

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

In the Matter of)	
)	
Promoting Investment in the 3550-3700 MHz Band;)	GN Docket No. 17-258
)	
Petitions for Rulemaking Regarding the Citizens Broadband Radio Service)	RM-11788 (Terminated) RM-11789 (Terminated)

REPLY COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (UTC) hereby files the following reply comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding.¹ UTC reiterates its opposition and echoes the overwhelming number of other parties who also oppose the FCC’s proposals to extend the term of Priority Access Licenses (PALs) to ten years and expand the size of the geographic area of PALs to Partial Economic Areas (PEAs).² UTC also reiterates that the Commission should avoid auctioning PALs, particularly where there is only one applicant in a given geographic area.

I. The Commission Should Not Extend the License Terms or the Geographic Area of PALs.

The comments on the record agree that extending the term and expanding the geographic areas of PALs will make it difficult for smaller entities such as utilities to be able to afford to acquire PALs.³

¹ See Petition for Rulemaking to Amend the Commission’s Rules Regarding the Citizens Broadband Radio Service in the 3550-3700 MHz Band, GN Docket No. 17-258, *Notice of Proposed Rulemaking*, FCC 17-134 (rel. Oct. 24, 2017) (*NPRM*). See also Promoting Investment in the 3500–3700 MHz Band, Notice of Proposed Rulemaking, GN Docket No. 17–258, 82 Fed. Reg. 56193 (rel. Nov. 28, 2017).

² See *NPRM* at ¶13 and ¶23 (proposing to extend the term of a PAL and inviting comment on expanding the geographic size of a PAL).

³ See e.g. Comments of Aristotle Unified Communications in GN Docket No. 17-258 (filed Dec. 28, 2017)(stating that “[m]oving to Partial Economic Areas (“PEAs”) would effectively prevent smaller providers from participating

While there are more than 74,000 census tracts in the United States, there are only 416 PEAs.⁴ As Southern explained in its comments, “[a]lthough PEAs may be smaller than the geographic areas that the Commission has typically auctioned in the past, they remain much too large for the service needs of the vast majority of potential users of the CBRS band, such as rural broadband service providers, private

in a 3.65 GHz spectrum auction in a meaningful way, which would, in turn, undermine the Commission’s stated goals for the band.”); Comments of Cal.net in GN Docket No. 17-258 (filed Dec. 28, 2017)(stating that “[e]nlarging the PALs license service areas from census tract size to Partial Economic Areas (“PEA”) would put the price of PALs out of our reach (and that of most other WISPs, as well)[; and that] [i]ncreasing the PALs license term to 10 years would likewise increase costs of obtaining such licenses.”); Comments of Cambium Networks, Ltd, the Entelec Regulatory and Technical Committee, and UTC in GN Docket No. 17-258 at 6 (filed Dec. 28, 2018)(“Changing PAL service areas from census tracts to PEAs would impose insurmountable barriers to entry for local private-network operators and WISPs, thereby stifling new competition by regulatory fiat.”); Comments of Cantor Telecom Services, L.P. in GN Docket No. 17-258 at 7 (filed Dec. 28, 2017)(underscoring that “[i]ncreasing the geographic license area for each PAL would foreclose smaller entities from participation.”); Comments of the Cloud Alliance in GN Docket No. 17-258 (filed Dec. 28, 2017)(opposing larger geographic areas for PALs and stating that “increasing the PAL term lengths with renewability provisions further increases the likely auction prices and essentially makes terms permanent, effectively eliminating the smaller companies.”); Comments of General Electric, Inc. in GN Docket No. 17-258 at 21 (filed Dec. 28, 2017)(stating that “[u]nder a PEA-based licensing approach, established wireless carriers would dominate the CBRS band.”); Comments of Google, Inc. in GN Docket No. 17-258 (filed Dec. 28, 2017)(stating that “PEA-sized [l]icense [a]reas [w]ill [d]epress [i]nvestment by [d]enyng WISPs and [s]ite-based [i]ndustrial, [h]ealthcare, and [h]ospitality [c]ompanies [a]ccess to PALs.”); Comments of Motorola in GN Docket No. 17-258 (filed Dec. 28, 2017)(stating that “[w]e strongly support a regulatory framework based on the existing 3-tier sharing of the 3.5 GHz band to enable a wide variety of use cases, including private broadband systems for industrial, manufacturing, enterprise, utility, oil and gas users.”); *And see Id.* at 4 (stating “[w]hile many potential users in the industrial, utility, oil and gas and enterprise segments desire interference protection for business-critical operations, they will be increasingly unlikely to participate in auctions for licenses that far exceed their coverage needs as they lack the skill, experience and motivation to manage the subleasing of the excess service area.”) Comments of Next Century Cities in GN Docket No. 17-258 at 6, 9 (filed Dec. 28, 2017)(stating that “[e]xpanding PAL geographic areas will drive up prices and limit investment opportunities for small and rural providers and innovative users;” and adding that “extending PAL license terms will increase cost, foreclose access by smaller users, and lock in advantages for largest carriers.”); Comments of Select Spectrum in GN Docket No. 17-258 (filed Dec. 28, 2017)(stating that “[w]hile in the auctions it will be possible for larger corporate operators to acquire multiple census tract PALs to cover larger areas such as the proposed PEAs or counties, it would be impractical and cost prohibitive for end users or smaller commercial operators to acquire full counties or the proposed PEAs.”); Comments of Southern Company Services, Inc. in GN Docket No. 17-258 at 2-3 (filed Dec. 28, 2017)(stating that extending the license term to ten years “will make the prospect of obtaining PALs significantly more expensive and could drive the cost of PALs beyond what many of the potential users of the CBRS band, such as smaller commercial entities and private network operators, could afford.”) Comments of Union Pacific in GN Docket No. 17-258 (stating that “If smaller providers are disincentivized and effectively precluded from competing for PEA-based PALs, the majority of the more costly PEA licenses will captured by national cellular carriers that have no intent, incentive or desire to provide fixed broadband services to remote populations, essentially creating a new band that will be used only for 5G services.”)

