



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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

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## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCE TEMPORARY FILING FREEZE ON THE ACCEPTANCE AND PROCESSING OF CERTAIN PART 90 APPLICATIONS FOR THE 4940-4990 MHZ BAND

### WP Docket No. 07-100

By this Public Notice, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (the Bureaus) announce a temporary freeze, effective September 8, 2020, on the acceptance and processing of certain applications related to Part 90 services in the 4.9 GHz band (4940-4990 MHz). Pursuant to this freeze, applications for new or modified operations in the 4.9 GHz band will not be accepted and pending applications will not be processed unless they meet limited exceptions.

On March 23, 2018, the Commission issued a *Sixth Further Notice of Proposed Rulemaking*, which sought comment on proposals to stimulate expanded use of and investment in the 4.9 GHz band.<sup>1</sup> In order to stabilize the 4.9 GHz spectrum landscape and to maximize the Commission's flexibility in considering the appropriate rules governing the band, the Bureaus now suspend the acceptance and processing of certain 4.9 GHz band license applications.

Imposition of the freeze is procedural and, therefore, not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.<sup>2</sup> We find good cause for not delaying the effective date of the freeze pending publication of this Public Notice in the Federal Register, because delay would undermine the purpose of the freeze, which is to ensure that new applications do not compromise the Commission's flexibility to modify the rules governing the band to the extent the public interest may warrant.

**Affected services and spectrum.** The freeze imposed by this Public Notice applies only to applications pertaining to licenses in the Private Mobile Radio Service, specifically those for the Public Safety 4940-4990 MHz Band (radio service code PA).

**Affected applications.** Effective immediately and until further notice, the Bureaus will not accept: (1) an application for a new license authorizing operations of any kind (geographic area or

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<sup>1</sup> See generally *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Sixth Further Notice of Proposed Rulemaking, 33 FCC Rcd 3261 (2018).

<sup>2</sup> See 5 U.S.C. § 553(b)(A), (d); see also, e.g., *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673, 680-82 (D.C. Cir. 1963).

permanent fixed site operations) in the 4.9 GHz band; or (2) an application to modify an existing license authorizing operations in the 4.9 GHz band, except as provided for below. Any such applications that are filed on or after the date of this Public Notice will be dismissed without prejudice. Currently pending applications that would be barred under this freeze will not be processed and will be dismissed without prejudice. Notwithstanding the implementation of this freeze, a geographic area licensee may continue to deploy mobile units, base stations, and temporary fixed stations within its license area, as such actions do not require the filing of an application with the Commission.<sup>3</sup>

**Excepted applications.** This freeze does not apply to applications that would not destabilize the licensing landscape, including: (1) applications to renew existing licenses without modification; (2) applications that seek to modify existing licenses by deleting frequencies or fixed sites; (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 to assign or transfer licenses; (5) notices of construction for permanent fixed site licenses or consummation of assignments or transfers; (6) requests for extensions of time to construct or consummate previously granted assignment or transfer applications; (7) applications to cancel licenses; (8) applications for special temporary authority for short-term operations; and (9) applications from geographic area licensees that require individual licensing under rule section 90.1207(b).<sup>4</sup>

**Waiver Requests.** Applicants may submit requests for waiver of this freeze on a case-by-case basis pursuant to section 1.925 of the Commission's rules.<sup>5</sup> Any waiver request would need to demonstrate why it is justified by special circumstances and consistent with the public interest, including the policies behind the rules that may be applicable to the band. While we will review each waiver request on a case by case basis, we encourage applicants to document their state or local authority to operate, and to address the existing use of 4.9 GHz spectrum by other state or local entities in the same jurisdiction.

For additional information regarding this Public Notice, please contact Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-0870 or [Michael.Wilhelm@fcc.gov](mailto:Michael.Wilhelm@fcc.gov) or Jon Markman, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau at (202) 418-7090 or [Jonathan.Markman@fcc.gov](mailto:Jonathan.Markman@fcc.gov).

Action by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau.

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<sup>3</sup> See 47 CFR § 90.1207(b), (c).

<sup>4</sup> See *id.* at (b)(1)(i)-(iii) (Commission rules state that a 4940-4990 MHz band license gives the licensee authority to construct and operate any number of base stations anywhere within the area authorized by the license, but a station is required to be individually licensed if “(i) International agreements require coordination; (ii) Submission of an environmental assessment is required under § 1.1307 of this chapter; or (iii) The station would affect areas identified in § 1.924 of this chapter.”).

<sup>5</sup> *Id.* at § 1.925.