

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

In the Matter of)	
)	
Petition for Reconsideration)	
of Action in Proceeding)	
)	
Promoting Investment in the)	GN Docket No. 17-258
3550 to 3700 MHz Band)	

WINNFORUM COMMENTS IN REPOSE TO THE CALLCOMM PETITION

Introduction

The Wireless Innovation Forum (WinnForum) submits these comments regarding the CallComm Petition for Reconsideration of the FCC's Report and Order in the proceeding Promoting Investment in the 3550-3700 GHz band, and hereby requests that the Commission deny the petition for the following reasons:

1. As a result of its secondary status, non-federal radiolocation in 3550-3650 MHz is not entitled to incumbency rights or interference protection with respect to primary services in the band, including the fixed and mobile allocations under which the Citizens Broadband Radio Service (CBRS) operates;
2. To the extent CallComm wished to seek reconsideration of the Commission's elimination of the secondary non-federal radiolocation allocation at 3550-3650 MHz, it should have done so in 2015 in accordance with the Commission's rules governing petitions for reconsideration¹; and
3. Granting primary incumbent status to non-federal radiolocation operations, thereby creating a new incumbent class, will cause substantial disruption to the nascent CBRS industry.

¹ CallComm Petition for Reconsideration (<https://ecfsapi.fcc.gov/file/101071199223024/Comments%20for%20R%26O%2001072019.pdf>) & Petition For Reconsideration of Action In Proceeding, DOC-357659, Report No 3128, May 24, 2019

Discussion

In the initial Notice of Proposed Rulemaking (NPRM) in this proceeding, the Commission noted the existence of a non-federal secondary allocation for radiolocation services in the 3500-3650 MHz band and requested input on whether the allocation should be maintained.² The Commission subsequently noted in the Further Notice of Proposed Rulemaking (FNPRM) that “there was limited comment on the allocation proposals *per se*, although the great majority of commenting parties support shared federal/non-federal use of the 3.5 GHz Band for new broadband technologies.”³ Nonetheless, the Commission proposed to “...permit non-federal stations in the radiolocation service that were licensed or applied for prior to the effective date of this *Report and Order* to continue to operate on a secondary basis until the end of the equipment’s useful lifetime.”⁴ Finally, in the Report and Order, the Commission eliminated the non-federal radiolocation allocation in the 3550-3650 MHz band. The Commission noted “there are a number of other bands available for non-federal radiolocation use, and we see no need to continue to authorize use for such radiolocation services in the 3550-3650 MHz band, especially considering the impact of potential interference to Citizens Broadband Radio Service.”⁵

While the Commission noted in the course of the proceeding that there were no comments regarding the elimination of the non-federal radiolocation service and the accommodations afforded incumbents, WinnForum also notes that there were no comments regarding this change among the eight Petitions for Reconsideration filed *almost five years ago*.⁶ Therefore, the WinnForum believes the Commission has made a careful and thorough determination of eliminating secondary status for non-federal radiolocation operations in the 3550-3650 portion of the CBRs band in course of the CBRs rulemaking, and even allowed existing licensees to operate in the band until the end of their equipment’s useful life.

Accordingly, the Commission should deny CallComm’s petition since it is both substantively and procedurally flawed. As a result of its secondary status, non-federal

² “Enabling Innovative Small Cell Use In 3.5 GHz Band NPRM & Order” (NPRM), Gen Docket 12-354, FCC 12-148, 27 FCC Rcd 15594 (18) ¶93

³ “Creation of New Citizens Broadband Radio Service in 3.5 GHz”, (FNPRM), Gen Docket 12-354, FCC 14-49, 29 FCC Rcd 4273 (5), ¶113

⁴ “Rules for Innovative Spectrum Sharing in 3.5 GHz Band”, (R&O and SFNRM), Gen Docket 12-354, FCC 15-47, 30 FCC Rcd 3959 (5) ¶40

⁵ *Id*

⁶ “3.5 GHz Order on Recon and 2nd R&O”, (2nd R&O), Gen Docket 12-354, FCC 16-55, 31 FCC Rcd 5011 (6)

radiolocation at 3550-3650 MHz would never have been entitled to incumbency rights or interference protection with respect to primary services in the band. The few previously authorized stations that are allowed to continue operating until the end of the equipment's useful lifetime must do so on a secondary non-interference basis to the fixed and mobile services under which CBRS operates, and other primary services. Moreover, to the extent CallComm wished to seek reconsideration of the elimination of the secondary non-federal radiolocation allocation at 3550-3650 MHz, it should have done so in 2015 in accordance with the Commission's rules governing petitions for reconsideration. The CallComm petition for reconsideration is thus time-barred.

In addition, granting primary incumbent status to non-federal radiolocation operations, thereby creating a new incumbent class, will cause substantial disruption to the nascent CBRS industry. Indeed, SASs are nearing certification, an extensive ecosystem of devices have been, or in the process of being, certified, Initial Commercial Deployment is expected to commence soon, and users are eagerly lining up to take advantage of this new band. Requiring the CBRS industry to now deal with this new and altogether different type of incumbent operation could bring these successes to a halt and effectively staunch millions of dollars of investment in a band with an estimated value of billions of dollars.⁷ We suggest this is certainly not in the public interest.

Summary

For the reasons stated above, we respectfully request that the Commission deny CallComm's Petition for Reconsideration.

Respectfully submitted,

By /s/:

Bruce Oberlies

President and Chair

The Wireless Innovation Forum

June 24, 2019

⁷ See <https://www.cbrsalliance.org/resource/the-potential-market-value-and-consumer-surplus-value-of-the-citizens-broadband-radio-service-cbrs-at-3550-3700-mhz-in-the-united-states/>