



# PUBLIC NOTICE

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

### WP Docket No. 07-100

Consistent with the Commission's September 30, 2021 decision in the *Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking* in this proceeding, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (Bureaus) hereby modify the temporary filing freeze on the acceptance and processing of certain applications in the 4940-4990 MHz (4.9 GHz band).<sup>1</sup> The Bureaus previously imposed the freeze on September 8, 2020, to maintain a stable spectral environment in the 4.9 GHz band while the Commission considered changes to the service rules governing operations in the band.<sup>2</sup> Specifically, the Bureaus suspended the acceptance of (1) applications for new licenses authorizing operations of any kind (geographic area or permanent fixed site operations) in the 4.9 GHz band; and (2) applications to modify existing licenses authorizing operations in the 4.9 GHz band, unless otherwise excepted.<sup>3</sup>

To facilitate effective use of the band pending resolution of the issues raised in the *Eighth Further Notice*, the Commission partially lifted the freeze to allow existing 4.9 GHz band licensees to modify their licenses, whether for permanent fixed sites or geographic areas, as permitted under the rules, and to allow existing 4.9 GHz band licensees to apply for new permanent fixed sites within their license areas.<sup>4</sup> The Commission directed the Bureaus to implement this change to the freeze within 30 days of adoption of the *Order on Reconsideration and Eighth Further Notice*.<sup>5</sup>

Accordingly, and effective immediately, we hereby modify the 4.9 GHz band licensing freeze by removing certain applications filed by incumbent licensees from the *Freeze Public Notice*'s list of

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<sup>1</sup> *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking, FCC 21-106 (2021) (*Order on Reconsideration and Eighth Further Notice*).

<sup>2</sup> *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, Public Notice, 35 FCC Rcd 9522 (PSHSB/WTB 2020) (*Freeze Public Notice*) (regarding affected services and spectrum the freeze 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)").

<sup>3</sup> *Freeze Public Notice*, 35 FCC Rcd 9522-23 (listing "affected applications" subject to the freeze and "excepted applications" not subject to the freeze).

<sup>4</sup> *Order on Reconsideration* at 11, para. 25.

<sup>5</sup> *Id.*

“affected applications”, and adding those applications to the list of “excepted applications.”<sup>6</sup> Specifically, the following applications will now be accepted for filing and processed if they otherwise comply with our rules:

- (1) applications filed by incumbent 4.9 GHz licensees to modify existing licenses in the 4.9 GHz band, whether for permanent fixed sites or geographic areas; and
- (2) applications filed by incumbent 4.9 GHz licensees for new permanent fixed site operations located within their licensed service areas.

In addition, pending applications that are now eligible for acceptance will be accepted and processed as newly filed.

However, as directed by the Commission, we retain the freeze on applications for new licenses authorizing operations of any kind (geographic area or permanent fixed site operations) in the 4.9 GHz band filed by entities who do not already have existing 4.9 GHz band licenses.<sup>7</sup> Pending applications that remain subject to the freeze, as well as future applications that are subject to the freeze, will be either dismissed without prejudice, or if accompanied by a waiver request, reviewed pursuant to our waiver standard as appropriate.<sup>8</sup> The Bureaus retain jurisdiction to manage and implement the freeze in the future.<sup>9</sup>

Modification of the freeze is procedural and, therefore, not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.<sup>10</sup> We find good cause for not delaying the effective date of the freeze modification pending publication of this Public Notice in the Federal Register, because delay would undermine the purpose of the modification. Specifically, the Commission stated that “this ‘partial thaw’ approach will allow additional public safety use, especially to improve existing deployments, without adding significant additional complexity to the band which could complicate [the Commission’s] efforts to rationalize the band’s rules and provide for nationwide standards.”<sup>11</sup>

**Waiver Requests.** Applicants continue to have the option to submit requests for waiver of this freeze on a case-by-case basis pursuant to section 1.925 of the Commission’s rules.<sup>12</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 band spectrum by other state or local entities in the same jurisdiction.

**Additional Information.** For further information regarding this Public Notice, please contact Thomas Eng, Public Safety and Homeland Security Bureau, at (202) 418-0019 or [Thomas.Eng@fcc.gov](mailto:Thomas.Eng@fcc.gov); or Jon Markman, Mobility Division, Wireless Telecommunications Bureau at (202) 418-7090 or [Jonathan.Markman@fcc.gov](mailto:Jonathan.Markman@fcc.gov).

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<sup>6</sup> See *Freeze Public Notice*, 35 FCC Rcd at 9522-23.

<sup>7</sup> *Order on Reconsideration* at 11, para. 26 (declining to allow entirely new entrants into the band at this time).

<sup>8</sup> 47 CFR § 1.925; see also *Freeze Public Notice*, 35 FCC Rcd at 9523.

<sup>9</sup> *Order on Reconsideration* at 11, para. 25.

<sup>10</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).

<sup>11</sup> *Order on Reconsideration* at 11, para. 26.

<sup>12</sup> 47 CFR § 1.925; see also *Freeze Public Notice*, 35 FCC Rcd at 9523.

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

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