

**Before the
Federal Communications Commission
Washington, DC 20230**

In the Matter of)
)
Facilitating Shared Use in the 3100-3550) WT Docket No. 19-348
MHz Band)

**JOINT COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION AND
THE RURAL WIRELESS ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ and the Rural Wireless Association, Inc. (“RWA”)² (together, “the Associations”) hereby submit these comments in response to the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) in the above-referenced proceeding.³ In the *Notice*, the Commission proposes to make 100 megahertz of spectrum in the 3.45-3.55 GHz (“3.45 GHz”) band available for auction and seeks comment on competitive bidding procedures for the auction

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural broadband companies who serve consumers who, reside, work, or travel in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

³ *Facilitating Shared Use in the 3100-3550 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 19-348 (Oct. 2, 2020) (“*Notice*”).

as well as the geographic size to be used for awarding licenses and bidding credits to be offered.⁴ The Associations recommend the Commission license the 3.45 GHz band according to county licensing areas, provide for use of the 3.45 GHz spectrum in areas where licensees are not offering service, and harmonize the technical rules with those adopted for Citizens Band Radio Service (“CBRS”) licensees.

I. THE SPECTRUM SHOULD BE LICENSED IN A MANNER SIMILAR TO THE CITIZENS BAND RADIO SERVICE AUCTION.

The Associations appreciate the Commission’s efforts to take a fresh look at spectrum rules to promote robust investment in network deployment. To achieve this goal in rural areas, the Commission must adopt policies that provide smaller carriers – those most likely to build in rural markets – a reasonable prospect to obtain 3.45 GHz spectrum.⁵ To be sure, the Commission’s proposal to offer bidding credits to “small” and “very small” businesses is a good start, but the Commission must by law not stop there.⁶ When establishing rules governing how new spectrum licenses will be awarded through competitive bidding, the Commission cannot ignore or sidestep the Congressional mandates articulated in Section 309(j) of the Communications Act of 1934, as amended (“the Act”). This statute compels the Commission to adopt safeguards to protect the public interest in the use of the spectrum and to promote the

⁴ *Id.* at ¶¶ 38-110.

⁵ *See, e.g.*, “Size of internet providers factors into Kansas’ rural broadband divide,” by Stan Finger, *The Wichita Eagle*, Nov. 8, 2020, available at <https://www.kansas.com/news/state/article247008137.html> (last visited Nov. 20, 2020).

⁶ *Notice* at ¶ 110.

purposes of the Act – which include making radio communication service available “to *all* the people of the United States.”⁷ Section 309(j) further articulates certain objectives, including:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public *including those residing in rural areas*, without administrative or judicial delays; and

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people *by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies*, and businesses owned by members of minority groups and women.⁸

In Section 309(j)(4) of the Act, Congress further mandated that the Commission:

(B) include performance requirements such as appropriate deadlines and penalties for performance failures, *to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees*, and to promote investment in and rapid deployment of new technologies and services; [and]

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, *prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small business, rural telephone companies*, and businesses owned by members of minority groups and women, *and (iii) investment in and rapid deployment of new technologies and services*.⁹

Any rules governing the award of new licenses through competitive bidding must expressly account for and seek to achieve these objectives. The Commission can best

⁷ 47 U.S.C. § 151 (emphasis added).

⁸ 47 U.S.C. §§ 309(j)(3)(A)(B) (emphasis added). The Supreme Court, in its *Adarand* and subsequent *VMI* decisions, struck down preferential treatment of minorities and women. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227-30 (1995) and *United States v. Virginia*, 518 U.S. 515, 531-34 (1996).

⁹ 47 U.S.C. §§ 309(j)(3)(B)(C) (emphasis added).

accomplish these objectives through a licensing scheme similar to that adopted for CBRS.¹⁰ A similar licensing scheme will ensure optimal use of all of the spectrum to be awarded in the 3.45 GHz auction, particularly in rural areas. The recent results of the successful CBRS Priority Access License (“PAL”) auction demonstrate small providers’ commitment to expanding their services through this spectrum. The CBRS PAL auction attracted 271 different qualified bidders and 228 different winning bidders and resulted in 91.1 percent of 22,631 county-based licenses being awarded in 3,225 counties for 10-year terms.¹¹ Successful bidders included large nationwide mobile wireless companies, large cable companies, and small wireless companies with only several hundred subscribers, including dozens of NTCA members.

