

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Promoting Investment in the 3550-3700 MHz) GN Docket No. 17-258
Band)

To: The Commission

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully submits its comments in the above-identified proceeding.¹ The Alliance urges the Commission not to over-correct in fine-tuning the novel regulatory structure adopted for the Citizens Broadband Radio Service (“CBRS”), one specifically intended to create opportunities for “a wide variety of users, deployment models, and business cases, including some solutions to market needs not adequately served by [the Commission’s] conventional licensed or unlicensed rules.”² While certain rule changes could help maximize the use of this spectrum, the FCC should resist efforts to convert it into a band in which only the major nationwide carriers will be likely to secure opportunities.

I INTRODUCTION

EWA is a national trade association representing business enterprises, wireless sales and service providers, hardware and software system vendors, and technology manufacturers. Its

¹ Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258, *Notice of Proposed Rulemaking and Order Terminating Petitions*, 32 FCC Rcd 8071 (rel. Oct. 24, 2017) (“NPRM”).

² Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Report and Order and Second Further Notice of Proposed Rulemaking*, 30 FCC Rcd 3959 at ¶ 6 (2015) (“First R&O”).

members operate in a variety of spectrum bands and are vitally interested in deploying more advanced technologies, including those that would be well suited to the 3550-3700 MHz (3.5 GHz) band. Some already have facilities in the 3650-3700 MHz portion of that band, while others are focused on the new Priority Access Licenses (“PALs”).

The PAL license option is of particular interest to entities with operating areas that are not well aligned with the relatively large geographic licenses typically issued in an auction process, and whose use cases require greater protection than is available on unlicensed spectrum. The Commission accurately described these potential applications: “Manufacturers, utilities, and other large industries can construct private wireless broadband networks to automate processes that require some measure of interference protection and yet are not appropriately outsourced to a commercial cellular network.”³ To the extent the FCC modifies the PAL rules, the needs of these entities must be considered.

II BACKGROUND

The Commission adopted rules governing the 3.5 GHz band in 2015.⁴ These rules involve a novel and complex hierarchy of tiered users with defined obligations vis-à-vis one another. Spectrum Access Systems (“SASs”), automated frequency coordinators approved by the FCC, will be responsible for coordinating operations among the various tiers to ensure that priority rights are protected.

Currently, the licenses identified as PALs are to be issued through competitive bidding. The license term is three years, although applicants in the initial filing window may apply for two consecutive terms. Only three-year terms will be granted in subsequent filing windows and PALs may not be renewed. The PAL geographic area is defined as a single census tract of which

³ First R&O at ¶ 6.

⁴ See First R&O.

there are 74,000 in the country. This area is deliberately small to provide opportunities for a wide variety of uses, both commercial and non-commercial. Larger areas can be created by acquiring PALs in adjacent census tracts.

In June 2017, prior to the approval of any SAS or the initiation of CBRS operations, CTIA and T-Mobile USA, Inc. (“T-Mobile”) each filed a Petition for Rulemaking seeking changes in certain 3.5 GHz rules, including those governing PAL licensing.⁵ Among those changes, both supported ten-year PAL license terms and a license renewal expectancy. Both also recommended the use of Partial Economic Areas (“PEAs”), of which there are only 416, rather than 74,000 census tracts as the PAL geographic area. The Commission invited comments on both Petitions and substantial records were developed. In conjunction with this NPRM, the FCC terminated both rulemaking proceedings, but a number of the issues raised in them are addressed herein.

Specifically, the Commission has proposed to extend PAL license terms to ten years. It has not recommended changing the geographic size of those licenses, but has requested comment on “increasing the geographic licensing area of PALs to stimulate additional investment, promote innovation, and encourage efficient use of spectrum resources.”⁶ Further, the NPRM asks, “whether a larger license area would provide additional flexibility to facilitate the deployment of a wide variety of technologies, including 5G.”⁷

The NPRM states that the proposed changes, and its seeming preference for large PAL license areas, “are consistent with the service rules and license assignment models that helped

⁵ See Petition of CTIA for Rulemaking to amend the Commission’s Rule Regarding the Citizens Broadband Radio Service in the 3550-3700 MHz Band, RM-11788 (filed June 16, 2017); see also Petition of T-Mobile USA, Inc. for Rulemaking to Maximize Deployment of 5G Technologies in the Citizens Broadband Radio Service, RM-11798 (filed June 19, 2017) (collectively, “Petitions”).

⁶ NPRM at ¶ 23.

