

**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)
)

To: The Commission

COMMENTS OF THE BLOOSTON 3.65 GHz COALITION

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“BloostonLaw”), on behalf of its clients that are existing and prospective licensees in the 3.65-3.70 GHz band (the “*Blooston 3.65 GHz Coalition*”), hereby submits its comments on the *Further Notice of Proposed Rulemaking* in the above-captioned docket.¹ In brief, the *Blooston 3.65 GHz Coalition* urges the Commission to refrain from extending its proposed Part 96 regulatory and licensing framework for the Citizens Broadband Radio Service in the 3550-3650 MHz band (the “3.5 GHz band”) to operations in the 3.65 GHz band.

Statement of Interest

The *Blooston 3.65 GHz Coalition* is a diverse group of incumbent licensees and businesses with operations in the 3.65 GHz band. Its members, shown in Attachment A, include a *Fortune 500* company and rural telephone companies and entrepreneurs that have each made significant investments in reliance on an innovative 3.65 GHz shared-use licensing scheme that the Commission adopted in 2005. Coalition members use 3.65 GHz facilities for private internal

¹ Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Further Notice of Proposed Rulemaking*, GN Docket No. 12-354 (rel. April 23, 2014) (“*Citizen’s Broadband Further Notice*”).

communications and to provide high-quality broadband fixed and mobile services primarily in underserved rural communities and, in some instances, to support carrier of last resort telephone service to tribal lands. As such, the members of the *Blooston 3.65 GHz Coalition* each have a significant interest in the outcome of this proceeding.

COMMENTS

I. The Commission Should Refrain from Extending its Part 96 Licensing and Regulatory Framework to Operations in the 3.65 GHz Band

In the *Citizen's Broadband Further Notice*, the Commission is proposing to extend its new Part 96 regulatory and licensing framework to existing licensees and services in the 3.65 GHz Band. For reasons discussed below, the *Blooston 3.65 GHz Coalition* respectfully urges the Commission to refrain from adopting this proposal and instead to preserve its existing regulatory approach to 3.65 GHz band operations that is codified in Part 90, Subpart Z, of the Commission's Rules. These rules have proven successful in encouraging businesses to make the investments necessary to extend broadband fixed and mobile and basic telephone services primarily to remote and underserved areas. Requiring licensees to participate in competitive bidding – on an annual basis – in order to obtain interference protection rights that are substantially less than what they currently receive under Part 90 rules would threaten the integrity of existing 3.65 GHz operations and stifle future investments to the detriment of these businesses and their customers.

The Part 96 rules proposed in the *Citizen's Broadband Further Notice* contemplate a tiered authorization framework in which existing primary operations, including authorized federal users and grandfathered FSS earth stations, would make up an Incumbent Access tier and would receive interference protection from Citizens Broadband Radio Service (“CBRS”) users.

Priority Access Licenses (“PALs”) would make up the second tier, and the Commission has proposed that mutually-exclusive applications for PALs would be subject to competitive bidding. The Commission has also proposed that each PAL would authorize use for one year of a 10 MHz channel in a single census tract. A dynamic Spectrum Access System (SAS) – conceptually similar to, but more advanced than the databases used to manage Television White Spaces (TVWS) devices - would dynamically assign frequencies to the PALs, such that spectral authorization of a PAL could shift from time to time during the license term. General Authorized Access (“GAA”) users would comprise the third tier. The GAA tier would be “licensed-by-rule” to permit open access to the covered band to the widest possible group of potential users. A minimum of 50 percent of the band that is not encumbered by Incumbent Access tier users in any given location would be reserved for GAA use.

While the members of the *Blooston 3.65 GHz Coalition* certainly appreciate the hard work and policy objectives of the President’s Council of Advisors on Science and Technology (PCAST) in developing an entirely new model for small cells and spectrum sharing in the 3.5 GHz band, this model is extremely complex when compared to more traditional models for spectrum management that have been used by the Commission. This complexity is even more pronounced when compared to the streamlined and cooperative licensing process that is already in place and has proven to be tremendously successful for the 3.65 GHz band. According to the Commission’s recent findings, as of June 19, 2014, there were 2,598 active nationwide, non-exclusive 3.65 GHz band licenses and 45,184 locations registered.² This is a tremendous amount of incumbent operation for any wireless service, let alone one for which the Commission has only been accepting applications and fixed/base station registrations since November of 2007.

² June 23, 2014 Letter from John Schauble, FCC Wireless Bureau, to Mitchell Lazarus, Esq., Counsel to the Fixed Wireless Communications Coalition, DA 14-871, at p. 1.

