

# October 2017 FCC Meeting Recap: Can We Be Better PALs? The FCC Seeks to Modify the Two-Year-Old Rules in the 3.5 GHz Band Citing the Need to Bolster Investment Incentives.

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October 29, 2017

At its Open Meeting on October 24, the FCC took a major step in recrafting the licensing and other rules for the Citizens Broadband Radio Service ("CBRS") in the 3550-3700 MHz band (the "3.5 GHz band") and promote 5G rollouts. Early in his tenure as FCC Chair which began in January of this year, Ajit Pai tasked Commissioner Michael O'Reilly with reexamining the regulatory framework in the band adopted in 2015, particularly as it applied to Priority Access Licenses ("PALs"). Within months, CTIA and T-Mobile filed petitions for rulemaking to make the licensing rules, from commercial wireless's perspective more investment friendly. Now the Commission has moved ultra-rapidly to act on those petitions and issue a [Notice of Proposed Rulemaking \("NPRM"\)](#) to consider making rule changes largely consistent with those sought by those proponents. The Commission hopes to bolster commercial investment and deployment in the band convinced that, for large scale 5G deployments, providers need greater certainty than the Wheeler-era rules afford.

The three-tiered 3.5 GHz band framework which is still in the process of being launched is designed to allow sharing -by multiple-user types: by primary radar and satellite users which would retain the highest priority and level of interference protection, by second-priority PALs licensed by auction, and by third-tier licensed-by-rule General Authorized Access ("GAA") users. Advanced frequency coordinators, known as the Spectrum Access System ("SAS") administrators supported by Environmental Sensing Capability ("ESC") Operators, will mediate and control access rights between the three tiers of users.

## Possible PAL Rule Modifications

The *NPRM* does not propose to alter the basic structure, but instead seeks comment on potentially modifying the licensing rules for PALs in the following ways:

- **Longer License Terms.** The *NPRM* proposes extending PAL license terms, from three years to ten years with the expectation that this will increase the value of the licenses for prospective PAL applicants and provide incentives for them to seek licenses.
- **Renewal Expectancy.** The FCC proposes to eliminate the current requirement that PALs

automatically terminate at the end of the license term. Rather, the *NPRM* tentatively concludes that PALs should enjoy a renewal expectancy, in the hopes of promoting investment in deployment and minimizing the risk of stranded investment.

- **Expanded Geographic License Areas.** The current PAL licensing rules provide for licenses issued in each census tract, anticipating their use for small cells. The *NPRM* solicits comment on larger PAL license areas such as Partial Economic Areas (“PEAs”) or counties. The *NPRM* reflects a prediction that larger license areas would “stimulate additional investment, promote innovation, and encourage efficient use of spectrum resources,” while asking for input on impacts to smaller entities, rural deployments, and investments relying on the current rules. The *NPRM* reflects an openness to a variety of approaches, such as a hybrid where some of the 10 megahertz-wide PALs would be issued within PEAs whereas others would be issued on a smaller scale, or a combination of PEAs in urban areas and census tracts in rural areas, offering PALs of different sizes, among other alternatives.
- **Spectrum Caps.** While the Commission has not proposed to increase the amount of spectrum in the 3.5 GHz band available to PALs in excess of the current 70 megahertz – rejecting T-Mobile’s proposal in its petition and ensuring at least 80 GHz will always be available in a given area for GAA licensees – the FCC does seek comment on lifting or revising the current single-licensee cap of 40 megahertz in a given area.
- **Secondary Market Transaction Reforms.** Consistent with its proposal to expand the geographic size of PAL licenses, the Commission proposes to allow partitioning and disaggregation of PALs in secondary market transactions to promote the efficient use of the spectrum where a licensee does not plan to utilize the entire license authority. However, the Commission also seeks comment on whether to allow partitioning and disaggregation irrespective of whether the agency opts to expand PAL license areas.
- **Auction Rule Modifications.** The FCC proposes to eliminate prior restrictions on the number of PALs per license area that are made available at auction depending on the number of PAL applicants for a given license area. Currently, except in rural areas, if there is only one PAL applicant, no licenses will be issued. The *NPRM* asks for comment on whether the proposed changes in the term, renewability, and geographic license area of PALs would make PALs “more useful to a wider range of potential licensees and, if so, whether that would reduce the benefit of limiting the number of PALs available in a given license area or not assigning PALs in any area for which there is only one applicant.” The Commission now proposes to assign PALs even when there is only one applicant in a given license area, assuming the applicant is otherwise qualified. The *NPRM* also asks whether there should nonetheless be an auction – bids of a minimum amount per license issued – where there are no more than applications for seven 10 megahertz in a given area, i.e., no traditional mutual exclusivity. Finally, the Commission seeks comment on allowing PAL applicants to bid on specific spectrum blocks within any given PAL license area.

