

**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
)

ORDER ON RECONSIDERATION

Adopted: October 4, 2019

Released: October 4, 2019

By the Chief, Wireless Telecommunications Bureau:

1. In this Order, the Wireless Telecommunications Bureau (Bureau) dismisses two petitions for reconsideration filed by CallComm and Mile One Broadband Consortium of a 2018 Report and Order that adopted certain changes to the rules governing Priority Access licensees in the 3550-3700 MHz Band (3.5 GHz Band), as well as technical rule changes.¹ CallComm argues that the protections adopted for incumbent users in the 3.5 GHz Band should have been extended to non-federal Part 90 Land Mobile Radiolocation licensees in the band.² As discussed below, the rules addressing incumbent users in the 3.5 GHz Band were adopted in an earlier proceeding and were not revisited in the 2018 Report and Order or the notice underlying that order. Accordingly, the Bureau finds that CallComm’s petition is untimely and raises matters outside the scope of the order on review, and we dismiss it for those reasons. Mile One Broadband Consortium requests that the Commission broaden the consortium exception to competitive bidding established in the 2018 Report and Order.³ Because this petition was filed over three weeks after the deadline established in Section 405 of the Communications Act and the Commission’s rules, we dismiss this petition as untimely.

I. BACKGROUND

2. On April 21, 2015, the Commission released a Report and Order establishing the new Citizens Broadband Radio Service as part of a three-tier framework for making the entirety of the 3.5 GHz Band available for shared commercial use (*2015 R&O*).⁴ Incumbent users comprise the highest priority tier and receive protection from all other users, followed by Priority Access Licenses (PALs) in

¹ See Petition for Reconsideration by CallComm, GN Docket No. 17-258 (filed Jan. 7, 2019) (CallComm PFR); *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Report and Order, 33 FCC Rcd 10598 (2018) (*2018 R&O*).

² See CallComm PFR at 1.

³ See Petition for Reconsideration by Mile One Broadband Consortium, GN Docket No. 17-258 (filed Jan. 29, 2019).

⁴ See *generally Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015) (*2015 R&O*). The Commission simultaneously sought further comment on certain focused issues: (1) defining when PAL frequencies are in “use”; (2) implementing secondary markets in PALs; and (3) optimizing protections for fixed satellite service earth stations. See *id.* at 4081-4090, paras. 418-445. The Commission resolved these issues in a 2016 order that also addressed a number of petitions for reconsideration of the *2015 R&O*. See *generally Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011 (2016) (*2016 Order*).

the second priority tier, and General Authorized Access (GAA) users in the third tier. The PAL and GAA tiers make up the Citizens Broadband Radio Service.⁵ The incumbent tier includes federal users in the band, Fixed Satellite Service earth stations, and, for a finite period, certain grandfathered terrestrial wireless licensees in the 3650-3700 MHz band.⁶

3. The *2015 R&O* also noted that a portion of the 3.5 GHz Band, including the 3550-3600 MHz and 3600-3650 MHz bands, was allocated for non-federal radiolocation use on a secondary basis, and that there were, at that time, three non-federal radiolocation licensees authorized to operate stations using these frequencies.⁷ The *2015 R&O* eliminated the non-federal radiolocation allocation in the 3550-3650 MHz band going forward, but provided that non-federal radiolocation stations that already were licensed in the 3.5 GHz Band or that had filed an application for authorization prior to the effective date of the *2015 R&O* could continue to operate on a secondary basis until the end of their equipment's useful lifetime.⁸ Although several parties filed petitions for reconsideration of the *2015 R&O*, all of which were resolved in the *2016 Order*, no party sought reconsideration of this aspect of the order.⁹

4. On October 24, 2017, the Commission commenced a new rulemaking proceeding with a Notice of Proposed Rulemaking (*2017 NPRM*) seeking comment on certain potential changes to the PAL tier, including changes to PAL license area, license term, and auction process.¹⁰ The Commission also sought comment on relaxing the emissions limits for Citizens Broadband Radio Service Devices (CBSDs), the devices deployed in the band by PAL licensees or GAA users, and on revising the requirements governing public disclosure of CBSD registration information.¹¹ In a Report and Order released October 24, 2018 (*2018 R&O*), the Commission, acting on these proposals, adopted a larger PAL license area, a longer PAL license term with renewability, and other regulatory changes within the scope of the *2017 NPRM*.¹² A summary of the *2018 R&O* was published in the Federal Register on December 7, 2018.¹³ On January 7, 2019, CallComm filed the pending petition for reconsideration.¹⁴

5. In its petition for reconsideration, CallComm states that the Commission “did not include existing, currently licensed, Part 90 Land Mobile Radiolocation Licensees as a classification in Incumbent Protections” and asserts that such existing operations need to be protected.¹⁵ As evidence of the omission

⁵ See *2015 R&O*, 30 FCC Rcd at 3962, para. 4.

