

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

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

**Comments of Colorado Valley Communications Inc., Nortex Communications Company
and Pathway Com-Tel, Inc.**

Colorado Valley Communications Inc. (“CVC”), Nortex Communications Company (“Nortex”) and Pathway Com-Tel, Inc. (“Pathway,” together with CVC and Nortex, the “Texas Carriers” or the “Parties”), by their counsel, hereby submit these comments in response to the above captioned Notice of Proposed Rulemaking.¹ The Texas Carriers urge the Federal Communications Commission (“FCC” or the “Commission”) to maintain census tracts as the geographic license size for Priority Access Licenses (“PALs”). Any larger sized license would bar CVC’s, Nortex’s, and other rural carriers’ ability to compete in the PALs auction. The Texas Carriers also support a longer license term of at least five (5) years and preferably ten (10) years, with an expectation of renewal. Increasing the term will encourage investment, and will allow carriers a return on investment. If the Commission does increase the licenses terms, the Parties recommend imposing a build-out requirement to ensure no spectrum lies fallow. Finally, the Texas Carriers voice concerns on the potential chilling effect that high Spectrum Access System

¹ *In re* Promoting Investment in the 3550-3700 MHz Band; Petitions for Rulemaking Regarding the Citizens Broadband Radio Service, *Notice of Proposed Rulemaking and Order Terminating Petitions*, GN Docket No. 17-258 (rel. Oct. 24, 2017) (“CBRS NPRM”).

(“SAS”) administrators’ fees may have on investment and participation in the new Citizen Broadband Radio Service (“CBRS”).

I. Background

CVC is a rural telephone cooperative that was formed in 1961 to provide eight-party all-aerial telephone service to approximately 550 subscribers in rural areas surrounding La Grange, Schulenburg and Weimar, Texas in Fayette County, Texas, where no other telephone company was willing to provide service. CVC continues to be dedicated to enhancing the quality of life for its members/owners and the economic growth of its service area. Today, CVC prides itself in offering high quality, reasonably-priced telecommunications services, including high speed data connections via buried copper and fiber optic cable and fixed wireless broadband services via its 3650 license,² to its members.

Nortex is a locally owned telecommunications company established in 1909 for the purpose of bringing telephone service to the residents of Muenster, Texas. Today, Nortex remains dedicated to serving its local community, offering high speed Internet, HD TV, and Voice and Business Solutions across Cooke and Montague counties to both small towns and the rural areas in between. Like CVC, Nortex currently provides fixed wireless broadband service to customers via its 3650 license³ and has invested in CBRS in anticipation of improving those services once the new rules go into effect.

Pathway is a Competitive Local Exchange Carrier established in 1997 as one of, if not the, first Fiber to Home companies in Texas. Pathway is owned by the Allen family who also own Pathway’s parent company, Alenco Comm. Inc. Pathway provides phone, Internet and

² Call Sign WQLY974.

³ Call Sign WQME761.

cable TV to their facility customers. Pathway also offers fixed wireless services, which provides Internet and phone to underserved customers. Pathway currently offers up to 25M download and 5M upload for its wireless service. To provide fixed wireless solutions, Pathway has been using 3.65 GHz spectrum, via its 3650 license,⁴ and 5.8 GHz unlicensed spectrum. Having experienced less interference issues with the 3.65 GHz band, Pathway is committed to continuing and expanding operations on that band. Like CVC and Nortex, Pathway would like the opportunity to participate in the PALs auction.

II. Maintain Census Tract Sized Licenses.

In the *Notice of Proposed Rulemaking*,⁵ the FCC sought comment on increasing the geographic licensing area of PALs to PEAs to stimulate investment in the band.⁶ The Commission asks what impact licensing PALs using PEAs would have on smaller entities, rural deployments and existing investments. Increasing the geographic license area of PALs from census tracts to Partial Economic Areas (“PEAs”) would unjustifiably favor large carriers to the detriment of small and rural carriers. If implemented, this proposal would foreclose the Texas Carriers’, and many other small carriers’, opportunity to participate in the PAL auction.

