

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

In the Matter of	)	
	)	
Amendment of the Commission’s Rules with	)	GN Docket No. 12-354
Regard to Commercial Operations in the	)	
3550-3650 MHz Band	)	
	)	
Petition for Rulemaking of CTIA	)	RM-11788
	)	
Petition for Rulemaking of T-Mobile USA, Inc.	)	RM-11789
	)	

**JOINT COMMENTS OF  
THE RURAL WIRELESS ASSOCIATION, INC. AND  
NTCA—THE RURAL BROADBAND ASSOCIATION**

The Rural Wireless Association, Inc. (“RWA”)<sup>1</sup> and NTCA—The Rural Broadband Association (“NTCA”)<sup>2</sup> hereby submit joint comments filed in response to the Federal Communications Commission (“FCC” or “Commission”) Wireless Telecommunications Bureau (“WTB”) and the Office of Engineering and Technology (“OET”) Public Notice<sup>3</sup> seeking

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<sup>1</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

<sup>2</sup> NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

<sup>3</sup> *Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment on Petitions for Rulemaking Regarding the Citizens Broadband Radio Service*, GN Docket No. 12-354, Public Notice, DA 17-609 (rel. June 22, 2017) (“Public Notice”).

comment on Petitions for Rulemaking (“Petitions”) filed by CTIA<sup>4</sup> and T-Mobile, USA, Inc. (“T-Mobile”).<sup>5</sup> The Petitions request a new rulemaking proceeding to adopt certain requested rule changes to the license framework in the Citizens Broadband Radio Service (“CBRS”) established in the 3550-3700 MHz (“3.5 GHz”) band, as well as several *ex parte* filings in GN Docket No. 12-354, the CBRS rulemaking docket that was initiated in 2012. RWA and NTCA oppose the Petitions and, at the onset, assert that they should be dismissed as untimely petitions for reconsideration. If the Petitions are not dismissed on procedural grounds, then RWA and NTCA urge the Commission to deny the Petitions insofar as they propose major rule changes to the established three-tier CBRS license structure discussed below that, if adopted, would delay the service’s commercial implementation and undermine the Commission’s goal of providing economic opportunity to a wide variety of applicants<sup>6</sup> including numerous 3650-3700 MHz license holders that are transitioning into the 3.5 GHz band.

**I. The T-Mobile and CTIA Petitions Should Be Dismissed As Untimely Petitions for Reconsideration.**

As an initial matter, RWA and NTCA maintain that the T-Mobile and CTIA Petitions should be dismissed pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”) and Section 1.429 of the Commission’s rules as untimely petitions for reconsideration.<sup>7</sup> CTIA and T-Mobile both have availed themselves of the opportunities to participate in multiple

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<sup>4</sup> CTIA, Petition for Rulemaking, GN Docket No. 12-354, RM-11788 (filed June 16, 2017) (“CTIA Petition”).

<sup>5</sup> T-Mobile USA, Inc., Petition for Rulemaking, GN Docket No. 12-354, RM-11789 (filed June 19, 2017) (“T-Mobile Petition”).

<sup>6</sup> 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, FCC 15-47, ¶100 (rel. April 21, 2015) (“3.5 GHz R&O”).

<sup>7</sup> 47 U.S.C. § 405. 47 C.F.R. § 1.429.

comment rounds during the established rulemaking proceeding and again under reconsideration.<sup>8</sup> CTIA was one of several entities that filed a Petition for Reconsideration in GN Docket No. 12-354 in 2015 and that was considered and disposed of by the full Commission.<sup>9</sup> T-Mobile also participated in the reconsideration cycle.<sup>10</sup> After a lengthy and exhaustive rulemaking comment period, the full Commission unanimously adopted the CBRS rules in 2015<sup>11</sup> and later, upon reconsideration, modified in part and affirmed its rules in 2016.<sup>12</sup>

Since that time, a wide array of diverse stakeholders—including small and rural telecommunications and broadband providers throughout the country—have invested resources toward new and innovative deployments while relying upon a predictable regulatory framework.<sup>13</sup> Now, the very filing of these petitions, let alone the prospect of a major license overhaul, has cast a pall of regulatory uncertainty over the CBRS band. The Petitions introduce undue delay to the implementation of the CBRS, including the Commission’s ongoing Spectrum Access System Administrators and Environmental Sensing Capability Operator approval process, and may chill further investment by stakeholders.

