

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's Rules Governing the 896-901/935-940 MHz Band)	WT Docket No. 17-200
)	
pdvWireless, Inc. d/b/a Anterix, Request for Modification of 900 MHz Temporary Filing Freeze)	

ORDER

Adopted: October 8, 2019

Released: October 9, 2019

By the Chief, Wireless Telecommunications Bureau:

1. *Introduction.* By this *Order*, we modify the temporary freeze on the acceptance of certain applications related to land mobile radio services operating in the 896-901/935-940 MHz (900 MHz) band,¹ as set forth below, pursuant to a request filed by pdvWireless, Inc. d/b/a Anterix (Anterix).² Specifically, we modify the freeze to provide greater flexibility for 900 MHz band incumbents to relocate out of the broadband segment that the Commission has proposed in a pending rulemaking proceeding.

2. *Background.* In September 2018, the Wireless Telecommunications Bureau announced a temporary freeze on the acceptance of applications for new or expanded use of 900 MHz band frequencies.³ The purpose of the freeze was to preserve the current landscape of authorized operations in the 900 MHz band pending Commission action as part of its inquiry into potential rule changes to promote next-generation technologies and services in the band.⁴ The *Public Notice* noted that licensees have recourse via the Commission's waiver provisions to request an exception to the freeze.⁵

3. In March 2019, the Commission released a *Notice of Proposed Rulemaking* in which it proposed to realign the 900 MHz band to create a 3/3 megahertz broadband segment (897.5-900.5 MHz/936.5-939.5 MHz), while reserving the remaining 2/2 megahertz of spectrum (896-897.5/935-936.5 MHz and 900.5-901/939.5-940 MHz) for narrowband operations.⁶ The Commission indicated that

¹ See *Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum*, Public Notice, 33 FCC Rcd 8735 (WTB 2018) (*Freeze Public Notice*), recon. pending.

² See Letter from Elizabeth R. Sachs, Counsel for pdvWireless, Inc. d/b/a Anterix, to Donald Stockdale, Chief, Wireless Telecommunications Bureau (July 8, 2019) (Request). In addition, we note that a request for broader modification of the freeze remains pending. See *Petition for Reconsideration or Clarification of the Utilities Technology Council* (filed Oct. 15, 2018); see also Letter from William P. Cox, Senior Attorney, NextEra Energy Inc., to Donald Stockdale, Chief, Wireless Telecommunications Bureau (Aug. 7, 2019) (supporting UTC request).

³ See *Freeze Public Notice*, 33 FCC Rcd at 8735-36.

⁴ *Id.* at 8735 (citing *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, Notice of Inquiry, 32 FCC 6421 (2017)).

⁵ See *id.* at 8736, n.4.

⁶ See *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd 1550, 1555, para. 15 (2019).

if this proposal is adopted, it will lift the temporary filing freeze to allow 900 MHz band incumbents to file applications necessary to effectuate relocation from the broadband segment to the segments reserved for narrowband operations.⁷

4. Anterix in its Request states that many 900 MHz band incumbents were in the process of upgrading or replacing their systems when the freeze was announced, and that these incumbents wish to construct on frequencies outside of the proposed broadband segment.⁸ It requests that the freeze be modified to provide flexibility for incumbents to exchange frequencies in the proposed broadband segment voluntarily for an equal number of frequencies in the segments that would continue to be used for narrowband operations.⁹ In order to ensure that there is no net increase in the number of frequencies assigned to incumbents, Anterix suggests that, if an incumbent is granted 900 MHz band frequencies outside the proposed broadband segment, its authorization for the corresponding frequencies in the proposed broadband segment be canceled.¹⁰ It argues that allowing incumbents to exchange frequencies on this basis before the Commission adopts final rules for the 900 MHz band realignment would accelerate the process of clearing the broadband segment of narrowband incumbents without prejudging or compromising the outcome of the rulemaking proceeding.¹¹ It also suggests that modifying the freeze as requested will curtail individual requests for waiver of the freeze.¹²

5. *Discussion.* We conclude that the 900 MHz freeze should be modified to provide greater flexibility for incumbents to relocate out of the proposed broadband segment. The purpose of the freeze is to preserve the current landscape of authorized operations in the band while the Commission considers potential rule changes.¹³ We find that the future availability of the 900 MHz band will not be jeopardized by allowing an incumbent to exchange frequencies in a manner that does not increase that incumbent's net number of licensed frequencies and is consistent with the Commission's proposed band realignment.¹⁴ In that regard, it is in the public interest to reduce the burdens for licensees and the Commission by eliminating the need for individual waiver requests for applications that meet these criteria.¹⁵

6. We therefore grant Anterix's request. Specifically, we modify the freeze by excluding applications filed by incumbent site-based licensees of frequencies in the 897.5-900.5 MHz/936.5-939.5 MHz segment to modify their licenses to request an equal or smaller number of frequencies in the 896-897.5/935-936.5 MHz and/or 900.5-901/939.5-940 MHz segments at the same location(s) and with equal or smaller spectral and geographic coverage. This type of application must include an attachment

⁷ See *id.* at 1564, para. 36.

