

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

In the Matter of)	
)	
Use of Spectrum Bands Above 24 GHz for Mobile)	GN Docket No. 14-177
Radio Services)	
)	

COMMENTS OF PVT NETWORKS, INC.

PVT Networks, Inc. (“PVT” or “the Company”), by its attorneys, hereby submits comments on the Commission’s proposals to transition existing spectrum holdings in the 39 GHz band (38.6-40 GHz) to the new flexible-use band plan, and related issues set forth in its Fourth Further Notice of Proposed Rulemaking (the “*Fourth FNPRM*”) in the above-captioned proceeding.¹

PVT applauds the Commission for its efforts to promote the efficient use of the 39 GHz band by incumbents and new licensees for fifth-generation (5G) wireless, IoT and other advanced services. In this regard, PVT supports the Commission’s proposal to modify the 39 GHz band plan from seven 200 megahertz channels to fourteen 100 megahertz channels, as well as proposals that would allow PEA incumbents to realign their existing spectrum holdings and assemble contiguous channel blocks without incurring any additional cost or having to participate in a future spectrum auction. Contiguous spectrum typically has greater utility for licensees (especially for 5G services which contemplate channel bandwidths of 100, 200 and 400 megahertz), and creating contiguous spectrum for auction will make the band more valuable. However, with respect to the classification and treatment of partially encumbered PEA licenses, PVT respectfully requests that the Commission recognize that certain Rectangular Service Area (or “RSA”) encumbrances of a PEA may be so miniscule that the underlying PEA channel should be treated as unencumbered for purposes of any rebanding efforts. Incumbents should be permitted to exchange these “flyspeck encumbered” licenses for other unencumbered channels in the same PEA,

¹ See Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services, Comment Sought on Procedures for Auctions 101 (28 GHz) and 102 (24 GHz), *Public Notice*, FCC 18-43 (*rel.* April 17, 2018) (*UMFUS Auction Procedures Notice*).

without penalty, if this would facilitate contiguity of their spectrum holdings. In addition, in geographic markets where they hold multiple channel blocks, PEA incumbents, and especially small licensees should be allowed the opportunity to modify their non-encumbered licenses (including any “flyspeck encumbered” licenses) to assemble contiguous spectrum by voluntarily trading channels with the FCC and not be forced to participate in an auction or voucher exchange program unless they want to expand or adjust their geographic spectrum holdings.

Statement of Interest

PVT is a small business and a wholly-owned subsidiary of the Peñasco Valley Telephone Cooperative in Artesia, New Mexico. The Company currently holds six (6) 100 megahertz PEA licenses in the Roswell PEA (which includes Chaves, Eddy and Lea Counties in NM, Yoakum and Gaines Counties in TX), and one (1) 100 megahertz PEA license in each of the El Paso (El Paso County, TX), Las Cruces (Sierra and Dona Ana Counties in NM), Alamogordo (Lincoln and Otero Counties in NM) and the Van Horn PEAs (Culberson and Hudspeth Counties in TX). All of PVT’s PEA channel blocks are clear of RSA incumbents *except* for channels 4-A and 4-B which it holds in the Roswell PEA (PEA259). Those licenses (Call Signs WRBD253 and WRBD254) are impacted by an extremely small overlap on the eastern edge of Yoakum County, a remote and sparsely populated area that would appear to include only 90 POPs. Since the Roswell PEA has around 209,606 POPs, this works out to a miniscule fraction of around 0.043%. *Forty-three one-thousandths of one percent.* While this “flyspeck encumbrance” has no bearing on PVT’s valuation of its spectrum, and PVT would gladly retain rights to this channel if it could still assemble contiguous 39 GHz Band spectrum holdings in the Roswell PEA, the encumbrance would appear to unduly complicate the ability of PVT to utilizing pre-auction license modification and voucher exchange programs effectively. As a result, PVT has a direct and substantial interest in the outcome of this proceeding.

I. PVT Supports Changing the 39 GHz Band Plan from 200 Megahertz Channels to 100 Megahertz Channels

As an initial matter, PVT supports the Commission’s proposal to change the 39 GHz band plan

from one that uses 200 megahertz channels to 100 megahertz channels. Using 100 megahertz channels would be consistent with 3GPP's 5G standards, it would allow licensees to aggregate larger channel sizes using a "building block" approach if they so choose, which is important given that the Commission has adopted 100 megahertz channels for other UMFUS bands, including the 24 GHz band, the Lower 37 GHz (37.0-37.6 GHz) band, and it has proposed to adopt 100 megahertz channels for the 42 GHz band. For incumbent PEA licensees like PVT that hold just one incumbent 39 GHz channel block in a PEA, or that hold an odd number of channel blocks, using a 100 megahertz channel plan for the reconfigured 39 GHz spectrum would prevent the situation where an incumbent holds rights to half of a channel, and would be forced to bid in an auction to secure a complete channel. This could potentially create a situation where a competitor could engage in insincere bidding to raise the cost of the partial channel, and it could limit the market for potential buyers if the incumbent decided to sell its partial channel in the secondary market.