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<sup>8</sup> See Comments of T-Mobile (filed February 20, 2013); Reply Comments of T-Mobile (filed April 5, 2013); Comments of T-Mobile (filed December 5, 2013); Reply Comments of T-Mobile (filed December 20, 2013). See also Comments of CTIA (filed February 20, 2013; CTIA Reply Comments to 3.5 GHz PN (filed December 20, 2013).

<sup>9</sup> See Petition for Reconsideration of CTIA (filed July 23, 2015); Reply to Oppositions to Petition for Reconsideration of CTIA (filed October 29, 2015).

<sup>10</sup> See Response of T-Mobile (filed October 19, 2015).

<sup>11</sup> 3.5 GHz R&O.

<sup>12</sup> Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, Order on Reconsideration and Second Report and Order, FCC 16-55 (rel. May 2, 2016) (“3.5 GHz Reconsideration Order”).

<sup>13</sup> A June 1, 2017 *ex parte* letter filed by a group of CBRS stakeholder companies highlighted the disparate efforts and investments that have been made thus far toward the commercial implementation of the CBRS, including standards development, chip design, operational trials, and commercial device manufacture. *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Notice of Ex Parte of All Points Broadband *et al.* (filed June 1, 2017) (“CBRS Stakeholder Ex Parte”).

Moreover, in substance the Petitions largely revive arguments that already have been considered and addressed by the Commission, twice in some cases. Among other things, the Commission has already considered and adopted rules covering license designations in the 3.5 GHz band, Priority Access License (“PAL”) term length, and PAL license area size, all of which are the subject of major CBRN licensing modifications proposed in both Petitions. Accordingly, the Petitions are unmistakably nothing more than late-filed petitions for reconsideration that should be dismissed on procedural grounds alone.<sup>14</sup> Even if the Commission were to consider the Petitions for Reconsideration, reconsideration would be warranted only if the Petitioners cite error of fact or law, or present facts or circumstances that raise substantial or material questions of fact that otherwise warrant Commission review of its prior action.<sup>15</sup> The Petitioners have not shown any errors with respect to the facts or law nor have they made a showing that acceptance of the late-filed Petitions for Reconsideration would benefit the public interest.

## **II. The Commission Should Not Modify PAL Areas to Partial Economic Areas.**

Census tract-based PAL license areas were adopted by the Commission to allow flexible and targeted network deployments, to promote efficient use of the spectrum, and to allow easy aggregation to accommodate larger network footprints.<sup>16</sup> Census tracts vary in size and population density, and in rural areas of the country they can be large and sparsely populated. The Commission also found census tracts to be practical as they nest into common license areas

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<sup>14</sup> The substantive allegations of the petition dictate its treatment as a petition for reconsideration. *See, e.g., Association of College and Univ. Telecommunications Administrators, American Council on Educ., and Nat’l Assoc. of College and Univ. Business Officers*, Memorandum Opinion and Order, 8 FCC Rcd 1781 (1993) (Commission dismissed self-styled petition for clarification as untimely filed petition for reconsideration).

<sup>15</sup> 47 C.F.R. § 1.429(k).

<sup>16</sup> 3.5 GHz R&O at ¶¶94-101.

(e.g., Cellular Market Areas, Economic Areas, and Partial Economic Areas (“PEAs”)) as well as political subdivisions.<sup>17</sup>

Significantly, the Commission noted that “the mandate of Section 309(j) strongly supported its goal, particularly in ‘prescrib[ing] area designations,’ of providing economic opportunity to a wide variety of applicants.”<sup>18</sup> Here, the Commission expressly praised the lower capital investment requirements associated with smaller service areas and noted that the larger, traditional license areas are inconsistent with its desire to promote innovative, low power uses in the CBRS band, such as small cells.<sup>19</sup> The Commission also expressly noted that traditional licensing areas will not allow users of the band to acquire PALs only for those specific geographic areas they intend to serve and that “[d]ivesting large, unwanted swaths through secondary markets transactions could impose significant transactions costs.”<sup>20</sup> Conversely, entities that wish to serve traditional geographic license areas are free to aggregate multiple contiguous census tracts.