⁶ See *2015 R&O*, 30 FCC Rcd at 3962, 3964-3967, paras. 4, 15-22 (detailing incumbent use of the band); *id.* at 4075-4080, paras. 400-412 (adopting protections for grandfathered terrestrial wireless operations for five years or until the end of the license term, whichever is longer).

⁷ See *2015 R&O*, 30 FCC Rcd at 3965, para. 17.

⁸ See *id.*, 30 FCC Rcd at 3974, para. 40.

⁹ See *2016 Order*, 31 FCC Rcd at 5017-18, paras. 19-27 (describing petitions).

¹⁰ See generally *Promoting Investment in the 3500-3700 MHz Band et al.*, GN Docket No. 17-258 et al., Notice of Proposed Rulemaking and Order Terminating Petitions, 32 FCC Rcd 8071 (2017) (*2017 NPRM*).

¹¹ See *id.* at 8090-92, paras. 54-58.

¹² See generally *2018 R&O*.

¹³ See 83 Fed. Reg. 63076-01 (Dec. 7, 2018).

¹⁴ Public notice of the petition was published in the Federal Register on June 7, 2019, with opposition or other comments due by June 24, 2019, and any replies due by July 2, 2019. See 84 Fed. Reg. 26634 (June 7, 2019). CTIA – The Wireless Association (CTIA), the Wireless Innovation Forum (WinnForum), and the Wireless Internet Service Providers Association (WISPA) filed oppositions to the PFR.

¹⁵ CallComm PFR at 1.

of these licensees from the incumbent classification, CallComm cites the table of contents from the *2015 R&O*.¹⁶

II. DISCUSSION

6. Under Section 405 of the Communications Act of 1934, any party in a proceeding may file a petition of reconsideration within 30 days of public notice of the decision.¹⁷ It is unclear whether CallComm seeks reconsideration of the *2015 R&O* or the *2018 R&O* given that CallComm refers to both the *2018 R&O* and *2015 R&O* but only raises issues addressed in the *2015 R&O*. Its petition is subject to dismissal in either event, however. The issue raised by CallComm's petition for reconsideration—the status of existing non-federal radiolocation service licensees in the 3.5 GHz Band—was decided in the *2015 R&O* and was not revisited in either the *2017 NPRM* or the *2018 R&O*.¹⁸ Indeed, CallComm's petition points for its challenge to the *2015 R&O*, not the *2018 R&O*.¹⁹ Accordingly, the Bureau finds that CallComm's petition for reconsideration is untimely and dismisses it on that basis.²⁰ To the extent that CallComm intends to seek reconsideration of the *2018 R&O*, the matters that CallComm raises are outside of the scope of the *2018 R&O* and the underlying proceeding, and we dismiss the petition on that ground as well.²¹

7. With this action, the Bureau also disposes of the only other pleading that is pending in GN Docket No. 17-258—the petition filed by Mile One Broadband Consortium on January 29, 2019.²² Because this Petition, like CallComm's, is untimely, the Bureau dismisses it.²³

III. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED pursuant to Sections 4(i), 4(j), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 405, as well as delegated authority in Section 1.429(l) of the Commission's rules, 47 CFR § 1.429(l), that the Petition for Reconsideration filed by CallComm on January 7, 2019 and the Petition for Reconsideration filed by Mile One Broadband Consortium on January 29, 2019 ARE DISMISSED.

9. IT IS FURTHER ORDERED that this ORDER ON RECONSIDERATION SHALL BE EFFECTIVE 30 days after publication of a summary in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Donald Stockdale
Chief, Wireless Telecommunications Bureau

¹⁶ *See id.*

¹⁷ “A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.” 47 U.S.C. § 405(a). *See also* 47 C.F.R. § 1.429(d).

¹⁸ Each of the parties filing oppositions argued the petition relates to matters outside the scope of the *2018 R&O*. *See* CTIA Comments at 1-4, WinnForum Comments at 1-2, WISPA Comments at 1-2.

¹⁹ *See id.*; *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir.1986) (finding the Commission was statutorily barred from acting on a belatedly filed petition for reconsideration). *See also* 47 CFR § 1.429(d).

²⁰ 47 CFR § 1.429(l)(5), (l)(9).

²³ *Id.*

²² *See* Petition for Reconsideration by Mile One Broadband Consortium, GN Docket No. 17-258 (filed Jan. 29, 2019)

²³ 47 CFR § 1.429(l)(9).