The existing streamlined framework has worked very well and has resulted in robust use of the 3.65 GHz band in the public interest. The Commission should not discount this level of success, or the role that a streamlined licensing mechanism with minimal regulatory entry requirements has had in making this success possible.

a. The Commission Should Not Scrap a Framework for the 3.65 GHz Band That Is Serving Licensees and the Public Interest

Coalition members appreciate the stability and simplicity of the current 3.65 GHz band licensing framework, with low entry costs and minimal regulatory delay, and a measure of interference protection rights afforded to registered operations. These factors have allowed most of them to extend reliable and affordable broadband service, and in some cases basic telephone services, to remote areas and communities that would otherwise lack affordable access to these services. For other 3.65 GHz licensees, the Part 90 licensing framework has provided them the speed and flexibility to gain access to a contiguous block of spectrum suitable for other operations, with a reasonable measure of interference protection rights, to use for business and/or research and development projects of varying durations. Morphing the streamlined 3.65 GHz licensing and base station / fixed site registration process into the far more complex Part 96 framework under consideration by the Commission would limit the current utility of the 3.65 GHz band with little or no corresponding benefit. The Commission should not scrap a licensing model that has served consumers and businesses well, especially in rural areas.

For some users of the 3.65 GHz band and especially for those whose businesses or operations are suited for the GAA tier, a transition from the current Part 90 licensing and site registration framework to the proposed Part 96 framework may perhaps not be very disruptive. Upon deploying certified, commission-approved Citizens Broadband Radio Service Devices (CBSDs) and providing information about their operations to the SAS, GAA users would be

required to comply with the instructions of the SAS and avoid causing harmful interference to Priority Access Licensees and Incumbent Access tier users.

However, for the majority of 3.65 GHz band users whose operations are more sensitive or who require a greater measure of interference protection, the proposed Priority Access rules under Part 96 would be a very significant change. Applicants would be limited to one-year license terms with no renewal, but could aggregate up to five consecutive years of licenses through competitive bidding. In addition to adding entirely new costs and administrative burdens that do not presently exist in the 3.65 GHz service under Part 90, the fact that PALs would automatically terminate at the end of each year would inject additional uncertainty and potential for disruption to ongoing operations in the band.

Licensees need to have more certainty, years in advance, to plan their capital investments. New licensees would be reluctant to make long-term investments necessary to make a new wireless service successful (as they have in the current 3.65 GHz band), knowing that their access to spectrum year-to-year is not guaranteed. Businesses that currently enjoy significant flexibility and spontaneity under the nationwide license and fixed station registration framework would not have the same flexibility to conduct their operations if they must wait for licensing opportunities (*i.e.*, auctions) to be scheduled by the FCC or if they are forced to acquire spectrum access rights on the secondary market. Entrepreneurs and businesses that rely on 3.65 GHz spectrum could find their operations held up by having to negotiate with other licensees who may be competitors or speculators looking to turn a profit. Moreover, if unforeseen circumstances arise and an operator needs to change the location of its 3.65 GHz band operations, the Part 96 PAL regulatory framework, with discrete application windows, may not accommodate such a change in a timely fashion.

b. Grandfathering of Incumbent 3.65 GHz Operations Would Not Preserve the Benefits of the Current Streamlined Licensing Framework

To integrate 3.65 GHz Band users into this regulatory scheme, the Commission proposes to grandfather existing users in the Band by treating each existing 3.65 GHz Band user as an Incumbent Access user within the service contours of its registered base stations or fixed access points during a period of five years after the effective date of the proposed rules. After the five-year period, the grandfathered users would have the option to apply for one-year PALs on a census tract basis, or to operate on a GAA basis.

While the members of the *Blooston 3.65 GHz Coalition* appreciate the Commission's efforts to protect incumbent 3.65 GHz operators by offering grandfathering rights, such grandfathering would not preserve the benefits of the current Part 90 licensing framework, since incumbents would not have the flexibility to modify and/ or expand existing operations; and these benefits would be foreclosed to companies that are new to the 3.65 GHz band. The lack of certainty and spontaneity in the Part 96 PAL regulatory framework would eliminate the most attractive characteristics that up to now have driven significant industry investment in the 3.65 GHz band.