CVC’s network, for example, covers portions of rural areas within Fayette County and Colorado County, Texas, and is bordered by the metropolitan areas of Austin, Houston and San Antonio, Texas. CVC is also interested in expanding service offerings to areas of Austin, Lavaca, Lee and Waller counties. If the Commission were to change the geographic size of PALs to PEAs, CVC would only be able to secure a PAL within its current service area if it bid

⁴ Call Sign WQTC575.

⁵ See CBRS NPRM, ¶ 23.

⁶ See *id.*, ¶ 24.

on PEA 160, which, in addition to Fayette and Colorado counties, includes: Austin, Burleson, Calhoun, DeWitt, Goliad, Jackson, Lavaca, Matagorda, Victoria, Washington, and Wharton counties. Victoria County alone has a population that is more than double Fayette County and Colorado County combined.⁷ In order to expand its service offerings to portions of Lee and Waller counties, CVC would also need to bid on PEA 313, which includes Bastrop, Caldwell and Lee counties, *and* PEA 10, which includes the City of Houston, the fourth largest city in the United States,⁸ and seven other counties in addition to Waller County. CVC would be priced out of an auction of these PEAs and CVC's members would be deprived of the fixed broadband solutions they currently enjoy via CVC's 3650 license and the possibility of greater broadband access through CBRS.

The same is true for Nortex, who would need to bid on PEA 337, which includes Cooke, Jack, Montague and Palo Pinto counties, just to serve Cooke and Montague counties. Nortex was just forced to partition a portion of its 700 MHz license to a large carrier because Nortex could not afford to serve all four counties within the larger 700 MHz service area. Pathway, too, who's fixed wireless network covers portions of Hamilton County and Johnson County, would need to bid on PEA 8, which includes Dallas, Texas, the ninth largest city in the United States,⁹

⁷ Fayette County, TX has a population of 25,149; Colorado County, TX has a population of 21,019; and Victoria County, TX has a population of 92,467. *See* U.S. Census Bureau, Fayette County, Colorado County and Victoria County 2016 Population Estimates, accessible at <https://www.census.gov/quickfacts/fact/table/fayettecountytexas,US/PST045216> (last visited Dec. 15, 2017).

⁸ U.S. Census Bureau, Population Division, Vintage 2014 Population Estimates (2015), accessible at <https://www.census.gov/newsroom/press-releases/2015/cb15-89.html> (last visited Dec. 21, 2017).

⁹ *See, id.*

and PEA 272. Increasing the geographic licensing area of PALs to PEAs would bar the Texas Carriers' participation in the PALs auction and jeopardize their existing investments in CBRS.

On the other hand, maintaining census tract license areas would not preclude large carriers from participating in the PAL auction. Carriers with larger network footprints would have the ability to bid on multiple census tracts to cover an entire PEA. As the Commission emphasizes in its initial Order establishing CBRS,¹⁰ census tract license areas strike an appropriate balance by “promoting intensive and efficient use of the spectrum, but also allowing easy aggregation to accommodate a larger network footprint.”¹¹ The Texas Carriers also do not oppose the implementation of package bidding, which may further assist large carriers to acquire their desired footprint.

In the *Notice of Proposed Rulemaking*, the Commission notes that census tracts generally nest into counties, which in turn nest into PEAs.¹² This nesting would enable larger carriers to combine their census tract sized PALs into the license size of their choice, whether it be counties or PEAs, or even Economic Areas. The converse, however, is not true. Small carriers cannot partition PEA sized PALs that they do not hold into smaller license sizes to tailor it to their network footprint. A large carrier that holds a PEA license will not be adequately incentivized to partition its license to provide small carriers with access to small, unserved or underserved areas. For many years, rural carriers have struggled with acquiring licenses from larger carriers.¹³ The

¹⁰ *In re* Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-365- MHz Band, *Report and Order and Second Further Notice of Proposed Rulemaking*, GN Docket No. 12-354 (Rel. Apr. 21, 2015).