⁸ See Request at 2.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See *Freeze Public Notice*, 33 FCC at 8735.

¹⁴ See *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, Memorandum Opinion and Order, 15 FCC Rcd 9340, 9342, para. 4 (2000).

¹⁵ See *Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Band Allotted to the Business and Industrial Land Transportation Pool; Improving Public Safety Communications in the 800 MHz and 900 MHz Industrial/Land Transportation and Business Pools*, Order on Reconsideration, 28 FCC Rcd 9464, 9467, para. 8 (2013).

specifying which particular 897.5-900.5 MHz/936.5-939.5 MHz segment frequency pair will be canceled in exchange for which particular requested frequency pair in the 896-897.5/935-936.5 MHz and/or 900.5-901/939.5-940 MHz segments. To prevent an effect on a future band realignment, we will not permit licensees to increase the number of unique channels assigned to them, which would encumber more channels across a region. Specifically, a licensee authorized for an 897.5-900.5 MHz/936.5-939.5 MHz segment frequency pair at multiple locations must replace it with the same 896-897.5/935-936.5 MHz or 900.5-901/939.5-940 MHz segment frequency pair at each such location.¹⁶

7. We will not require simultaneous deletion of the old frequencies from the license because licensees may need to continue to use the old frequencies during a transition period while constructing and testing the new frequencies.¹⁷ Instead, in order to ensure that there is no net increase in the number of licensed 900 MHz band frequencies beyond a temporary transition period, applications will be granted on the express condition that the licensee must cancel its authorization for the corresponding frequencies in the 897.5-900.5 MHz/936.5-939.5 MHz segment no later than 180 days after the application is granted.¹⁸ A failure to cancel the 897.5-900.5 MHz/936.5-939.5 MHz segment frequencies as required shall constitute a failure to meet a condition of the grant and thus grounds for declaring that the authorization for the frequencies in the 896-897.5/935-936.5 MHz and/or 900.5-901/939.5-940 MHz segments terminated.

8. We note that it is not necessary to modify the filing freeze to permit licensees to *assign* frequencies in the proposed broadband segment in exchange for equivalent frequencies outside the proposed broadband segment, as requested by Anterix.¹⁹ The *Public Notice* specifically provides that the freeze does not apply to “applications to assign, transfer, or lease existing licenses.”²⁰ We hereby clarify that this exception covers not only applications to assign entire licenses, but also applications to assign specific frequencies.

9. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.41 of the Commission's rules, 47 CFR § 1.41, that the Request for Modification filed by pdvWireless, Inc. d/b/a Anterix, on July 8, 2019, IS GRANTED and the application freeze set forth in *Public Notice* DA 18-949, WT Docket No. 17-200, IS MODIFIED as set forth herein.

¹⁶ For example, under the modification to the freeze, an incumbent that is licensed for channel 120 (which is in the proposed broadband segment) at two locations will be permitted to replace it with channel 119 (which is below the proposed broadband segment) at those locations, but not to replace channel 120 with channel 119 at one location and channel 118 at the other location. Similarly, the incumbent will not be permitted to replace channel 120 at one location but retain it at the other location.

¹⁷ See, e.g., *Flint Hills Resources Corpus Christi, LLC*, Order, DA 19-908, para. 9 (WTB MD Sept. 12, 2019).

¹⁸ Licensees that cannot meet that deadline may request a longer transition period in the modification application. The applicant must justify the extended transition. The justification must describe the proposed system and state the amount of time necessary to put the replacement frequencies in operation. Cf. 47 CFR § 90.629(a). In no case, however, will a licensee be permitted to hold both sets of frequencies for more than one year. See 47 CFR § 90.155(a) (part 90 stations generally must be placed into operation within one year of the date of grant or the authorization cancels automatically).

¹⁹ See Request at 2.

²⁰ See *Freeze Public Notice*, 33 FCC Rcd at 8736.

10. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale
Chief, Wireless Telecommunications Bureau