

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

In the Matter of)	
)	
Promoting Investment in the 3550-3700 MHz Band)	GN Docket No. 17-258
)	
Petitions for Rulemaking Regarding the Citizens Broadband Radio Service)	RM-11788 (Terminated)
)	RM-11789 (Terminated)

**REPLY COMMENTS OF THE
CITY OF LOS ANGELES, CALIFORNIA**

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I. INTRODUCTION

The City of Los Angeles, California (“Los Angeles”) respectfully submits these Reply Comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking entitled “Promoting Investment in the 3550-3700 MHz Band” (“NPRM”),¹ and the record developed thus far in response to that NPRM. As the record overwhelmingly demonstrates, the licensing framework in place for the 3550-3700 MHz Band (“3.5 GHz Band”) is generating substantial interest and investment, while the Commission’s proposed changes are unwarranted. In particular, the 3.5 GHz Band’s smaller license areas and shorter license terms, among other characteristics, must be preserved. When distributing licenses by auction, the Commission’s mandate is to promote the best uses of spectrum, and to “avoid[] excessive concentration of licenses”² and to disseminate licenses among “a wide variety of applicants, including small businesses.”³ The Commission’s proposals would result in the concentration of licenses among the largest, most established incumbent providers; accordingly, the current framework should not be modified.

II. THE RECORD REFLECTS WIDESPREAD INTEREST AND INVESTMENT IN THE 3.5 GHZ BAND UNDER ITS CURRENT RULES; NO CHANGES ARE NEEDED TO PROMOTE INVESTMENT.

Los Angeles echoes the views shared by the great majority of commenters, that the changes to the Priority Access Licenses (“PALs”) proposed by the NPRM will “effectively foreclose participation in PAL auctions by smaller providers and strand millions of dollars in

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

² 47 U.S.C. § 303(j)(3)(B).

³ *Id.*

investment *already made* in reliance on the rules adopted in 2015.”⁴ Those 2015 rules were specifically designed to “make the 3.5 GHz Band hospitable to 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.”⁵ That purpose, and that appeal, has been embraced by a broad array of stakeholders, and is reflected in this proceeding’s record.

Those few voices in support of the Commission’s proposals further the interests of dominant, incumbent wireless providers;⁶ in contrast, a broad array of technology companies, innovators, local governments, and small and rural ISPs describe in great detail the present and future investments enabled by the current framework of the 3.5 GHz Band.⁷ Los Angeles echoes the views of these commenters. The innovation, competition, and investment made possible by the current licensing framework must not be abandoned in favor of an approach which favors entrenched incumbents. While the Commission espouses its dedication to closing the digital divide; the record clearly demonstrates that the Commission’s proposals miss the mark, and will do far more harm than good. Consumers and the public interest are best served by access to affordable, competitive, and diverse services and service providers, and the current framework plainly furthers this goal. The current standard promotes such a result and must be maintained.

⁴ Wireless Internet Service Providers Association Comments at v (“WISPA Comments”).

⁵ *In the Matter of 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, 3962 (2015) (“2015 Order”).

⁶ *See, e.g.* CTIA Comments.

⁷ *See, e.g.* Tennessee Wireless Comments at 1; Cirrinity Wireless, LLC Comments at 2; Portative Technologies, LLC Comments at 1; Royell Communications, LLC Comments at 1; Night Owl Wireless, LLC Comments at 1; AirFi Inc. Comments at 1; Grand County Internet Services Inc. Comments at 1; Starry Comments at 1-2.

III. THE EXISTING LICENSING FRAMEWORK IS WORKING, AND SHOULD NOT BE ABANDONED.

A. Census-Tract License Areas Promote Competition, Investment, and Innovation, and Discourage Spectrum Warehousing.

Los Angeles echoes the views of the City of New York and others, that “[c]ompetition, resulting in greater coverage and speed, as well as lower prices for consumers, will be better fostered by a licensing regime that enables all actors, including smaller providers and new types of operators, to take part in building 5G networks.”⁸

Smaller license areas allow for more focused uses of spectrum, as demonstrated by Next Century Cities. In Los Angeles, for example, a shift from census tract licensing to Partial Economic Areas (“PEAs”) or, as some have proposed, even counties, would drastically increase the price of licenses exponentially, from covering neighborhoods and single-site locations of several thousand people, to one of the largest metro areas in the nation. Instead of providing affordable access to high-capacity spectrum for schools, hospitals, industrial facilities, and competitive wireless broadband providers, among other applications, PALs in the Los Angeles area would cover millions of individuals, even at the county level, making licensed spectrum in the 3.5 GHz band entirely inaccessible to all but the deepest of pockets.⁹ In Los Angeles’ case, that would not only pit the connectivity interests of communities of several thousand against the concerns of far more dense parts of the Los Angeles PEA, or even Los Angeles County. Investors and innovators, too, would be pitted against one another, as those seeking to serve the most needy parts of Los Angeles would be pitted against major carriers seeking to bolster their already-robust networks in more affluent areas. Consumers, competition, and innovation suffer when spectrum access is limited and market power is concentrated in the hands of a few.

⁸ City of New York Comments at 1.(“New York City”)

⁹ See Next Century Cities Comments at 7.

Los Angeles also shares the views of those commenters who argue in favor of the Spectrum Access System’s ability to manage licenses of smaller geographic sizes. As the New York City noted, existing SAS Administrators do not see a problem in administering licenses at the census tract level.¹⁰ Los Angeles further agrees that smaller license areas “promote a more open path for investment for a much wider variety of potential investors” and will “help ensure that licenses will be held only by providers who intend to use them in particular areas.”¹¹ These outcomes are just some of the core goals of the Commission that will be achieved far better by the current licensing framework than by the proposals in the NPRM.