¹¹ *See id.*, ¶ 96.

¹² *See* CBRS NPRM, ¶ 24.

¹³ *See, e.g.*, Comments of WISPA, GN Docket No. 12-354 (filed July 24, 2017) (“As has been the case historically, large carriers acquire licenses for large areas, build out in the urban core where the population is more dense, and warehouse spectrum in rural areas that could be used for

fact that PALs may be partitioned does little to alleviate small carriers' concerns that, if the Commission increases the size of PALs to PEAs, PALs will be another set of licenses held almost exclusively by large, national carriers. Accordingly, the Texas Carriers request that the Commission maintain census tracts as the geographic licensing area of PALs; or, in the very least, the Texas Carriers request that the Commission not increase the licensing size to anything larger than counties.

III. Longer License Terms Will Encourage Investment in CBRS.

In the Notice of Proposed Rulemaking, the Commission sought comment on increasing the PAL license term from three years to ten years and appropriate performance requirements and renewal standards for PALs.¹⁴ The Texas Carriers support a longer license term with an expectation of renewal so long as there are appropriate build-out requirements to prevent spectrum hoarding. The Parties agree with 5G Americas, AT&T and others that a longer, renewable license term will encourage investment in the 3.5 GHz band and reduce the risk of stranded investment.¹⁵ Based on the Parties' current business models, the Texas Carriers believe that a minimum term of five (5) years and maximum term of ten (10) years with an expectation of renewal would be sufficient to encourage investment with a potential for a reasonable return on investment. The Texas Carriers also believe that such amount of time should be sufficient for carriers to meet any imposed build-out requirements. Should the Commission increase the license size of PALs to PEAs, then the Texas Carriers agree with concerns raised by WISPA and

broadband deployment.”).

¹⁴ See *id.*, ¶ 13.

¹⁵ See *id.*, ¶ 10 and note 26.

others that the larger license area combined with the longer term would make PALs economically viable only for large carriers.¹⁶

IV. The Commission Should Address SAS Fees.

The Parties request that the Commission consider the impact of SAS fees on PALs and General Authorized Access (“GAA”) users alike. While not addressed in the *Notice of Proposed Rulemaking*, the SAS fees are an important factor in determining the best way to encourage investment in the 3.5 GHz band and to ensure that all carriers, whether providing service in metropolitan or rural markets, have access to the spectrum. SAS fees are predicted to be around \$450 per base station per year and \$4.50 per subscriber per year. The SAS fees for a network with one hundred (100) base stations and one thousand (1,000) subscribers would be nine hundred ninety thousand dollars (\$990,000.00) over a ten-year period. At such rates, this spectrum use charge would cut into approximately eighteen percent (18%) of gross revenue.¹⁷ Couple this cost with the auction price of acquiring a PAL and smaller carriers are priced out of the band. The Texas Carriers request that the Commission cap the SAS administrators’ fees per base station at \$400 per year and prohibit SAS administrators from placing a fee on the subscribers.

¹⁶ See *id.*, note 34.

¹⁷ See Exhibit 1, SAS Database Fee Spread Sheet.

V. Conclusion

For the foregoing reasons, the Texas Carriers request that the Commission maintain census tract size PALs, or, revise rules to increase the geographic license size of PALs to counties, at maximum, increase the license term for PALs, and address SAS fees.

Respectfully submitted,

Colorado Valley Communications, Inc.
Nortex Communications Company
Pathway Com-Tel, Inc.



By: _____
Donald L. Herman, Jr.
Clare C. Liedquist
Herman & Whiteaker, LLC
6720B Rockledge Drive, Suite 150
Bethesda, MD 20817
Their Attorneys

December 28, 2017