

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**OPPOSITION OF CTIA  
TO PETITION FOR RECONSIDERATION OF CALLCOMM**

Pursuant to Section 1.429(f) of the Commission’s Rules, CTIA<sup>1</sup> hereby opposes the petition for reconsideration of the *2018 3.5 GHz Report and Order* filed by CallComm.<sup>2</sup>

**I. INTRODUCTION.**

The Commission should dismiss the Petition as untimely and substantively deficient. The Petition does not identify a single issue raised or decided in the *2018 3.5 GHz Report and Order* for purposes of reconsideration and instead amounts to an untimely petition for reconsideration of the Commission’s *2015 3.5 GHz Report and Order*.<sup>3</sup>

---

<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> See *Petition for Reconsideration of Action in Proceeding*, Public Notice, Report No. 3128 (rel. May 24, 2019); *Petition for Reconsideration of CallComm*, GN Docket No. 17-258 (filed Jan. 7, 2019) (“Petition”); *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598, (2018) (“*2018 3.5 GHz Report and Order*”).

<sup>3</sup> *Amendment of the Commission’s Rules with Regard to Commercial Operations in 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015) (“*2015 3.5 GHz Report and Order*”).

The Petition claims that the Commission failed to address the protected status of non-federal Land Mobile Radiolocation licensees in the 3.5 GHz band as part of the *2018 3.5 GHz Report and Order*. However, the Commission did not need to do so because it addressed the status of radiolocation operations in the 3.5 GHz band in 2015. The *2018 3.5 GHz Report and Order* did not reopen any discussion of these issues and the Petition cannot now seek reconsideration of the long-settled subject. The Petition therefore does not warrant consideration by the Commission and should be dismissed because it is grossly untimely filed and relates to matters outside the scope of the *2018 3.5 GHz Report and Order*. In the alternative, the Commission should deny the Petition, as the Commission already eliminated the non-federal radiolocation allocation and permitted only limited operations for existing licensees in the band, and any relief here could restrict the rollout of the Citizens Broadband Radio Service (“CBRS”)—which is on the cusp of commercial deployment—contrary to the public interest.

**II. THE PETITION SHOULD BE DISMISSED, AS IT IS AN UNTIMELY REQUEST FOR RECONSIDERATION OF THE 2015 3.5 GHz REPORT AND ORDER.**

Pursuant to Section 1.429(k) of the Commission’s rules, the Petition is “untimely” and “relates to matters outside the scope of the order for which reconsideration is sought,” and thus “plainly do[es] not warrant consideration by the Commission” and should be dismissed.<sup>4</sup> Although the Petition calls for reconsideration of the Commission’s *2018 3.5 GHz Report and Order*, it fails to identify any issue decided in that order that warrants reconsideration. Instead, the Petition amounts to a request for reconsideration of a Commission decision made nearly four years ago.

---

<sup>4</sup> 47 C.F.R. § 1.429(l)(9), (7), (5).

The Petition alleges that the Commission erred by “not includ[ing] existing, currently licensed, Part 90 Land Mobile Radiolocation Licensees as a classification in Incumbent Protections” in the 3.5 GHz band.<sup>5</sup> To support its point that the Commission missed something, the Petition cites to the table of contents of the *2015 3.5 GHz Report and Order*, which references “Federal Incumbent Protection” and “Protection for Incumbent FSS Earth Stations,” but does not mention protection for Land Mobile Radiolocation.<sup>6</sup> However, the Commission’s decision in 2015 not to include protections for non-federal radiolocation operations was intentional and the Commission did not disturb the finding when it revisited certain CBRS rules in 2018.<sup>7</sup>

The *2015 3.5 GHz Report and Order* affirmatively addressed land mobile radiolocation by (1) “eliminat[ing] the non-federal radiolocation allocation in the 3550-3650 MHz band,” and (2) “continuing to permit non-federal radiolocation stations that were licensed or had filed an application . . . to continue to operate on a secondary basis until the end of the equipment’s useful lifetime.”<sup>8</sup> The Commission codified these conditions in footnote US105 of the Table of Allocations. In 2015, the Commission found that “a number of other bands” were available for non-federal radiolocation use and that there was “no need” to continue to authorize radiolocation

---

<sup>5</sup> See Petition at 1.

<sup>6</sup> See *id.*; *2015 3.5 GHz Report and Order*, 30 FCC Rcd 3960.

<sup>7</sup> Subsequent to the 2015 decision, the Commission sought comment on targeted changes to the Commission’s rules related to Priority Access Licenses (“PALs”) in the 3.5 GHz band. See *Promoting Investment in the 3550-3700 MHz Band*, Notice of Proposed Rulemaking and Order Terminating Petitions, 30 FCC Rcd 3959 (2017). The *2018 3.5 GHz Report and Order* then adopted limited changes to make the rules governing PALs more investment friendly, including changes to license areas, license terms, performance requirements, and competitive bidding rules. See *2018 3.5 GHz Report and Order*, 33 FCC Rcd 10599 ¶ 2.

