454/459 MHz licenses in the same metro areas) can remain in the T-Band after Public Safety licensees are relocated, the Commission will have rendered worthless the substantial capital investments of MRA and others. Such an action by this Commission would be arbitrary and capricious, and would constitute the worst sort of retroactive rulemaking. While retroactive

rulemaking is always troublesome, it is especially so where, as here, the Commission conducted multiple auctions and suckered large sums of money from auction participants such as MRA, by having had rules specifically allowing the auction winners to build integrated UHF networks using the 454/459 MHz and T-Band channels fungibly.

In *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 220 (Scalia, J., *concurring opinion*), that Justice explained:

A rule that has unreasonable secondary retroactivity ---- for example, altering future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule ---- may for that reason be "arbitrary" or "capricious," see *5 U. S. C. § 706*, and thus invalid.

Similarly, the U.S. Court of Appeals for the District of Columbia Circuit has warned this Commission: “[C]ourts have long hesitated to permit retroactive rulemaking and have noted its troubling nature.” *Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 745 (1986).

In summary, the Commission should resolve the various issues pertaining to the T-Band by ensuring that Industrial/Business licensees who reasonably relied upon Commission rules in deciding to purchase spectrum from the Commission at auction not have their investment wiped out by regulatory fiat.

Respectfully submitted,  
**MOBILE RELAY ASSOCIATES**

June 11, 2013

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