Now, at well past the eleventh hour, the Petitioners grasp for a second or even third bite at the apple by seeking to upend the CBRS license framework and request that PALs be licensed on a PEA basis. Petitioners also request that the CBRS rules be modified so that PEA-based licenses may be partitioned and disaggregated through the secondary market. Permitting such a major modification of the license framework would be an about-face for the Commission, as it would restrict economic opportunity to a smaller pool of applicants. PEA-based licenses would inherently cause prices to skyrocket and would freeze out many small and rural providers and particularly new entrants from the auction process. Instead, the framework advocated by the

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

large national Mobile Network Operators (MNOs) would impose significant secondary market transaction costs on a broader group of smaller entities that desire CBRS access. Worse yet, for over two years many of these entities have been relying upon and making investments on the basis of the Commission’s existing CBRS license framework—one that has run its course including through reconsideration. Small, rural providers have the desire and motivation to serve rural communities. Changing the geographic area licensing scheme at this late date all but ensures that no small providers will successfully utilize the spectrum. Only large carriers (*i.e.*, the Petitioners) have the resources necessary to offer service on a PEA basis. It would be a mistake, ultimately harming rural consumers and the objectives of competition, to deny rural providers the opportunities afforded by the spectrum at issue. In no event should the Commission modify PAL license areas to PEAs.

### **III. The Commission Should Not Designate the Entire 3.5 GHz Band for PAL Use.**

T-Mobile, the third largest U.S. MNO, proposes that the Commission designate for PAL use the entire 3.5 GHz band (*i.e.*, all 150 megahertz rather than the current 70 megahertz limit) with any remaining unclaimed spectrum made available for opportunistic general authorized access (“GAA”) use.<sup>21</sup> Under this proposal, in-band spectrum aggregation would be limited to 50 megahertz and would permit three entities to hold and aggregate CBRS licenses in a market area – most likely the three largest MNOs. RWA and NTCA urge the Commission to reject this proposal as it would shut out many small and rural providers and new entrants, and essentially would obliterate the GAA tier. Relegating GAA only to opportunistic use in areas where there is no PAL usage renders the tier entirely unpredictable and unviable. Moreover, PAL auctions with all 150 megahertz would be won primarily by well-heeled buyers and would largely shut out

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<sup>21</sup> T-Mobile Petition at 9-11.

small and rural providers, startups, and new entrants. Entities that lack the resources to ensure a successful result at a PAL auction would be left with a haphazard GAA market.

As adopted, the Commission's divided framework of PALs and GAAs was intended to promote innovation and flexibility as well as to help prevent spectrum warehousing. The three-tiered framework reflected the Commission's goals of "ensuring that a stable and significant quantity of spectrum is available for both Priority Access Licensees and GAA" in order to "foster innovation, encourage efficient use of the band, and create an environment conducive to a wide array of potential users and uses."<sup>22</sup> In rejecting proposed policies that would preclude opportunistic use and limit the scope of potential GAA deployments, the Commission noted that such policies would "encourage spectrum warehousing and disincentivize efficient use of the band."<sup>23</sup> Rather, the Commission indicated that it is "in the public interest to ensure that the 3.5 GHz Band is made widely available to Citizens Broadband Radio Service users – regardless of their operational tier..."<sup>24</sup> There is nothing in the Petitions that should call into question these conclusions, and thus the Commission should leave the three-tier CBRS license framework intact.

#### **IV. The Commission Should Not Lengthen the PAL License Term to Ten Years.**

The current PAL license term of three years, which is renewable *only after the initial term* for another three years, was never intended to mirror the traditional exclusive licensing regime.<sup>25</sup> Rather, the Commission's rules aimed to promote deployments by a wide range of service providers and lower costs of entry.<sup>26</sup> This framework promotes additional broadband

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<sup>22</sup> 3.5 GHz R&O at ¶63.

<sup>23</sup> 3.5 GHz R&O at ¶73.

<sup>24</sup> *Id.*

<sup>25</sup> 3.5 GHz R&O at ¶108.

<sup>26</sup> 3.5 GHz R&O at ¶107.

development in rural areas and lowers the barriers to entry for small and rural providers as well as new entrants. Additionally, the adopted framework does not foreclose nationwide mobile wireless providers from participating. PAL holders that are not able to obtain exclusive PAL rights after a three-year term may use their equipment as a GAA user.