⁴ Comments of Cambium et al at 7, *citing* “Wireless Telecommunications Bureau Provides Details About Partial Economic Areas,” GN Docket No. 12-268, Public Notice, DA 14-759 (rel. June 2, 2014).

network operators, electric utilities and other operators of critical infrastructure, municipalities and state and local government agencies, commercial venues (such as stadiums, arenas, and shopping malls), educational institutions, and so forth.”⁵ Contrary to proponents of the Commission’s proposals, extending the license term and enlarging the geographic area is not necessary to promote investment. Comments opposing larger areas for PALS agree that larger geographic areas are likely to deter or practically exclude smaller entities from competing at auction, thereby reducing overall investment in the 3.5 GHz band.⁶ It is also important to note that the small cell technology to be used in the 3.5 GHz band is inherently better suited to smaller geographic area licenses anyway. Moreover, as many comments have pointed out, the practical effect of PEA licensing would most likely mean that rural areas would be left unserved.⁷ This is because PEAs are simply too large for most providers with business models focused on serving underserved rural and tribal communities.⁸ Finally, UTC continues to believe that partitioning or disaggregation would not serve as a panacea to the potential for spectrum warehousing by the big carriers, which would not be alleviated by build-out requirements that may be effectively skirted by the major carriers.⁹ UTC echoes comments that caution the FCC against reliance on such secondary market transactions as they are completely voluntary (and the carriers may choose not to offer to subdivide their licenses to others), and the cost of acquiring a license through partitioning or disaggregation could pose a barrier for many licensees.¹⁰

⁵ Comments of Southern Company Services at 14.

⁶ Comments of Union Pacific at 8.

⁷ *See e.g.* Comments of Aristotle Communications at 2. Comments of Union Pacific at 8-9.

⁸ Comments of Union Pacific at 9.

⁹ Comments of Southern Company Services at 16 (stating that “[p]artitioning, disaggregation, and reliance on secondary market transactions are neither adequate nor appropriate as a substitute for smaller license areas.”)

¹⁰ *Id.* at 3.

II. The Commission Should Avoid Auctioning PALs, Particularly in Areas Where There is Only One Applicant.

UTC reiterates that the Commission should avoid auctioning PALs, particularly in areas where there is only one applicant . As Southern explained in its comments, utilities need access to PALs in order to ensure communications reliability for mission-critical operations and service restoration. Moreover, as Southern noted, the Congressional Research Service (CRS) has observed that “auctioning spectrum may direct assets to end-use customers instead of providing wireless services where the consumer may be the beneficiary but not the customer,” such as smart grid.¹¹ In that regard CRS stated that “[s]pectrum resources are needed for [such] applications that may not have an immediate commercial value but can provide long-lasting value to society as a whole.”¹² Thus, UTC supports Southern’s comments urging the Commission to ensure that the nation’s spectrum resources are being managed in a way that considers the societal benefit of providing access to spectrum for utilities and other critical infrastructure, consistent with the recommendations by CRS.¹³

Given that utilities have critical assets in remote areas, they may find themselves in a situation where they will be the only applicant for a PAL that is necessary for ensuring reliable communications to their critical assets in remote areas. This situation was recognized in comments by US Cellular Corporation, which stated that certain “CBR Service providers require the quality of service guarantees that will only be available in the 3.5 GHz band via a PAL, including ... *utilities and other critical infrastructure industries*.”¹⁴ UTC agrees with US Cellular that “[i]nsufficient demand by other auction participants in no way diminishes a provider’s need for exclusive-use spectrum, so it should have no bearing on the ability of an otherwise qualified applicant to acquire the PAL(s) it requires to provide

¹¹ *Id.* at 9, citing Linda K. Moore, *Spectrum Policy in the Age of Broadband: Issues for Congress*, CRS Report for Congress at 13 (2009).

¹² *Id.*

¹³ *Id.*

¹⁴ Comments of US Cellular Corporation in GN Docket No 17-285 at 15 (filed Dec. 28, 2017)(emphasis added).

service to the public.”¹⁵ Therefore, UTC reiterates and underscores its initial comments to urge the Commission to assign PALs – and not auction them – in areas where they are the only applicant.

Conclusion

In conclusion, UTC continues to oppose proposals extending the license term and expanding the geographic size of PALs, and it urges the Commission to retain the existing CBRS rules for the 3.5 GHz band. UTC is not alone as numerous parties share the concern that changing the rules at this stage – just as the Commission is getting ready to make the 3.5 GHz band available -- would delay access to the band and prevent innovation and investment, as well as threaten to cause interference to existing systems in the 3.65 GHz band and thereby undermining the significant investments that utilities and others have made in these systems. In addition, UTC respectfully requests that the Commission avoid auctioning PALs, particularly in areas where there is only one applicant , consistent with the comments on the record including UTC’s initial comments.

Respectfully,

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¹⁵ *Id.* at 15.