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

In the Matter of	)	
	)	
Wireless Telecommunications Bureau	)	
Announces Temporary Filing Freeze on the	)	WT Docket No. 17-200
Acceptance of Certain Part 90 Applications for	)	
896-901/935-940 MHz (900 MHz Band)	)	
Spectrum	)	

PETITION FOR RECONSIDERATION OR CLARIFICATION OF THE UTILITIES TECHNOLOGY COUNCIL

Pursuant to Section 1.429 of the Commission's rules,[1] the Utilities Technology Council ("UTC") seeks reconsideration or clarification of the Public Notice by the Wireless Telecommunications Bureau (hereinafter the "Bureau") announcing a temporary filing freeze on the acceptance of certain Part 90 applications for 896-901/935-940 MHz ("900 MHz band") spectrum.[2] Specifically, UTC respectfully requests that the Commission reconsider or clarify the Bureau's decision so that the 900 MHz freeze would only apply to applications by entities that are not affiliated with current licensees in the 900 MHz band (*i.e.*, non-incumbents). This would effectively serve the purpose of the freeze by preserving the 900 MHz band and limiting the potential for speculative applications while the Commission considers possible rule changes affecting the band.[3] At the same time, it would enable utilities and other incumbent licensees with legitimate needs for the spectrum to continue to upgrade their networks, thereby ensuring reliable communications and avoiding stranded investment that is currently being made in the

[1] 47 C.F.R. § 1.429 (2018).

[2] 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*, DA 18-949 (released, Sept. 13, 2018)(hereinafter, "Public Notice").

[3] *Id*. at 2.

band. In this regard, it is important to note that proponents of realigning the 900 MHz band likewise suggested in their petition to limit the freeze to apply only to non-incumbents and that none of the comments that were filed in response to the petition supported expanding the freeze more broadly to incumbents. Finally, it would be consistent with Commission precedent and would serve the public interest, as well as avoid causing undue burden and overbroad application to incumbents in the band.

Introduction and Overview

UTC is a trade association for the telecommunications and information technology interests of electric, gas, and water utilities and other critical infrastructure industries (CII). UTC's members include large investor-owned utilities that may serve millions of customers across multi-state service territories as well as smaller public power and cooperatively-organized utilities that may only serve a few thousand customers in isolated communities and remote areas across the nation.

UTC's members own, maintain, and operate private internal communications networks that they use to ensure the safe, reliable, and secure delivery of essential energy and water services both during routine operations and in the aftermath of hurricanes and other emergencies when systems are being repaired and services are being restored. These networks include wireless and wireline systems that carry voice and data traffic to communicate with personnel in the field and with devices that remotely monitor and control utility operations. Owing to the criticality of the essential energy and water services that they help to provide, utility communications networks are designed, built, and maintained to extremely high standards of reliability and resiliency, including extensive back-up power at every site and redundant/diverse routing of network communications. Any failure of these communications networks to properly

operate can have potentially catastrophic results and would threaten the safety of personnel that are working in hazardous situations.

Utilities represent one of the largest groups of users of spectrum in the 900 MHz band, and they operate extensive networks in various parts of the country. Incumbent utilities rely on these networks, and many are currently in the process of upgrading their 900 MHz systems or are planning to do so. The Bureau's decision to adopt a temporary licensing freeze in the 900 MHz band puts a halt to network upgrades that are underway or being planned and negates the investment that utilities are making. Worse, the freeze prevents utilities from expanding coverage, filling gaps, or increasing capacity to ensure communications reliability. In a very real sense, the 900 MHz licensing freeze threatens operational safety, reliability, and security of utilities across the country. In addition, this temporary freeze follows an earlier freeze that lasted from 2004-2013. Utilities are justifiably concerned that the new freeze will affect their communications over a significant and extended period of time.

