**December 26, 2017**

Marlene H. Dortch, Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554

Re: **Comment and Request Regarding GN Docket 17-258 - In re: Promoting Investment in the 3550-3700 MHz Band**

Dear Ms. Dortch:

It is always a great and distinct honor to address you. Thank you for the opportunity to provide feedback by way of official comment. My focus today is on the specific aspects of the current CBRS NPRM in Docket GN Docket 17-258, Promoting Investment in the 3550-3700 Band.

**Background of Bernhardt Communications Company**

Bernhardt Communications Company is a strategic and competitive technology consulting service in continuous operation since 1993. We have been truly lucky to have a wide-array of networking and telecommunications clients and work extensively with and including radio tower companies, network companies, fixed wireless providers, channel distribution companies, network providers, Wireless Internet Service Providers, broadcast companies, online providers and radio equipment manufacturing vendors. While located in California, we offer strategic services to clients nationwide and work directly with clients served by the FCC rules to sustain, grow and benefit their businesses and their client consumers.

**Summary of What Bernhardt Communications Company Seeks from the FCC**

Bernhardt Communications Company seeks to have the Commission reject the substantial changes to the size of Priority Access Licensee (PAL) geographic divisions (from Census Tracts to PEAs) and to maintain the current PAL term(s) in the present Part 96 (Rules).

Bernhardt Communications Company sees through its clients, that the CBRS Band provides needed mid-band spectrum to service unserved and underserved areas of America. By providing access to 150 MHz of access in such areas under the current Rules, a diversity of providers can enter and serve the need.

History has not shown that major telecom or mobile providers alone have entered these areas nor that the economic incentives are present for them to enter. Since CBRS under its current Rules for PALs offers providers a mechanism to immediately enter such areas, the expectations set under the current Rules should be maintained in order to encourage investment and support a diversity of entrants and competition.

**Response to Assertion in the NPRM that Promoting Investment Requires Changes to Part 96 Rules**

Bernhardt Communications Company asserts that the assumption in the NPRM that continued and future investment in the CBRS Band require drastic and late changes to the CBRS Rules to keep or instill investment are incorrect. Many millions of dollars and thousands of man hours of invested time have already been invested in the 3.5 GHz Band to date. All entities we are aware of involved in CBRS not only continue to invest, but have ramped additional investment under the current Rules until the mobile companies filed their rulemaking petitions.

Wireless Internet Service Providers (WISPs), as an example, continue to invest in infrastructure costs relative to the Band in reliance on the present Rules. Providers and vendors of all types and sizes have already invested in the Band with expectations of the stated access. Changes now to the Rules would have the impact of rendering many of those investments valueless (stranding investments) and reducing the entrants from many to just a few.

The current NPRM therefore reduces the prospects for diverse and sustainable investments by introducing uncertainty in the market; and the likelihood that investments by small and medium sized businesses in the Band will be fruitless.

**Requested Outcomes from the NPRM in Proceeding GN Docket Number 17-258 (CBRS Part 96 Rule Change Proposal)**

In relation to GN Docket 17-258, Bernhardt Communications Company comes to the FCC to address very serious concerns about the proposed late in the process changes to the CBRS model. We feel the changes will have a contrary effect of causing only certain companies to have access to PALs.

Specifically, Bernhardt Communications Company wishes to express its concern and objections about the following proposed change areas in the Part 96 Rules under the NPRM:

1. **Change to PEAs from Census Tracts**: The proposed change of the CBRS Part 96 rules to allow PAL auctions to be based upon Partial Economic Areas (PEA’s) rather than the current Census Tract areas.

Bernhardt Communications Company asserts that the *current rules should be maintained* in order to best allow all business sizes and types to participate fairly and effectively in the CBRS Band. Large geographic regions such as PEAs, encompass too great an area (in some cases entire states) combining dense urban areas with sparsely populated rural areas. Changing the geographic area of PALs in this manner will eclipse competition and favors large established providers. It will have the effect of making PALs directly unattainable by other than a select group of providers.

1. **Change from License Terms of 3 to 10 years with Renewal Expectancy**: The proposed change of the CBRS Part 96 rules to allow PALs to be issued for ten-years with renewal expectancy; rather than the current three-year term.

Bernhardt Communications Company asserts that If the object of CBRS was to simply sell licenses akin to the current model of licensing, why bother with CBRS? CBRS is a method of both sharing spectrum and assuring that the spectrum is best utilized. The model does not work if PALs are simply considered assets and not maximized. With the possibility of PEAs and long terms, there geography begins to look and act like traditional licensed spectrum where only very wealthy participants can buy and control the band. It stops non-traditional businesses from entering the field and effectively cuts off competition.

1. **Private Subdivision or Partitioning of Licenses:** The proposal to allow purchasers of PALs within the proposed PEAs to partition or disaggregate their rights.

Bernhardt Communications Company asserts that major providers under traditional licensing have had the right to sublicense their spectrum for years. Most do not do it. They are not in the business of licensing and those they would license to areas seen in many cases as competition. Giving only the larger operators the ability to acquire PALs and then telling them they have complete control of partitioning (or choosing not-to) creates an unhealthy environment that is neither market driven, nor Rules driven. The likely outcome, based on history, is that much of the spectrum will not be used effectively and underserved areas will remain under or un-served.

