

FCC Opens New Chapter in Repurposing Spectrum in the 3 GHz Band

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In the wake of the recent completion of the 3550-3650 MHz auction of Priority Access Licenses (“PALs”) in the Citizens Broadband Radio Service (“CBRS”) making 70 megahertz of so-called mid-band spectrum available, and the adoption of the regulatory framework in the 3700-4200 MHz band that will make available another 280 megahertz for flexible use commercial wireless operations, the FCC has announced its intention to take significant steps in realigning the 3450-3550 MHz range for non-federal flexible fixed and mobile use on a shared basis with existing federal radiolocation operations. On September 9, 2020, the FCC made available a draft Report and Order and Further Notice of Proposed Rulemaking (“[Order and FNPRM](#)”) on which it will vote at its September 30 Open Meeting. This document follows closely on the heels of the FCC’s June 2020 notification to the National Telecommunications and Information Administration (“NTIA”) of a plan to commence an auction in December 2021 for flexible use licenses within the contiguous United States (“CONUS”) in the 100 megahertz of the 3450-3550 MHz band. In July 2020, the NTIA issued a report concluding that 3450-3550 MHz “is a good candidate for potential spectrum sharing, including at the commercial system power levels sought by the wireless industry.” For its part, the Department of Defense (“DoD”), a primary user of the 3450-3550 MHz band, announced earlier this summer that it had devised a sharing framework for this spectrum and will undertake the work needed to prepare the spectrum for auction in this very aggressive time frame.

As the DOD completes its efforts to enable sharing with non-federal terrestrial communications systems, the FCC will consider an Order to adopt its proposal to remove the secondary, non-federal radiolocation and amateur service allocations from 3300-3550 GHz as a first step toward making additional spectrum available for commercial wireless communications and federal/non-federal sharing. The draft Order would allow incumbent licensees to continue in-band operations on a time-limited basis while the FCC finalizes plans to reallocate 3450-3550 MHz. In general, the FCC seeks to maximize the entire 3100-3550 MHz band for potential flexible use operations in the future. Accordingly, non-federal radiolocation licensees in the 3300-3550 MHz range would be transitioned to the 2900-3000 MHz radiolocation band on a secondary basis, and amateur licensees currently in 3300-3500 MHz would have to move to other existing amateur radio allocations they choose. Moving existing radiolocation operations below 3000 MHz is characterized as a measure to retain the potential for future flexible use licensing of the 3100-3300 MHz band, in addition to 3300-3550 MHz. The draft Order would also permit continued experimental radiolocation operations under Part 5 – something that Lockheed Martin and Boeing pushed for – under the same limitations as they are allowed in other flexible use bands requiring operations on a non-interference basis.

The FNPRM would seek comment on proposed subsequent steps: allocation changes to enable future commercial flexible use (except aeronautical mobile) where possible on an exclusive, not shared

basis; coordination frameworks between flexible users and federal incumbents; relocation logistics for non-federal secondary users (amateur radio operators and non-federal radiolocation); and technical, licensing, and operating rules for new flexible use licensees including possible protections to flexible use licensees in the 3450-3550 MHz band from federal operations in adjacent bands, *i.e.*, below 3450 MHz and above 3550 MHz. The FNPRM proposes licenses issued by auctions in 20 megahertz blocks on an exclusive geographic basis. The proposed sharing mechanism, on which the FCC would seek comment, would prohibit incumbent federal systems operating in the 3450-3550 MHz band from causing harmful interference to co-band non-federal operations in the band, except that non-federal systems would not be entitled to protection from federal operations and may be subject to other restrictions (1) in to-be-established limited Cooperative Planning Areas, such as military training facilities, test sites, Navy home ports, and shipyards; (2) in Periodic Use Areas where DoD will need episodic access to all or a portion of the band; and (3) during times of National Emergency.

The FCC hopes that federal agencies will file transition plans for the 3450-3550 MHz band by April 2021 and that licensed flexible use operations will commence as soon as early 2022.

Meanwhile, this is not necessarily the final chapter of opening up spectrum for flexible use in the 3 GHz Band. NTIA's July 2020 report suggested that some federal/non-federal spectrum sharing below 3450 MHz might be possible, but would require additional analysis. The report identified four principal areas for further exploration of additional sharing in 3100-3450 MHz: (1) a more in-depth assessment of the extent each of the federal systems is used; (2) the development of a reliable mechanism for commercial operations to coordinate when federal systems are operating; (3) assessment of the potential for relocating federal systems, including nationwide airborne systems; and (4) consideration of improved out-of-band emission limits for commercial operations. As noted above, the FCC's proposals in the draft Order and FNPRM anticipate prospects for making even more 3 GHz flexible use spectrum available in the future.