

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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	)	

To: Wireless Telecommunications Bureau

**COMMENTS OF CTIA**

CTIA,<sup>1</sup> in response to the Public Notice released May 28, 2019,<sup>2</sup> hereby submits these comments on the “Request for Modification of Freeze” (“Modification Request”) and the “Request for Limited Waiver” (“Waiver Request”) submitted by Dynetics, Inc. (“Dynetics”) in the above-captioned docket.<sup>3</sup>

**I. INTRODUCTION.**

The Wireless Telecommunications Bureau (“Bureau”) should deny Dynetics’ requests to lift or waive the temporary freeze (“Freeze”) on the acceptance and processing of non-federal

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *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, WT Docket No. 19-39, DA 19-478 (rel. May 28, 2019).

<sup>3</sup> See *Dynetics, Inc. Request for Modification of Freeze*, WT Docket No. 19-39 (filed May 17, 2019); *Dynetics, Inc. Request for Limited Waiver*, WT Docket No. 19-39 (filed May 17, 2019).

applications for new or expanded Part 90 Radiolocation Service operations in the 3100-3550 MHz band.<sup>4</sup> As the Bureau is well aware, mid-band spectrum is a key input in the race to 5G. And notably, the U.S. Government—Congress, the Administration, and the Commission—has prioritized identifying additional mid-band spectrum for commercial wireless services. To that end, Congress has directed the Administration to study the 3100-3550 MHz band for repurposing to flexible-use wireless services.<sup>5</sup> As the Bureau concluded, a freeze on applications at 3100-3550 MHz is necessary “to maintain a stable spectral environment in a band that is under active consideration for possible alternative use.”<sup>6</sup>

As an initial matter, the Modification Request is, if anything, an untimely petition for reconsideration of the Freeze Public Notice.<sup>7</sup> Dynetics could have filed a petition for reconsideration against the Freeze Public Notice until March 25, 2019—it did not, and its request, regardless of how it is styled, is untimely.<sup>8</sup> The Waiver Request, on the other hand, faces a high bar that Dynetics does not—and cannot—satisfy.

Moreover, there is no reason for the Bureau to reverse course. The Freeze should remain intact during the study of the 3100-3550 MHz band and possible repurposing of the band for flexible-use commercial wireless services. Dynetics observes that the Freeze disrupted

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<sup>4</sup> See *Temporary Freeze on Non-Federal Applications in the 3100-3550 MHz Band*, Public Notice, DA 19-105 (rel. Feb. 22, 2019) (“Freeze Public Notice”).

<sup>5</sup> See discussion of MOBILE NOW Act, *infra*.

<sup>6</sup> Freeze Public Notice at 2.

<sup>7</sup> The Modification Request was submitted pursuant to Section 1.4 of the Commission’s rules—the computation of time rule. See Modification Request at 1. Even if the Modification Request was intended to be filed pursuant to Section 1.41 of the Commission’s rules—informal requests for Commission action—that rule does not apply here where a formal procedure existed. A petition for reconsideration would have been the clear course of action.

<sup>8</sup> See 47 C.F.R. §§ 1.4(b)(2), 1.106(f).

discussions with 98 potential customers about deployment of radiolocation services at 250 site locations, with 10-year radiolocation licenses.<sup>9</sup> This is precisely what the Freeze was intended to achieve, as the relief that Dynetics seeks would embed further radiolocation operations at 3100-3550 MHz just as the U.S. Government is reviewing the band for a possible transition to new services. Dynetics can and should pursue its business opportunities using other Part 90 spectrum.