II. PVT Supports the Continued Availability of Voluntary License Swap and License Modification Procedures that Allow PEA Licensees to Assemble Contiguous Spectrum Holdings Without the Need for Vouchers, with Minor Clarifications

For 39 GHz incumbent PEA licensees whose geographic licenses are not impacted by RSA incumbency, the Wireless Telecommunications Bureau has announced procedures whereby it would accept applications from 39 GHz licensees (1) to swap their existing holdings for certain unassigned blocks within the 39 GHz band without the agreement of any other incumbent licensee; (2) to swap their existing holdings for other existing holdings and unassigned blocks within the 39 GHz band with the agreement of other incumbent licensees; and/or (3) to cancel their RSA licenses that fall wholly within a PEA in block(s) held by the same incumbent in that PEA, resulting in an unencumbered PEA license block(s).² The availability of quick and inexpensive procedures to increase spectrum contiguity within a PEA without having to participate in an auction is extremely valuable to small licensees such as PVT, who have limited resources that must be conserved for deployment of service in smaller and rural markets, and who may not wish to incur the expense or uncertainty of participating in a 39 GHz spectrum

² See Wireless Telecommunications Bureau Accepting Applications to Modify Existing Licenses in the 39 GHz Band Pursuant to Voluntary Rebanding Process, *Public Notice*, DA 18-619 (*rel.* June 14, 2018) ("39 GHz Voluntary Rebanding PN").

auction perhaps a year or more from now.

However, under the voluntary rebanding procedures previously announced and the pre-auction voucher exchange procedures proposed in the *Fourth FNPRM*, it would appear that PVT could be precluded from exchanging channels 4-A and 4-B which it holds in the Roswell PEA for a different clean channel, if this is needed in order to consolidate PVT's holdings into a contiguous 600 megahertz set of channels. As noted in the *Fourth FNPRM*, AT&T and Verizon hold the majority of encumbered PEA licenses.³ It should come as no surprise then that the pre-auction voucher exchange program, originally proposed by AT&T, would be a highly useful way for a licensee that has nationwide operations and that holds thousands of 39 GHz licenses representing hundreds of millions of MHz-POPs, to amass fractional vouchers from hundreds of markets, allowing it to make significant changes to its 39 GHz spectrum holdings prior to the auction as well as offset the value of its winning bids. For licensees with vast spectrum holdings, vouchers are a viable commodity, and large licensees have access to economists and teams of analysts to maximize their value. For much smaller licensees, like PVT, the cost of potentially having to participate in a complex voucher exchange program and possibly an auction just to preserve one's existing license rights is unreasonable.

The *Fourth FNPRM* notes that the only other entities that hold encumbered PEA licenses nationwide are PVT, Consolidated Communications and T-Mobile.⁴ And in PVT's case, as discussed above, the only encumbrance of which it is aware involves one of its channel blocks in the Roswell PEA, and a remote/sparsely populated area in Eastern Yoakum County, TX, impacting just 90 out of 209,606 POPs in that market. This miniscule fraction of around 0.043% is so insignificant that it should not be considered an encumbrance for purposes of the rebanding process. Footnote 6 of the *Fourth FNPRM* notes that 18 of the 735 PEAs have encumbrances in areas that do not contain any population. The Commission could easily eliminate this potential stumbling block to PVT's efficient and low-cost

³ See *Fourth FNPRM* at para. 4.

⁴ *Id.*

consolidation of its 39 GHz spectrum rights if it adopted a policy that treated licenses with a *de minimis* encumbrance (for example, less than 5 one-hundredths of one percent of the PEA POPs) as if they were unencumbered. Such a policy would not prejudice any incumbent RSA licensees, and it would not have any negative impact on potential auction proceeds.

CONCLUSION

PVT appreciates the opportunity to submit these comments, and applauds the Commission for its efforts to make the 39 GHz band “auction ready.” Creating contiguous spectrum for incumbent licensees and for auction will make the 39 GHz band more valuable and should speed the development of equipment and services for 5G and IoT applications. PVT respectfully requests that the Commission adopt policies that small licensees should be allowed the opportunity to modify their non-encumbered licenses (including any “flyspeck encumbered” licenses) to assemble contiguous spectrum by voluntarily trading channels with the FCC and not be forced to participate in an auction or voucher exchange program unless they want to expand or adjust their geographic spectrum holdings.

Respectfully submitted,
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