⁷ *Id.*

foster the development of 4G and LTE services in the United States.”⁸ While that may be accurate, adoption of those changes in the PAL rules would transform this band from one intended to provide opportunities for the wide array of entities and use cases referenced in the First R&O. Instead, it would mirror a regulatory paradigm that supports a limited number of competitive commercial providers with comparable service offerings. While the Alliance recognizes the importance of positioning the United States as the international leader in 5G deployment, it is premature for the Commission to question its prior conclusion that it has adopted “a comprehensive regulatory scheme to promote development of innovative technologies and services in the 3.5 GHz Band.”⁹

III RECOMMENDATIONS

A. The FCC Should Retain Census Tracts as the PAL Geographic License Area.

Extensive experience with geographic licensing and its partitioning/disaggregation opportunities has demonstrated one thing: When needed to address their operating requirements, major commercial operators are able to assemble the requisite geography and spectrum through acquisition, while partitioning and/or disaggregation to meet the needs of smaller licensees, both private and commercial, has proven markedly less successful. The record in response to the Petitions confirms that most commenters – with the exception of the largest commercial carriers and their vendors – oppose larger PAL areas for just this reason.¹⁰ In EWA’s opinion, adopting PEAs as the PAL area would not promote “an equitable distribution of licenses and services among geographic areas” and “economic opportunity for a wide variety of applications” as required by the Communications Act.¹¹ It would severely limit, perhaps eliminate, any realistic

⁸ NPRM at ¶ 1.

⁹ First R&O at ¶ 8.

¹⁰ *See, e.g.*, NPRM at n. 52, 53.

¹¹ 47 U.S.C. § 309(j)(4)(C), (D).

opportunity for successful auction participation by other than the proponents of larger license areas, and thereby subvert an avowed purpose of the FCC in including the PAL licensing option in the CBRS.

The Alliance's business enterprise members have defined coverage requirements that simply do not conform to PEAs. They would have a reasonable opportunity of acquiring a census tract or adjacent tracts that closely approximate the areas in which they need to operate. Conversely, it is extraordinarily difficult for them to justify a business plan that requires them to acquire more geography and/or spectrum than needed with the hope that they might be able to sell what they will not use to a third party. The same is true for EWA's commercial provider members, most of which provide highly localized service to business and governmental customers.

The PAL license area is a classic example of an FCC decision that isn't broken and doesn't require fixing. EWA urges the FCC to maintain its current rule.

B. The FCC Should Extend the PAL License to a Five-Year Term and Allow a Single Renewal Period.

As indicated in the NPRM, the record on this issue is split. CTIA, T-Mobile and some other parties, primarily equipment vendors, support a ten-year license term and a renewal expectancy.¹² CTIA described it as a "proven approach" in wireless licensing.¹³ Other parties oppose terms of that length on the basis that they will place PAL auction prices out of the reach of many interested parties such as Wireless Internet Service Providers ("WISPS") and private internal users and, effectively, will grant the major carriers unlimited PAL license terms.¹⁴ Others object to such a fundamental change after more than two years of investment in the band

¹² NPRM at n. 26, 27.

¹³ CTIA Petition at 9.

¹⁴ NPRM at n. 34.

based on the current rules, and the likelihood that this change will prevent implementation of a variety of technologies, business models, and use cases.¹⁵

EWA agrees with those who object to a ten-year PAL license term. CTIA is correct that ten-year wireless licenses are “proven.” They have proved well-suited to the business plans of nationwide carriers providing consumer-based services. If the FCC had not expressly stated that PALs would support uses that are not well-served by current regulatory approaches, the “proven” ten-year license might be appropriate. It is not the right answer for the intended purpose of PALs as defined by the Commission.

If the FCC determines that the license term should be modified, the Alliance recommends a middle ground. It appreciates that all potential holders of PALs need a reasonable timeframe to justify an investment in equipment and system deployment. That is true whether the spectrum will be used in a 5G consumer network or at a major manufacturing facility. Therefore, EWA could support those, such as Motorola, that have proposed, at most, a five-year PAL license term with the option for a single renewal period. Such an approach seems to strike a reasonable balance, one that would not raise PAL prices to a level that would discourage participation in an auction by all but major wireless carriers, while offering a degree of certainty that would encourage investment in the band.

C. The FCC Should Retain the “Use It or Share It” Concept Vis-à-Vis PALs.

EWA strongly supports Commission efforts to ensure that all spectrum, however acquired, is put to appropriately intensive use. The current rules are predicated on the assumption that if PAL spectrum is underutilized, it will be available for assignment by an SAS

¹⁵ *Id.* at n. 35.

for unlicensed General Authorized Access (“GAA”) use. It will be “shared” unless and until utilization by the PAL licensee makes it unattractive for GAA assignment.

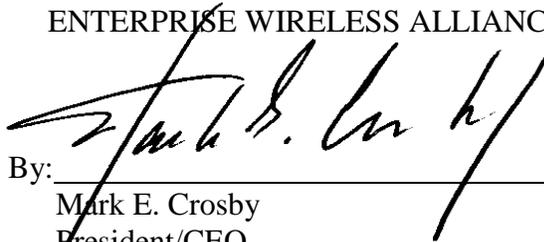
The Alliance believes that approach is reasonable, but intends to examine carefully other options that may be proposed in the proceeding. Its focus is on seeing spectrum put to productive use, however that can best be accomplished.

IV CONCLUSION

For the reasons discussed above, EWA urges the Commission to adopt rules in this proceeding consistent with the recommendation contained herein.

Respectfully submitted,

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