UTC has a direct and substantial interest in this proceeding, and it has been an active participant, filing numerous comments and participating in several meetings with the Bureau and the Commission regarding the proposed realignment of the 900 MHz band. Moreover, the 900 MHz licensing freeze will impose substantial harm to the interests of UTC and its members, which will be irreparable if the Commission does not immediately clarify its scope or limit the freeze so that it allows for modification and natural business growth of existing systems. This request is consistent with the comments on the record by UTC and others, and indeed is consistent with the previous freeze in the 900 MHz band. It would serve the underlying purpose of the 900 MHz freeze while at the same time permit existing licensees and their affiliates to modify, upgrade and expand their systems. Specifically, it would preserve the spectrum

environment pending the outcome of this proceeding and would prevent speculative applications, which is the stated purpose of the freeze. In addition, this would enable licensees with existing systems to make effective use of the band and protect against stranded investment that would otherwise by caused by a complete freeze on any new or modified systems. In this way, the public interest would be served. Therefore, UTC respectfully requests reconsideration or clarification, as more fully described below.

I. The Decision to Adopt a Freeze on the Acceptance of Certain 900 MHz Applications Will Significantly Threaten Utility Operations and Investments.

As the Commission observed in its NOI[4], utilities represent one of the largest groups of licensees in the 900 MHz band, and they operate extensive systems for voice and data communications to ensure the safe, reliable, and secure delivery of essential electric, gas, and water services. A recent search of the Commission's databases revealed that there are approximately 1450 active licenses for private wireless systems on business and industrial/land transportation (B/ILT) frequencies in the 900 MHz band. About 40% of these licensees are utilities and petroleum companies. Each of these licenses may involve multiple sites, and each of these sites may represent approximately one million dollars in capital investment in terms of towers and equipment. Several utilities have recently upgraded their systems or are in the process of doing so, and there is a significant percentage of applications pending with the Commission that have been filed by utilities. Given the significant use of the band by utilities, the 900 MHz freeze will significantly impact them, both in terms of stranded investment and in

[4] *See* Review of the Commission's Rules Governing the 896-901/935-940 MHz Band, *Notice of Inquiry*, 32 FCC 6421 at ¶¶7-12 (2017)(observing that the band is heavily used by utilities and the petrochemical industry and that the 900 MHz band is used for "nuclear power plants for security operations, public alert notifications [and that] other reported uses include flood warning systems; and Smart Grid applications including advanced metering infrastructure, and transmission and distribution functions such as transmission line monitoring, distribution feeder automation, and supervisory control and data acquisition (SCADA) to support, monitor, control, and secure the grid's infrastructure.").

terms of operational reliability/safety.

Not all utilities use the 900 MHz band, but those that do use the band depend on their systems for reliable and secure communications. These systems are used to restore electric service in the aftermath of hurricanes and other disasters. They support voice communications with personnel in the field, and must be able to operate so that crews can closely coordinate with each other as powerlines are reenergized. Otherwise, the safety of personnel as well as the public may be put at risk if there is an accident, due to the failure to communicate on these 900 MHz systems. Ensuring reliability and safety is the reason why utilities operate their own private internal communications systems, and the 900 MHz systems have protected service contours to avoid interference. Moreover, utilities design, build, and operate these systems to remain resilient, including diverse routing and network redundancy as well as extended back up power at every site. Utilities need to be able to communicate on their 900 MHz systems at all times, and they must be able to expand coverage as needed to maintain communications with their personnel in the field, as well as with critical assets such as substations and protective relaying systems that utilities use to remotely monitor and control the grid. These systems are also vital to public safety and homeland security as numerous utilities use this spectrum for Nuclear plant security teams and for Nuclear Siren systems to alert the public in the event of a plant incident that places the public at risk. The 900 MHz freeze will put a halt on system upgrades, including expansion of the coverage of existing systems, and this will severely limit utilities' ability to implement new 900 MHz systems if they can't apply to license additional sites that will be necessary as part of the system upgrade.

Each individual utility in the band has invested literally millions of dollars in their 900 MHz systems, and some of them are investing millions of dollars in system upgrades that are

underway. These investments are jeopardized by the sudden decision by the Commission to impose the 900 MHz freeze. As the Commission acknowledged in the Public Notice, the Bureau deliberately adopted the freeze without any advance notice. In addition, this latest freeze comes on the heels of a decade long freeze that was lifted in 2013. Pent up demand for access to 900 MHz spectrum led to significant additional investment after the freeze was lifted, and utilities expected that they would be able to expand their 900 MHz systems into the future without the fear of a further freeze. This sudden decision by the Commission undermines the reasonable investment-backed expectations of utilities, many of whom lack reasonable alternatives for their private internal communications. The Commission should protect utility investment and should avoid creating regulatory uncertainty in the 900 MHz band.

