

On October 23, 2018, the Federal Communications Commission (FCC) adopted a Report and Order modifying rules governing the 3.5 GHz Band, commonly known as the Citizens Broadband Radio Service (CBRS). Conceived from the outset as an innovation band with a flexible and more open licensing regime, the CBRS band creates new opportunities for current wireless providers and new entrants looking to deploy next generation wireless technologies and for enterprises and commercial real estate owners and developers looking to create private LTE networks, neutral host networks and other in-building solutions.

The changes to the framework that the FCC recently adopted, which include increasing the geographic scope and duration of certain licenses in the CBRS band, aim to make it more attractive to investors interested in the deployment of 5G networks and offering fixed wireless broadband service, particularly in rural areas.

Background

The FCC originally adopted rules in Part 96 for the shared commercial use of the 3550-3700 MHz band in 2015. Before this action by the FCC, the majority of this band had been dedicated to Fixed Satellite Services (FSS) and government use.

- The rules created a three-tiered licensing regime to coordinate shared federal and non-federal commercial use of the band.
 - Incumbents comprise the first tier (Incumbent Access) and receive protection from all other users. Incumbent Access users include authorized federal and grandfathered Fixed Satellite Service users and Navy radar services currently operating in the 3.5 GHz Band.
 - Priority Access Licenses (PALs) constitute the second tier. These exclusive licenses will be awarded through competitive bidding and will be afforded protection from interference from licensees in the third tier. Seven 10 MHz channels will be reserved for PALs in a given license area.
 - General Authorized Access (GAA) make up the third tier. This tier will be licensed by rule and will allow the use any portion of the 150 MHz band that is not assigned or in use by a higher tiered licensee.
- The framework foresees the use of a Spectrum Access System (SAS) that will manage shared access to the band and an Environmental Sensing Capability to facilitate coexistence through signal sensing.
- After the initial adoption of the rules, CTIA and T-Mobile filed petitions proposing changes to the Part 96 rules focused on the geographic scope and duration of the PALs. After seeking comments on the proposed rule change, the FCC released the draft Report and Order on October 2, 2018 in advance of the Open Meeting on October 23.



The Report and Order

The Report and Order (R&O) makes a number of fundamental modifications to the 2015 service rules in the following respects:

- **Geographic Licensing Area** – The R&O provides for licenses by county instead of census tract or Partial Economic Area (PEA). The FCC ultimately chose licensing by county on the theory that “census tracts could disadvantage flexible mobile use, including 5G, and other wide-area network deployments, which in turn would decrease investment in the band.” The FCC concluded that using PEAs could “disproportionately favor mobile use cases and hinder investment in innovative fixed networks and localized deployments.” In addition, there are 74,000 census tracts in the US, which would complicate the use of the auction mechanism.
- **License Term and Renewal** – The R&O extends the PAL term to 10 years and permits renewal of the license. The FCC chose to revise the license term due to “rapid changes in the mobile marketplace, including the growing importance of mid-band spectrum for large-scale 5G service.” Arguments that the longer term and renewability would make “PALs broadly uneconomical for rural and innovative investments or lead to a less efficient use and distribution of the band” did not persuade the FCC.

- **Performance Requirements** – In tandem with the longer license period and renewability, the R&O requires PALs to provide communications services that meet a “substantial service” standard of performance. There are two ways to meet the substantial service standard:
 - Mobile or point-to-multipoint services (reliable signal coverage and service over at least 50% of the population in a license area)
 - Point-to-point service (construction and operation, using Category B Citizens Broadband Radio Service Devices (CBSDs) of at least four links in license areas with a population of 134,000 or less and at least one link per 35,000 population (rounded up) in license areas with greater population)
- **Competitive Bidding Procedures for PALs** – Under the competitive bidding procedures, applicants are subject to a 40 MHz spectrum cap out of the 70 MHz available per license area. Applicants have an opportunity to identify on their short form application each geographic area in which they are interested in bidding for PALs, and can then only bid on those identified areas. Assuming an applicant is otherwise qualified, the FCC will assign a PAL even where there is only one application in a given geographic area.
- **Bidding on Specific PAL License Blocks** – PALs will operate over 10 MHz unpaired channels and all channels will be assigned by SAS. The exact frequencies of specific assigned channels may be changed by SAS to facilitate sharing between the three tiers of authorized users. To provide greater flexibility to PAL applicants interested in serving larger areas, the FCC will seek comment in the pre-auction process on allowing package bids to facilitate bidding for the counties that comprise a complete Metropolitan Statistical Area in the top 305 markets.
- **Bidding Credits for PALs** – The R&O provides for small business, rural service provider and tribal bidding credits for PALs.
 - To qualify for a 25% bidding credit, a very small business entity must show that it has average revenues for the preceding three years of US\$20 million or less.
 - To qualify for a 15% bidding credit, a small business entity must show that it has average gross revenues for the preceding three years of US\$55 million or less.
 - To qualify for a rural service provider bidding credit of 15%, an entity must show that it predominantly serves rural areas and has fewer than 250,000 combined wireless, wireline, broadband and cable subscribers.
 - If an entity serves “qualifying tribal lands,” it may qualify for a tribal land bidding credit.
- **Partitioning and Disaggregation of PALs on the Secondary Market** – Partitioning and disaggregation of PALs in secondary market transactions will be permitted, in compliance with Section 1.950 of the FCC’s rules. Each party to a partitioning or disaggregation agreement must have a clear construction and operation requirement and will face license termination in the event of failure to meet those requirements.
- **Confidentiality of CBSD Registration Information** – The rules that the FCC initially adopted for the CBRS band required that all CBSDs register with and be authorized by a SAS prior to initial service transmission. Under those rules, the SAS administrators were required to make the CBSD registration information available to the general public. The FCC sought comment on that requirement in 2017, and in the R&O it changed the rule to prohibit public disclosure of individually identifying (i.e., disaggregated) information, unless authorized by the registrant. SAS administrators are required, however, to make “aggregated spectrum usage data for any particular area of interest available to the public.”
- **Emission Limits for CBSDs and End User Devices** – The R&O does not modify the OOB limits outside the 3.5 GHz band, specifically at or beyond the 3550 and 3700 band edges. Additionally, there are no changes in the emissions mask for Category A and B CBSDs, but the emissions mask for uplinks from End User Devices were relaxed to ensure support of operations over wider bandwidths.

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