### **Proposed CBSD Disclosure Reforms**

The *NPRM* proposes to amend the current CBRS rules which require SAS administrators to make Citizens Broadband Service Device (“CBSD”) registration information available while “obfuscating” CBRS licensees’ identities. The Commission proposes, rather, to prohibit SAS administrators from disclosing publicly CBSD registration information that may compromise the security of critical network deployments or be considered competitively sensitive. The Commission recognizes that

several carriers opposed disclosure on the grounds that it could jeopardize network security and confidential business information. However, the Commission also acknowledges arguments by parties such as Google and the Wireless Internet Service Providers Association (“WISPA”) that registration information is valuable to potential co-channel operators in investigating the feasibility of deploying service in the 3.5 GHz band before incurring the cost of attempting to reserve or participate in an auction for spectrum. Accordingly, the FCC proposes to amend the rules “to prohibit public disclosure of registration information that may compromise network security or that is competitively sensitive,” while asking whether, consistent with such a prohibition, there is certain information that SAS administrators can release to would-be operators to promote increased spectrum use in the complex multi-tier priority framework.

### **Potential Revisions to 3.5 GHz Emissions and Interference Limits**

The Commission seeks to relax the CBRs out-of-channel and out-of-band emission limits applicable in the 3.5 GHz band, principally to facilitate wider bandwidth channels. Previously, the FCC adopted the following limits:

- -13 dBm/MHz from 0 to 10 megahertz from the assigned channel edge;
- -25 dBm/MHz beyond 10 megahertz from the assigned channel edge down to 3530 MHz and up to 3720 MHz;
- -40 dBm/MHz below 3530 MHz and above 3720 MHz.

In order to facilitate wider channels, the Commission seeks comment on two alternative proposals that would replace the existing limits and relax the emissions masks so as to make them scalable, accommodating channels with bandwidths in excess of 10 and 20 megahertz thereby promoting investment and innovation in the 3.5 GHz band:

#### **Proposal 1**

- (1) -13 dBm/MHz limit from 0 to 100% of channel bandwidth (“B”);
- (2) -25 dBm/MHz limit beyond 100% of B; and
- (3) -40 dBm/MHz limit below 3530 MHz and above 3720 MHz.

#### **Proposal 2**

- (1) -13 dBm/MHz from 0 to 50% of B megahertz from the assigned channel edge;
- (2) -20 dBm/MHz from 50% to 100% of B megahertz from the assigned channel edge;
- (3) -25 dBm/MHz beyond B megahertz from the assigned channel edge, down to 3530 MHz and up to 3720 MHz;
- (4) -40 dBm/MHz below 3530 MHz and above 3720 MHz.

The Commission seeks comment on both of the proposals and on the tradeoffs in the number and levels of the attenuation steps.

### **Accompanying Order Terminating Petitions**

A brief Order accompanies the *NPRM* and consolidates several dockets pertinent to 3.5 GHz. As noted above, T-Mobile and CTIA each filed petitions for rulemaking earlier in the year seeking revisions to the 3.5 GHz band rules. In general, the Order grants both petitions but rejects proposals

by T-Mobile to revisit in-band base station power limits and make the entire 150 megahertz of the band available for PALs, as discussed earlier.

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If adopted, the PAL licensing reforms proposed in the *NPRM* could have serious ramifications for how the 3.5 GHz band is utilized. Such rule revisions could alter both the extent and the nature of investment in the 3.5 GHz band, impacting the variety of providers and operators that seek access to the band. While expanding the scope and duration of PALs could make them more attractive to large carriers for 5G deployment, these same measures, depending on the details, may act as a disincentive to participation in PALs by small businesses and rural carriers. Parties interested in the 3.5 GHz band would do well to monitor this proceeding (and even participate in the rulemaking) and look for new developments, as we will continue to do.