II. The Public Interest Would be Served by Clarifying the 900 MHz Licensing Freeze So That It Is Narrowly Tailored to Apply to Non-Incumbents.

Instead of freezing *any* further applications for new facilities or modifications that would expand the coverage of existing systems, the Commission may accomplish the stated purpose of the 900 MHz freeze to preserve the spectrum environment in a more narrowly tailored way by *limiting* the freeze to apply only to non-incumbents. That approach would "limit[] the potential for speculative applications that might be filed" in the 900 MHz band.[5] At the same time, it would permit existing licensees to continue to modify their existing systems and to expand coverage as necessary. This narrowly tailored approach would fairly balance the need to preserve the spectrum environment while still allowing incumbent licensees and their affiliates to upgrade and expand their existing systems and to build new systems necessary to support recently acquired utility service territories. It is important to note that there has been no evidence of speculative applications that have been filed with the Commission, and the Bureau has cited

[5] Public Notice at 2.

no such evidence in support of its 900 MHz freeze.[6] Therefore, it is reasonable to conclude that it is not necessary to apply the freeze on incumbent licensees and their affiliates in order to prevent speculation in the band, and in any event, the Commission could always reserve the right to expand the scope of the freeze as necessary if there were any subsequent signs of speculation occurring in the 900 MHz band.

Limiting the freeze to apply to non-incumbents would serve the public interest and would be consistent with the previous Commission precedent. The public interest would be served because the spectrum would be put to more effective use by allowing incumbents to expand existing systems and deploy interoperable systems in recently acquired service territories.[7] This would enable utilities and their affiliates and other 900 MHz licensees to upgrade and expand their networks, thereby making more efficient use of the spectrum while improving the performance of their communications systems. It would also serve the public interest by obviating the need for incumbent licensees to file waiver requests, thereby saving time and expense of filing as well as avoiding unnecessary administrative burdens for the Commission in processing those waiver requests. Moreover, this would be consistent with the previous "incumbent-friendly" 900 MHz freeze in 2004, which permitted the filing of modification of facilities.[8] Similarly here, the Commission should limit the application of the 900 MHz freeze to

[6] UTC searched the ULS database and found that the number of applications filed in the last year has been relatively consistent over that time, and there has been no sudden increase of applications that would be indicative of speculation, such as was the case when the Commission imposed the last 900 MHz freeze in 2004.

[7] The public interest would not be served by requiring a utility to deploy in a recently acquired service territory a new, non-900 MHz system that is not interoperable with the systems utilized by it and its sister entities in nearby service areas. Among other things, the operation of two separate networks operating on different frequencies would complicate the staging process associated with disaster recovery preparedness efforts.

[8] Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, WT Docket No. 05-62, *Public Notice*, 19 FCC Red 18277 at n. 7 (2004)(stating that "Applications for modification of existing facilities, assignment of license, or transfer of control of a licensee will continue to be accepted. These applications will be subject to existing requirements for showings of eligibility, loading, and other requirements of the Commission's Rules.")

non-incumbents to allow existing licensees to upgrade and expand their existing systems.

III. Conversely, Imposing the 900 MHz Licensing Freeze Across the Board Poses an Undue Burden That is Overbroad.

Imposing the 900 MHz freeze on applications for new facilities or modifications to existing facilities by incumbent licensees would pose an undue burden. Utilities lack reasonable alternatives to using the 900 MHz band, and would be prevented from expanding their 900 MHz systems, either by modifying existing systems to improve existing service or deploying new systems in recently acquired service territories to ensure interoperability and facilitate disaster recovery, to ensure communications with personnel and devices that are critical to protecting the safe, secure, and reliable delivery of essential electric, gas and water services. Utilities migrated to the 900 MHz band in part due to the lack of available spectrum in other bands in their service territories. Moreover, the 900 MHz band provides protected service contours that are necessary to ensure communications reliability. As a practical matter, no other licensed spectrum in the land mobile bands provides the same level of reliability, because trunking in the bands below 512 MHz is difficult (or impossible) due to congestion in certain areas, and the 800 MHz band is still undergoing rebanding and channels are unavailable in many parts of the country.[9] Moreover, the 900 MHz band provides favorable propagation characteristics that improve the performance and cost-effectiveness of utility communications systems. Therefore, the 900 MHz freeze would prevent many utilities from accessing the only available licensed spectrum that would meet their performance requirements for communications reliability and cost-effectiveness.