**A Bookstore in the Neighborhood – Metaphor About Why the Proposed Rule Changes Will Have Far Reaching Negative Consequences to the Band**

Imagine you are the small book store on the street in a neighborhood. Your daily business requires you to add new books and find the content that your clients seek. As demand grows, you need to add more and more books, until there is no more space.

Because there is so much demand, you rent or buy another facility that is larger and more robust. Then again repeat the process a year later because so many clients seek your books that there just is not enough space.

In just a few years, you have gone from a personal provider to a provider that serves many. At the same time, digital books have become popular; so, you add a Website that sells digital books equivalent to what you have in your store. Your services have expanded, so has your client base, and you are doing something that is in demand.

Broadband providers, ISPs and network operators are like the bookstore owner. Their services are always in demand and the demand is growing. The space they use to provide their services (spectrum) needs to grow; and, they add new technologies and services to adapt to the ever-changing commercial environment and meet demand.

But, what if the wholesaler of books or the distributor choses only to sell books to those who could buy warehouses full at once? And then demanded that the only way to buy books is on a long-term contract with the supplier. What if they selected only Amazon, or Walmart, or Apple to sell their books to and nobody else had access to their inventory. How would that affect the business of the book store on the street? How would that affect competition? How would that affect likelihood of growth and dynamic expansion? Dramatically. Obviously, in this context, this is a metaphor for the dramatic changes suggested in the CBRS NPRM.

When a regulatory entity like the FCC chooses sides by its actions it can have a dramatic affect. The FCC choosing to change the size of PAL offerings from Census Tracts to PEA’s and changing licensing of PALs from three years to ten with renewals does just that. It shuts off the ability for anyone but huge providers (such as AT&T, Verizon, T-Mobile, Sprint, Comcast, Cox, Charter, and large institutional companies) from being able to afford to purchase access via PALs. It leaves them only GAA. It is akin to the large distributor of books telling the small bookstore, buy $5 million in stock and inventory and we’ll sell you books; but if you want to buy less, no deal. It shows no interest in the book seller who sell in its community. It has the dramatic effect of stifling innovation and competition.

Indeed, the major providers provide valuable offerings; but, they are limited to their business model. In short, they provide their services to their demographics and leave others substantially unserved.

At the same time, there are WISPs, fixed wireless providers, and others who currently serve those areas that the major telecom and mobile providers do not serve or underserve. And, they have done so successfully for over 15 years. They cover the United States and they serve millions.

By changing the rules of the CBRS offering, especially this late in the game, the FCC is in effect is saying that only the major providers with huge resources should be present, and should provide everywhere. Historically that has not been true that the current telecom providers are willing to invest and deploy everywhere needed. When given the choice to serve rural and suburban areas, they have not done so with any substantial coverage.

On a competitive basis, changing the rules leaves little room for competition and growth and predictably only a very few companies will be able to afford to invest. Sure, some may be able to sublicense what they don’t use, but that provides no guarantees to a current operator, especially a competitor, that they will be able to gain access to the Band in a meaningful way. And, it eclipses new and dynamic entrants. Why do this? Why not leave the greatest potential for competition in place? Let the market drive the outcome rather than the regulation?

As an example, Wireless Internet Service Providers (WISPs) continue to provide exceptional services in the space. In fact, they are one of the current and major incumbents. They have invested substantially in anticipation of new opportunities and growth in the Band. They have continued to purchase equipment and operate in 3.65 GHz on the promise of a place to thrive. By changing access at this late date, the FCC choses to ignore their investments, strand them, and tell the world, the FCC would prefer someone else.

**Conclusion**

For over two-years the Commission has worked with stakeholders, network providers, ISPs, and potential operators and vendors toward the development of CBRS. The project has been seen by the industry as vital and exceptional. It is a first.

The standards organization WInnForum has worked diligently to establish working baseline standards. Industry organizations such as the CBRS Alliance have formed to support technologies and commerce in CBRS. The ecosystem itself is coming into reality along with a very wide-range of use cases serving many areas.

Two-plus years into the process is not the time to make drastic changes in the Rules. Even though PAL auctions have not yet even been calendared, the anticipation of the division of the tiers of offerings and the expectations of those offerings has spurred significant investments, planning and interest.

The fact that a few huge companies have petitioned the FCC to change the rules in their favor and to the detriment of the greater opportunity of CBRS, should not sway the momentum and future investment in the Band. They can and likely will succeed along with many others with the current Rules, but keeping the current Rules gives the greatest likelihood for real competition in the Band.

The FCC has throughout its history worked to protect and foster the American asset of spectrum. It continues to work to provide the widest possible use and best and highest outcomes for the limited resources. The industry as-a-whole has high expectations for CBRS. Please do not change the direction now by creating Rules which limit rather than expand the possibilities of such a valuable resource.

Bernhardt Communications Company requests the Commission reject the current proposed rules changes in its NPRM (GN Docket No. 17-258). Please preserve the current Rules. Keep PAL sizes reasonable and accessible by maintaining Census Tracts. Keep PALs vibrant by leaving license terms at reasonable sizes rather than creating virtual assets in almost perpetual license terms with renewals.

CBRS as it is now, under the current Rules is an outstanding and competitive offering. Let’s maximize the Band and make CBRS the outstanding Band as it has promised.

Respectfully submitted,

**Richard Bernhardt**

**Managing Director**

**Bernhardt Communications Company**