**II. THE REQUESTED RELIEF WOULD UNDERMINE THE PURPOSE OF THE FREEZE AND COMPLICATE ANY FUTURE REPURPOSING FOR 5G AND OTHER COMMERCIAL SERVICES.**

At the outset, Dynetics bears a substantial burden of proof in this matter. Dynetics is asking the Bureau to reverse itself less than four months after concluding that the Freeze is necessary to properly study the entire 3100-3550 MHz band as required by Congress. As noted above, the Modification Request is an untimely petition for reconsideration, and Dynetics' burden with respect to the Waiver Request is high. As the Commission has noted, a waiver applicant "faces a high hurdle even at the starting gate."<sup>10</sup> The Commission may only issue a waiver for "good cause shown,"<sup>11</sup> and waiver applicants must demonstrate either that (i) a waiver would serve the public interest and, conversely, that failure to issue a waiver would defeat the purpose of the underlying rules, or (ii) there are unique or unusual circumstances such that application of the underlying rules would be inequitable, unduly burdensome, or contrary to

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<sup>9</sup> Modification Request at 10-11.

<sup>10</sup> *Waiver Requests By Clarity Media Systems, LLC To Operate CARS Stations At Flying J Travel Plazas*, Order, 28 FCC Rcd 9629, 9633 ¶ 13 (2013), quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (footnote omitted).

<sup>11</sup> 47 C.F.R. § 1.3.

the public interest, or the applicant has no reasonable alternative.<sup>12</sup> As shown below, Dynetics has failed to sustain its burden.

In the 2018 MOBILE NOW Act, Congress mandated that by March 23, 2020, the National Telecommunications and Information Administration (“NTIA”), in consultation with other federal agencies, submit “a report evaluating the feasibility of allowing commercial wireless services, licensed or unlicensed, to share use of the frequencies between 3100 megahertz and 3550 megahertz.”<sup>13</sup> There was nothing inequitable or surprising about this, as the 3100-3550 MHz band has been under review as possible commercial spectrum for some time.<sup>14</sup> In February 2019, the Bureau announced the Freeze and put it into effect immediately. Importantly, the Bureau took such action to maximize the Commission’s flexibility: “By imposing this freeze immediately, the Bureau will help preserve the options available to the Commission for consideration of additional uses of the band, while limiting the potential for speculative applications that might be filed in anticipation of potential future actions by the Commission.”<sup>15</sup> Again, there was nothing inequitable or surprising here, as the Commission

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<sup>12</sup> *Id.* § 1.925(b)(3).

<sup>13</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P (RAY BAUM'S Act of 2018), Title VI (MOBILE NOW Act), § 605(a), 132 Stat. 348.

<sup>14</sup> *See, e.g.*, NTIA, *Quantitative Assessments of Spectrum Usage*, at iv (Nov. 2016), [https://www.ntia.doc.gov/files/ntia/publications/ntia\\_quant\\_assessment\\_report-no\\_appendices.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia_quant_assessment_report-no_appendices.pdf) (identifying the 3100-3550 MHz band in a report intended to serve “as an intermediate step in a process for identifying and prioritizing strategic options for potential repurposing of bands”).

<sup>15</sup> Freeze Public Notice at 3. *See also id.* at 1 (“The purpose of this freeze is to preserve the current landscape of authorized operations in the 3100-3550 MHz band in light of Congress’ mandate that the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), and the Commission consider alternate uses of the band.”) (footnote omitted).

frequently adopts a freeze on new operations when a band is under consideration for new services.<sup>16</sup>

If the United States is to keep pace in the race to 5G, the Commission should refrain from embedding additional incumbent operations in mid-band spectrum under review for repurposing to commercial wireless services. That is why the Commission adopted a temporary freeze last year on new earth station and fixed microwave operations in the 3.7-4.2 GHz band: to “preserve the current landscape of authorized operations in the 3.7-4.2 GHz band pending Commission action as part of its ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band.”<sup>17</sup> And that is why the Bureau should maintain the freeze here to ensure a meaningful opportunity to review and repurpose the 3100-3550 MHz band.