While the Commission’s focus on maximizing investment in broadband to close the digital divide is laudable, it must recognize that the existing PAL rules, particularly the smaller license areas, are far better suited to achieving the Commission’s objectives than turning the 3.5 GHz band into just another wide-area licensed band accessible only to the largest providers. Accordingly, Los Angeles strongly urges the Commission to recognize the benefits of census tract licensing, and preserve the current PAL framework.

B. Shorter License Terms Promote Experimental Investment and Diverse Uses while Maximizing Spectrum Distribution, As Required by the Communications Act.

Los Angeles agrees with numerous commenters that the problems posed by expanding PAL license areas would be “compounded by the NPRM’s proposal to replace limited-term PALs [. . .] with 10-year license terms that renew automatically and bestow effectively permanent license rights.”¹² The actions proposed in the NPRM would essentially transform the

¹⁰ City of New York Comments at 3.

¹¹ *Id.*

¹² Open Technology Institute at New America and Public Knowledge Comments at 29 (“OTI/PK Comments”).

PALs and the innovative 3.5 GHz Band licensing framework “into traditional cellular licenses” and would make PALs “prohibitively expensive and uneconomic for all but the largest wide-area mobile carriers.”¹³ That result, while understandably preferable to those incumbent providers, not only defeats the purpose of the innovative structure of the 3.5 GHz band, but also directly contradicts the Commission’s statutory obligations in distributing spectrum licenses.

Los Angeles is deeply concerned that “long and perpetual license terms, combined with license areas as large as counties or PEAs, will do their intended job of ensuring that small operators, market entrants, innovators, and individual enterprises and local institutions (such as schools, libraries, public parks, harbors, et al.) do not have access to PAL spectrum.”¹⁴ These concerns are shared by small and rural WISPs,¹⁵ competitive providers providing consumer choice in urban and suburban markets,¹⁶ potential industrial users,¹⁷ and a variety of other commenters. Furthermore, the proposals in the NPRM only enhance large carriers’ incentive to aggregate 3.5 GHz spectrum with holdings in other bands.¹⁸ Smaller providers, and new industrial and enterprise users, on the other hand, have no other ready access to licensed spectrum. Thousands of potential uses cases fall by the wayside if the licensing framework for

¹³ *Id.* at 30.

¹⁴ *Id.* at 31.

¹⁵ *See, e.g.* Tennessee Wireless Comments at 1; Cirrinity Wireless, LLC Comments at 2; Portative Technologies, LLC Comments at 1; Royell Communications, LLC Comments at 1; Night Owl Wireless, LLC Comments at 1; AirFi Inc. Comments at 1; Grand County Internet Services Inc. Comments at 1; Starry Comments at 1-2.

¹⁶ *See, e.g.* Starry Comments at 2-3.

¹⁷ *See, e.g.* General Electric Comments at i-ii.

¹⁸ *See* OTI/PK Comments at 32.

PALs is modified to best accommodate capacity-building for established carriers, rather than promoting access for new users and operators.¹⁹

Such an approach also directly contravenes the Commission’s statutory obligations in distributing licenses via auction. The Commission is obligated by law to ensure license concentration is avoided, that licenses are distributed as broadly as possible, and that small businesses are able to access spectrum.²⁰ The Commission must also ensure that its auction processes advance the “efficient and intensive use of the electromagnetic spectrum.”²¹ These are not optional considerations, either; the statute is explicit that the Commission *shall* seek to promote these outcomes in its auction policymaking.²² As General Electric notes, “‘Census-tract licensing for CBRs PALs furthers all of these statutory objectives.’”²³ The Commission must retain the existing 3.5 GHz licensing framework in order to ensure these Congressional directives are achieved.

The NPRM takes another path, however, with conversion to traditional wireless licenses, with large geographic size and lengthy, automatically renewing terms, favoring incumbents over innovators, competitors, and small businesses. These are not the objectives Congress dictated in granting the Commission auction authority, nor are they what the wireless marketplace needs. As the record unequivocally reflects, there is great potential for investment in the 3.5 GHz band under its existing licensing framework. The changes proposed in the NPRM will simply tilt the playing field to favor major incumbents, and should be abandoned.

¹⁹ *See id.*

²⁰ 47 U.S.C. § 303(j)(3)(A-B).

²¹ 47 U.S.C. §§ 309(j)(3)(D).

²² *See* 47 U.S.C. §§ 303(j); *see also* General Electric Comments at 33, note 63.

²³ General Electric Comments at 33.

IV. CONCLUSION

The next generation of wireless technology will usher in unimagined advances in consumer and commercial connectivity, public safety, and network investment. While the 3.5 GHz Band is but one element of the future of connectivity, its innovative framework represents a critical step toward a more competitive, more connected, and more broadly served future. The 3.5 GHz Band is, in essence, an essential element in any approach to bridging the digital divide. Its potential for explosive growth in rural wireless, industrial Internet of Things applications, and competitive broadband are striking, and must be preserved, but it is essential too that the band be available for innovators whose applications have not yet been dreamed up. Those innovators will need access to viable spectrum at affordable prices, and in specific geographic markets, on an ongoing basis. Census-tract licensing, on short three-year terms, ensures the 3.5 GHz Band will serve as a hotbed of wireless innovation for decades to come, provided the Commission recognizes the value in the current framework. Accordingly, Los Angeles respectfully urges the Commission to set aside the harmful proposals in this NPRM, and turn its efforts instead toward ensuring this spectrum is brought to market as expeditiously, and in as competitively a fashion, as is practicable.

Respectfully submitted,

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