If the Commission were to adopt its grandfathering proposal, a five-year period would be insufficient for most incumbent licensees, especially those recently licensed. The allowed life for depreciation of base station and mobile equipment is up to thirteen (13) years.³ Since 3.65 GHz licensees would no doubt have to purchase new equipment to conform to the standards adopted for the CBRS, a five-year grandfathering period for 3.65 GHz equipment would result in

³ Under relevant IRS guidelines, the permissible recovery period for assets used in High Frequency Radio and Microwave Systems operations (Asset Class 48.32) is either seven (7) or thirteen (13) years, depending on depreciation method used. See IRS Publication 946, "How to Depreciate Property" (dated Jan 28, 2014) (accessible online at: <http://www.irs.gov/pub/irs-prior/p946--2013.pdf>).

stranded investment for most licensees. Accordingly, if the grandfathering proposal is adopted, the period should be no less than thirteen years.

II. The Commission Should Keep the 3.65 GHz Band Service Separate from the 3.5 GHz CBRS and Proceed with Minor Part 90 Rule Change As Recently Proposed by FWCC

The members of the *Blooston 3.65 GHz Coalition* respectfully submit that the Commission should keep the 3.65 GHz band service separate from the 3.5 GHz CBRS indefinitely. The objectives of the 3.65 GHz band rulemaking - *i.e.*, to establish a radio service with “minimal regulatory barriers to encourage multiple entrants in the 3650 MHz band and to stimulate the rapid expansion of broadband services - - - especially in America's rural heartland”⁴ are very different from its objectives in proposing the 3.5 GHz CBRS, namely, to create an “innovation band” where the Commission can “explore new methods of spectrum sharing and promote a diverse array of network technologies, with a focus on relatively low-powered applications” such as small cells.⁵ While the spectrum bands for the services are adjacent to one another, and operations may share certain technical and practical similarities, the fact that one regulatory framework for one service is designed to stimulate the rapid expansion of broadband services while the other is designed to explore new spectrum sharing methods and technologies should inform the Commission that a “melding” of the two services would risk falling short of the Commission’s objectives on both counts.

To the extent the 3.5 GHz band will be used to implement recommendations of the PCAST, the members of the *Blooston 3.65 GHz Coalition* believe the Commission should be purely focused on those recommendations and the new CBRS should proceed on its discrete

⁴ Rules for Wireless Broadband Services in the 3650-3700 MHz Band, *Report and Order and Memorandum Opinion and Order*, 20 FCC Rcd 6502, 70 FR 24712 (2005)(“3.65 GHz Report and Order”) at Para. 15.

⁵ *Citizen's Broadband Further Notice* at Para. 2.

spectrum band and pursuant to rules that are designed to serve PCAST recommendations. At the same time, the utility and flexibility of the Commission's 3.65 GHz radio service should be preserved by maintaining its current Part 90 licensing and regulatory framework, with minor improvements that the Commission should adopt in a separate rulemaking consistent with recent proposals of FWCC.⁶ In this regard, the *Blooston 3.65 GHz Coalition* and its members support comments of BloostonLaw that were filed on July 6, 2010, in support of the *FWCC Petition*.

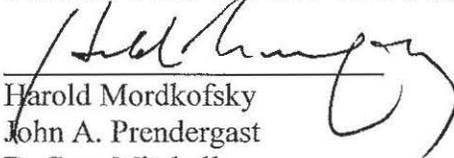
CONCLUSION

The members of the *Blooston 3.65 GHz Coalition* appreciate this opportunity to submit comments on the Commission's 3.5 GHz licensing and regulatory proposals. For the reasons discussed herein, the Commission should respectfully refrain from extending its proposed Part 96 regulatory and licensing framework for the CBRS to incumbent operations in the 3.65 GHz band. The current Part 90 regulatory framework promotes both flexibility and spontaneity in the deployment of commercial services to rural and underserved communities, and for use in support of business operations.

Respectfully submitted,

THE BLOOSTON 3.65 GHz COALITION

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⁶ See Petition for Rulemaking of the Fixed Wireless Communications Coalition, RM-11604 (filed April 15, 2010 ("FWCC Petition")).

Attachment A

The following is a list of the members of the *Blooston 3.65 GHz Coalition*:

**All West Communications, Inc.
Kamas, Utah**

**Cal-Ore Communications, Inc.
Dorris, California**

**Caterpillar of Delaware, Inc.
Peoria, Illinois**

**Emery Telcom-Wireless, Inc.
Orangeville, Utah**

**Giant Communications, Inc.
Holton, Kansas**

**HTC Technologies Co.
Waterloo, Illinois**

**Haviland Telephone Cooperative, Inc.
Haviland, Kansas**

**Ponderosa Communications, Inc.
O'Neals, California**

**PVT Networks, Inc.
Artesia, New Mexico**

**Sacred Wind Communications, Inc.
Albuquerque, New Mexico**

**Townes Broadband Corporation
Lewisville, Arkansas**