By contrast, Auction 107 for 3.7 GHz spectrum has drawn far less participation with only 57 applicants deemed qualified.¹² This is unsurprising given that the 3.7 GHz spectrum is being licensed for 15-year terms by Partial Economic Area (“PEA”), which are larger, pricier, and more challenging for small and rural carriers to build out as compared to counties. As further detailed below, licensing 3.45 GHz spectrum similar to CBRS PALs would promote economic opportunity and competition among all Americans consistent with Section 309(j)(3)(B) of the

¹⁰ See *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Report and Order (Oct. 24, 2018).

¹¹ See *Auction of Priority Access Licenses in the 3550-3650 MHz Band Closes*, AU Docket No. 19-244, Public Notice (Sep. 2, 2020). PALs were available in a total of 3,233 counties. This means there were only eight counties that did not attract any winning bids for PALs.

¹² *Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band; 57 Applicants Qualified to Bid in Auction 107*, AU Docket No. 20-25, Public Notice, DA 20-1333 (Nov. 12, 2020).

Act by promoting the availability of this spectrum to small business and rural telephone companies.¹³

Providers in rural areas sometimes use wireless services to connect homes and businesses in remote areas where other methods of deployment may require additional time and/or resources.¹⁴ Thus, rural providers' access to wireless spectrum can already make the difference in whether some consumers have access to high speed Internet. This will become increasingly important in the next few years as the Commission and others turn their focus to 5G. Furthermore, the Commission itself noted that the 3.45 GHz spectrum "is particularly well-suited for 5G buildout due to its desirable coverage, capacity, and propagation characteristics."¹⁵ These coverage and propagation characteristics will be especially important for any prospect of bringing 5G to rural areas given the distance between homes and businesses.

II. AWARDING LICENSES ON A COUNTY BY COUNTY BASIS WILL BENEFIT CONSUMERS AND COMPANIES OF ALL SIZES.

The Commission seeks comment on "the appropriate geographic license area for the band to best facilitate robust use."¹⁶ As noted above, the Commission has successfully awarded licenses on a county-by-county basis in the past to providers of all sizes. The Commission can build on that success in the 3.45 GHz auction by once again awarding licenses on a county-by-county basis. County-based spectrum licenses would also provide for efficient use of the

¹³ 47 U.S.C. §§ 309(j)(3)(B).

¹⁴ An annual survey conducted by NTCA recently found that just over 8% of members who completed the survey use licensed fixed wireless service to deliver fixed broadband service to homes and businesses in their community.

¹⁵ *Notice* at ¶ 42.

¹⁶ *Id.* at ¶ 96.

spectrum, encourage deployment of wireless broadband services in rural areas, and promote investment and rapid deployment of new technologies and services by providing smaller companies with the ability to acquire 3.45 GHz spectrum while simultaneously allowing large companies to acquire smaller geographic areas that complement existing operations.

Additionally, large companies that desire larger geographic areas would have the ability to aggregate licenses that cover the areas they wish to serve. Counties “nest” into larger geographic service areas and operators would have the ability to secure licenses that correspond to their current footprints. Awarding licenses using smaller geographic areas would also preserve the ability of new entrepreneurs and niche businesses to obtain spectrum and spur quick deployment with low capital expense in very localized areas.

In the CBRS context, because each PAL holder has a buildout obligation at the county level, the results of the CBRS PAL auction mean that rural areas in 3,225 counties are much more likely to be expeditiously served by the new services than had that auction involved licensing by PEA. In light of the Commission’s buildout rules, which are based on a percentage of population for point-to-multipoint and mobile services and a number of links per population for point-to-point services, licensing by PEAs would incentivize more rapid buildout in dense and wealthier urban areas while deterring buildout in sparsely populated rural and low-income counties of the PEAs. Accordingly, a spectrum auction using county-sized geographic license areas for the 3.45 GHz spectrum auction would help bridge digital divides more effectively than one using PEAs.

