

FCC Proposes Spectrum Sharing with Commercial Wireless Providers in the 3.45-3.55 GHz Band

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On September 9, 2020, the Federal Communications Commission (FCC or Commission) released a draft Report and Order (Report & Order) and Further Notice of Proposed Rulemaking (FNPRM) that would take several critical steps toward making the 3.45-3.55 GHz band available for commercial use. The draft item follows last month's announcement by the White House and the U.S. Department of Defense (DoD) of an initiative that will allow commercial 5G systems to operate, on a shared basis with DoD, in the band throughout almost all of the contiguous United States. To prepare the band for commercial operations, the draft Report & Order would, among other things, relocate existing non-federal radiolocation licensees to the 2.9-3.0 GHz band. The Commission is scheduled to vote on the draft item at the upcoming Open Commission Meeting on September 30, 2020.

The 3.45-3.55 GHz band, a key mid-band spectrum opportunity, has been the subject of study and analysis for several years. The 2018 MOBILE NOW Act directed the Commission to work with the National Telecommunications and Information Administration (NTIA) to determine whether wireless service providers and federal incumbents could effectively share spectrum in the 3.1-3.55 GHz band. As part of this effort, in January 2020, NTIA released a technical analysis that concluded that there was "a clear possibility" for spectrum sharing that would protect federal incumbents – such as the DoD in the 3.45-3.55 GHz band. In a related July report to Congress, NTIA further concluded that the 3.45-3.55 GHz portion is "a good candidate for potential spectrum sharing, including the commercial power levels

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sought by the wireless industry.”

Building on NTIA’s report and analysis, in August 2020, the White House and the DoD announced plans to allow for 5G operators to utilize spectrum in the 3.45-3.55 GHz band. As part of its announcement, the White House expressed a goal of auctioning the spectrum in December 2021. With the actions proposed in the draft item, the Commission expects that commercial operations in the band could begin in early 2022.

The Draft Report & Order

The draft Report & Order would remove the secondary non-federal radiolocation service allocations in the 3.3-3.55 GHz band, along with the secondary non-federal amateur allocations in the 3.3-3.5 GHz band. The Commission would allow secondary incumbent licensees operating in the 3.45-3.55 GHz band to continue operating until the Commission finalizes its plans to reallocate spectrum in the band.

The draft Report & Order would relocate non-federal radiolocation licensees to the 2.9-3.0 GHz band, where they would operate on a secondary basis to federal operations. Rather than specifying a particular replacement spectrum band for amateur operators, amateur licensees would be permitted to determine appropriate alternative spectrum from existing available allocations on an individual basis.

The Draft FNPRM

The draft FNPRM proposes to make 100 megahertz of spectrum in the 3.45-3.55 GHz band available for wireless services providers throughout the contiguous United States. Moreover, the draft FNPRM seeks input on including co-primary, non-federal fixed and mobile allocations to the band. Accordingly, the draft FNPRM is seeking comment on an appropriate coordination system that would “promote productive ongoing negotiations between federal incumbents and new, commercial flexible use licensees.” Specifically, the draft FNPRM proposes unpaired, 20-megahertz blocks for the band, and is suggesting service, technical, and competitive bidding rules for flexible use licensees in an attempt to align the band with the 3.7-4.2 GHz band, which is scheduled to be auctioned in December 2020.

Additionally, the draft FNPRM seeks comment on how the Commission should: (1) relocate non-federal radiolocation operators to the 2.9-3.0 GHz band; and (2) sunset amateur operations in the 3.3-3.5 GHz band. Specifically, the draft FNPRM proposes sunseting all non-federal secondary radiolocation usage of the 3.3-3.5 GHz band within 90 days of the close of a commercial wireless auction in the band. The draft FNPRM also seeks comment on the appropriate timing of transitioning radiolocation incumbents to the 2.9-3.0 GHz band.

Finally, the draft FNPRM seeks input on issues related to the continued operation of amateur stations in the 3.3-3.45 GHz band. It proposes to sunset amateur operations in the 3.4-3.5 GHz band, but to allow such operations to continue on a secondary basis in the 3.3-3.4 GHz segment of the band. Under the proposal, operations in the 3.3-3.4 GHz portion would be subject to sunseting “at any time.”

If you have questions about the draft Report & Order and FNPRM or are interested in filing comments, please contact the Wiley attorney who regularly assists you with your FCC matters or one of the authors listed on this alert.