<sup>8</sup> *2015 3.5 GHz Report and Order*, 30 FCC Rcd 3974 ¶ 40.

services in the 3.5 GHz band, “especially considering the impact of potential interference to [CBRS].”<sup>9</sup>

A subsequent rulemaking in which the Commission did not revisit or seek comment on any related or relevant issue offers no procedural vehicle to seek reconsideration now. As the Commission has noted, enforcement of the Commission’s procedural rules “promotes orderliness and finality in the administrative process and thereby serves the public interest, convenience, and necessity.”<sup>10</sup> Neither the Communications Act nor the Commission’s rules require the Commission to consider petitions for reconsideration that “rely on facts or arguments that the petitioner could have – but did not – present” at an earlier stage in the proceeding.<sup>11</sup> The time to challenge the Commission’s decision related to the allocation and limited grandfathering of Land Mobile Radiolocation stations was in 2015—not 2019. In short, the Petition cannot now reopen that decision in a petition for reconsideration. The Petition should therefore be dismissed.

### **III. IN ANY EVENT, THE PETITION’S REQUESTS ARE SUBSTANTIVELY MISGUIDED AND SHOULD BE DENIED.**

To the extent the Commission considers the Petition on the merits, it should deny the Petition as it “[f]ail[s] to identify any material error, omission, or reason warranting reconsideration.”<sup>12</sup>

Although the Petition seeks protected status for non-federal Land Mobile Radiolocation operations, it is important to note that the existing Land Mobile Radiolocation operations in the

---

<sup>9</sup> *Id.*

<sup>10</sup> *See, e.g., Scott Malcolm, DSM Supply, LLC, Somaticare, LLC*, 33 FCC Rcd 2410, 2412 ¶ 8 (2018).

<sup>11</sup> *Id.*

<sup>12</sup> *See* 47 C.F.R. § 1.429(l)(1).

band are only authorized on a secondary basis.<sup>13</sup> The *2015 3.5 GHz Report and Order* did not alter that secondary status when it permitted non-federal Land Mobile Radiolocation stations already existing in the band to continue to operate on a secondary basis until their existing equipment is no longer operable. Such licensees are required to curtail any operations that may cause harmful interference to new CBRS operations.

It defies logic to transition these existing secondary operations to a protected status just as the 3.5 GHz CBRS regime is on the “precipice” of commercial deployment.<sup>14</sup> Adding new incumbent protections or designing a re-banding program for Land Mobile Radiolocation licensees at this stage—as the Petition suggests—would delay the rollout of CBRS, upset the expectations of those operators who are ready to begin deployments, and conflict with the Commission’s goal of “ensuring the rapid deployment of advanced wireless technologies” in the 3.5 GHz band.<sup>15</sup> For these reasons, to the extent the Commission considers the Petition, it should be denied.

#### **IV. CONCLUSION.**

The Petition is not timely, raises no issues for reconsideration related to the *2018 3.5 GHz Report and Order*, and is substantively deficient. The Commission should dismiss and/or deny the Petition.

---

<sup>13</sup> Petition at 1; *see also Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Notice of Proposed Rulemaking and Order, 27 FCC Rcd 15594, 15603 ¶ 23 (2012) (“The 3500-3600 MHz and 3600-3650 MHz bands are allocated to RLS on a secondary basis for non-federal use.”).

<sup>14</sup> *See* Remarks of FCC Commissioner Michael O’Rielly before the CBRS Alliance, Charlotte, NC (Apr. 30, 2019), <https://docs.fcc.gov/public/attachments/DOC-357255A1.pdf>.

<sup>15</sup> *2018 3.5 GHz Report and Order*, 33 FCC Rcd 10599 ¶ 2.

Respectfully submitted,

/s/ Kara Graves

Kara Graves  
Director, Regulatory Affairs

Thomas C. Power  
Senior Vice President and General Counsel

Scott K. Bergmann  
Senior Vice President, Regulatory Affairs

**CTIA**  
1400 Sixteenth Street, NW  
Suite 600  
Washington, DC 20036  
(202) 785-0081

Dated: June 24, 2019

## **CERTIFICATE OF SERVICE**

I, Alexandra Carr, hereby certify under penalty of perjury that the foregoing Opposition of CTIA to Petition for Reconsideration of CallComm was served this 24th day of June, 2019, by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to:

John C. Gazzo  
CallComm  
PO Box 1541  
Dillon, CO 80435

/s/ Alexandra Carr

Alexandra Carr

June 24, 2019