CTIA and T-Mobile request that the Commission modify the PAL license terms from three to ten years with a renewal expectancy. Both Petitioners previously addressed the issue of license term length in the rulemaking proceeding, proposing various “multi-year” terms<sup>27</sup> in response to the one-year terms initially proposed by the Commission. As a compromise, the Commission adopted and later affirmed a three-year PAL license term with no opportunity for renewal except after the initial term.

In justifying its decision to maintain a three-year non-renewable term despite requests under reconsideration by CTIA and others to extend the term, the FCC explained its continued belief that this structure “strike[s] a balance between some commenters’ desire for flexibility with other commenters’ need for certainty.”<sup>28</sup> The Commission determined that the arguments raised by CTIA and others concerning license term “were already thoroughly considered by the Commission in the 3.5 GHz R&O.”<sup>29</sup>

Importantly, the Commission “continue[s] to believe that the current rules will effectively incentivize network investment”<sup>30</sup> particularly given the “differences in the nature and scope of service”<sup>31</sup> in the shared CBRS band. CTIA argued in its petition for reconsideration “that deploying a network takes ‘several years,’ and that six years is not a sufficient time period to

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<sup>27</sup> T-Mobile initially requested a term “similar to the 10-year licenses commonly issued in other wireless services” while CTIA specified a five-year term in its Petition for Reconsideration.

<sup>28</sup> 3.5 GHz R&O at ¶107; 3.5 GHz Reconsideration Order at ¶43.

<sup>29</sup> 3.5 GHz Reconsideration Order at ¶43.

<sup>30</sup> *Id.* at 44.

<sup>31</sup> *Id.* at 45.



build a network and obtain the financial return an operator would need to justify making such investments.”<sup>32</sup> Among other things, CTIA argued that factors such as “standardizing a new frequency band, developing and certifying equipment, undergoing site acquisition and local zoning and permitting processes, deploying infrastructure and incorporating the band into consumer devices” demanded license terms of at least five years with renewal expectancy. Nevertheless, the Commission determined that CTIA offered “no support” for this assertion. Instead, the Commission concluded that the “economics and upgrade cycles for small cell use may resemble those for Wi-Fi deployments rather than traditional macro cell deployments” and emphasis on the smaller PAL license area size.

Now, CTIA and T-Mobile both repeat that same refrain that the current license term rules create a risk that a PAL licensee would “face stranded investment,” which in turn would “diminish the attractiveness of PALs” and harm the “potential of the three-tiered CBRS spectrum access regime.”<sup>33</sup> On reconsideration, the Commission had found there to be a lack of support to justify lengthening the license term to five years with a renewal expectancy. Here, no new support is offered to justify an *even longer* license term of ten years plus a perpetual renewal expectancy.

Applying the traditional exclusive licensing regime model to the CBRS would completely undercut the Commission’s innovative objectives with the band and would encourage large providers to accumulate CBRS spectrum in contravention of Section 309(j) of the Act “to prevent stockpiling or warehousing of spectrum.”<sup>34</sup> Accordingly, the Commission should deny the request to increase the PAL license term to ten years. If, however, the Commission

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<sup>32</sup> *Id.* at 44, *citing* CTIA Petition for Reconsideration at 3.

<sup>33</sup> T-Mobile Petition at 11; CTIA Petition at 6.

<sup>34</sup> 47 U.S.C. § 309(j).

determines that a modification to the PAL license term is appropriate, then RWA and NTCA would support a PAL license term ranging from three to five years with the opportunity to renew for another three- to five-year term. Such a modification would accommodate the infrastructure challenges raised by CTIA (e.g., siting, zoning, permitting), which can be particularly challenging in rural areas.

**V. Conclusion.**

Based on the foregoing, the CTIA and T-Mobile Petitions for Rulemaking should be dismissed or denied. The Commission should remain committed to unanimously adopted and affirmed rules, and refrain from major rule changes that would undermine current investments, market expectations, and ability of operators and investors to rely on the Commission's rules.<sup>35</sup>

Respectfully submitted,

**RURAL WIRELESS  
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By: */s/ Caressa D. Bennet*

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<sup>35</sup> *CBRS Stakeholder Ex Parte* at 2.