Lastly, the Commission adopted a 15-year license term only for the initial 3.45 GHz license term to account for the relocation of services vacating the band. Afterward, renewal license terms should revert to 10-year terms consistent with the 10-year terms of CBRS PALs

and to prevent national carriers from warehousing the spectrum after building out to the most densely populated communities of the license area. Ten-year terms have been adopted by the Commission for numerous spectrum bands with resounding success and provide licensees with sufficient time to make long-term investments in deployment.

III. THE COMMISSION SHOULD ADOPT SHARED SPECTRUM AND INTERFERENCE RULES.

The Commission recognized in the *Notice* that CBRS licensees operate in the 3.55-3.7 GHz band and proposed not to create guard bands at either end of the 3.45-3.55 GHz band.¹⁷ The Associations agree that a guard band is unnecessary; however, licensees should be afforded protection from interference. As noted by Charter in the 3.7 GHz proceeding, this protection can be provided simply by a Commission rule requiring licensees to coordinate their operations with existing licensees.¹⁸ Such a rule would avoid the need to devote Commission staff time to reviewing and acting on interference complaints, including the real possibility of consumer complaints resulting from degraded service.¹⁹ Furthermore, neither the Commission nor those that opposed Charter’s proposed interference coordination challenged Charter’s demonstration that interference with licensees operating in adjacent bands is likely – they simply disagreed on a solution for resolving the interference. Accordingly, absent Commission rules that protect

¹⁷ *Id.* at ¶ 57.

¹⁸ *See* Petition for Reconsideration of Charter Communications, Inc., GN Docket No. 18-122 (May 26, 2020) (“Petition”).

¹⁹ Charter pointed out in its Petition that CBRS licensees are using the spectrum to “advance wireless competition and broadband deployment” and, without TDD synchronization, CBRS operations will likely suffer “both coverage loss and throughput reduction...” Petition at pp. 2, 4.

licensees from interference, the Commission will be left to resolve interference complaints on a case by case basis while consumers experience interruptions to their service.

The Associations further recommend the Commission adopt the same CBRS shared use requirements for the 3.45 GHz band as those applicable to the 3.5 GHz band. The Commission stated when implementing such rules that the CBRS rules are designed to promote shared, rather than exclusive, access to the 3.5 GHz band.²⁰ The Commission also concluded that “[a]dopting rules that would allow a Priority Access Licensee to foreclose access to its entire Service Area (or even a single census tract) with nothing but a notification of its intent to provide service – or transmission of an initial signal – would over-protect Priority Access Licensees, facilitate spectrum warehousing, and encourage inefficient use of spectrum resources.”²¹ Applying the shared use rules to the 3.45 GHz spectrum would further allow consumers whose only option for broadband service is through their CBRS provider to continue receiving this essential service, consistent with Commission goals. Furthermore, to the extent that dynamic spectrum sharing could reasonably be applied similar to the Spectrum Access System (“SAS”) adopted for the adjacent CBRS band, the Commission should consider adopting such a system.

IV. CONCLUSION

The 3.45 GHz spectrum band has the potential to create a new market of innovative uses. When adopting rules governing the licensing of this spectrum, the Commission must be mindful of Section 309(j)’s requirement to ensure small businesses have an equal opportunity to acquire

²⁰ *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Order on Reconsiderations and Second Report and Order, 31 FCC Rcd 5011, 5061 (2016).

²¹ *Id.*

the licenses awarded through auction of the spectrum and that consumers and businesses in even the most rural parts of the country will receive the benefit of services offered through this spectrum. Accordingly, the Associations recommend the Commission apply the same auction rules for the 3.45 GHz spectrum as used for awarding licenses in the CBRS auction. Such rules will provide the best opportunity for small and large companies to acquire the licenses they need to deliver new and expanded services to all areas of the country.

Respectfully submitted,



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