UTC also reiterates that applying the 900 MHz freeze to incumbent licensees would be

[9] Unlicensed spectrum does not provide protection against interference, and hence does not meet utility requirements for reliability.

overbroad. As explained above, it is not necessary to apply the 900 MHz freeze to incumbents in order to prevent speculation and preserve the spectrum environment while the Commission considers rule changes. Moreover, there is no evidence that speculation is occurring at all, let alone by incumbents. It is important to note that when the proposal to realign the band was first introduced, it was suggested at that time that the Commission impose a limited freeze that would not apply to incumbents.[10] The Commission invited comment on the proposal, and the parties uniformly responded that a freeze was unnecessary and that, if it was imposed at all, it should be applied only to a limited extent against non-incumbents – and only then in the event that there was evidence of speculation.[11] No one – not even the proponents of the 900 MHz realignment – supported a complete freeze of the band. For all of these reasons, UTC submits that the Commission should not apply the 900 MHz freeze to incumbents because it would be overbroad.

Conclusion

It has been only four years since the FCC lifted the last 900 MHz freeze, which lasted ten years in total. Utilities and other incumbent licensees and their affiliates can ill afford another licensing freeze, let alone one that lasts ten years. It would negate investment in system upgrades that are currently underway, and it would impair the ability of utilities to meet their increasing communications needs for reliability, availability, and resiliency. Moreover, the public interest would not be served because the 900 MHz freeze would prevent utilities and other

[10] Petition for Rulemaking of the Enterprise Wireless Alliance and Pacific DataVision, Inc., RM-11738 (filed Dec. 8, 2014).

[11] *See generally,* Wireless Telecommunications Bureau Seeks Comment on Enterprise Wireless Alliance and Pacific DataVision, Inc. Petition for Rulemaking Regarding Realignment of 900 MHz Spectrum, Public Notice, RM-11738 (rel. Nov. 26, 2014). *See also*. Comments of the Utilities Telecom Council in RM-11738 (filed Jan. 12, 2015). Comments of Duke Energy in RM -11738 at 1-2, 7-8 (filed Jan. 12, 2015); Reply Comments of NextEra Energy, Inc. in RM-11738 at 5 (filed Jan. 27, 2015); Reply Comments of the Enterprise Wireless Alliance and Pacific DataVision, Inc. at 18 (filed Jan. 27, 2015); and Reply Comments of JVCKenwood USA Corporation in RM-11738 (filed July 14, 2015).

incumbents from continuing to make effective use of the band to expand coverage to additional service areas. In turn, that would undermine the safety, reliability, and security of essential electric, gas, and water services as well as other critical services that are enabled using private radio systems in the 900 MHz band.

In order to preserve the spectrum environment and prevent speculation in the band, the Commission should limit the 900 MHz freeze to non-incumbents. As described above, this balanced, narrowly tailored approach would accomplish the goal of the freeze while still allowing utilities and other incumbent licensees to expand their 900 MHz systems without having to apply for a waiver. Conversely, imposing a complete freeze on new or modified facilities across the board for all applicants would pose an undue burden and would be overbroad because utilities lack reasonable alternatives to the 900 MHz band, and there is no evidence that applying the freeze to utilities and other incumbents and their affiliates is necessary to prevent speculation. While UTC supports the Commission's goals of preserving the spectrum environment while it considers a possible realignment of the 900 MHz band to support broadband and narrowband operations, it urges the Commission to narrowly tailor the freeze and balance the relevant interests so that the freeze would only apply to 900 MHz non-incumbents.

Respectfully,

Utilities Technology Council

_ss_____
Brett Kilbourne
Vice President Policy and General Counsel
Utilities Technology Council
1129 20th Street NW, Suite 350
Washington, DC 20036
202-872-0030

October 15, 2018