Yet, Dynetics is asking the Commission to put aside the nation’s 5G goals and instead permit new deployments of radiolocation operations in the band. The Bureau should reject Dynetics’ requests. First, the purpose of the Freeze is to prevent additional embedded encumbrances at 3100-3550 MHz as NTIA considers whether and how that spectrum could be used for flexible-use commercial services, along with an orderly implementation of recommended steps. Lifting or waiver of the Freeze at this time would achieve the opposite

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<sup>16</sup> See, e.g., *Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band; 90-Day Window to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band*, Public Notice, 33 FCC Rcd 3841 (2018) (announcing a temporary freeze on the filing of new or modification applications for FSS earth station licenses or registrations and FS microwave licenses in the 3.7-4.2 GHz band) (“3.7-4.2 GHz Temporary Freeze”); *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) (announcing temporary freeze on the acceptance of certain applications for Part 90 services operating in the 896-901/935-940 MHz spectrum band); *Freeze on the Filing of Applications for New Digital Low Power Television and Translator Stations*, Public Notice, 25 FCC Rcd 15120 (2010) (freezing new and major change applications for low power stations in rural areas).

<sup>17</sup> *3.7-4.2 GHz Temporary Freeze*, 33 FCC Rcd at 3841.

result.<sup>18</sup> Moreover, Dynetics is wrong when it claims that “there is no indication at all that NTIA is even actively considering the 3100-3450 MHz range for alternative use at this point for inclusion in the report due in March 2020.”<sup>19</sup> Just two weeks ago, in a report on 5G’s expected impact on the demand for non-federal spectrum, the White House Office of Science and Technology Policy (“OSTP”) noted that “NTIA is studying” the 3100-3550 MHz band and other bands and evaluating them as a possible home for commercial wireless services.<sup>20</sup> The Administration’s acknowledgment of the MOBILE NOW Act’s directive confirms that NTIA’s charge is to study the full 3100-3550 MHz band for potential commercial wireless use.

### **III. DYNETICS CAN PURSUE ITS SERVICE USING OTHER RADIOLOCATION FREQUENCIES.**

In any event, the Freeze does not stop Part 90 radiolocation operators from using spectrum other than the 3100-3550 MHz band. Intrusion detection radars like the ones Dynetics seeks to sell are available in multiple spectrum bands, and other frequency bands identified in Section 90.103(b) of the Commission’s Rules are available for radiolocation operation.<sup>21</sup> Dynetics makes no showing as to why such alternative spectrum would be inadequate, and thus cannot claim that maintaining the Freeze would be unduly burdensome. It would not serve the public interest for the Bureau to upend the Freeze simply because Dynetics prefers other bands.

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<sup>18</sup> Cf. *Third District Enterprises, LLC*, Order, 27 FCC Rcd 1980, 1984 ¶ 11 (WTB 2012) (noting in denying a request for waiver of freeze on acceptance of new 800 MHz applications that “[t]he Commission’s purpose in freezing the acceptance of applications in its proceedings is to stabilize spectrum inventory upon announcement of a change to its licensing rules to ensure spectrum will be sufficiently available to meet its ultimate objectives”).

<sup>19</sup> Modification Request at 2; Waiver Request at 17.

<sup>20</sup> Office of Science and Technology Policy, *Emerging Technologies and Their Expected Impact on Non-Federal Spectrum Demand*, at 6, 54 (May 2019), <https://www.whitehouse.gov/wp-content/uploads/2019/05/Emerging-Technologies-and-Impact-on-Non-Federal-Spectrum-Demand-Report-May-2019.pdf>.

<sup>21</sup> 47 C.F.R. § 90.103(b).

#### IV. CONCLUSION.

The Congressionally mandated study of and report on the 3100-3550 MHz band as a potential home for commercial wireless services is an important element of the United States' larger effort to identify suitable mid-band spectrum for 5G. As such, the Freeze is necessary to prevent additional encumbrances in the band that would interfere with that process. Lifting or waiving the Freeze now would achieve the opposite result, and nothing in Dynetics' filings justifies that outcome. Dynetics has not sustained its heavy burden in this matter, and the Bureau should therefore deny Dynetics' Modification Request and Waiver Request and confirm that the Freeze will remain intact for the full 3100-3550 MHz band as long as necessary to permit a thorough study of the band and orderly implementation of any steps recommended in NTIA's report.

Respectfully submitted,

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June 12, 2019

## **CERTIFICATE OF SERVICE**

I, Alexandra Carr, hereby certify under penalty of perjury that the foregoing Comments of CTIA were served this 12th day of June, 2019, by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to:

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June 12, 2019