

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

In the Matter of)	
)	
GCI Communications Corp.)	IBFS File No. SES-LIC-20190509-00583
)	
Request for Waiver of the Temporary Freeze on)	
Applications for New Fixed Satellite Service Earth)	Call Sign: E020088
Station License in the 3.7-4.2 GHz Band)	

ORDER

Adopted: October 24, 2019

Released: October 24, 2019

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, the International Bureau (Bureau) grants the request of GCI Communications Corp. (GCI) for waiver of the temporary freeze on its application for an earth station license in the 3.7-4.2 GHz band (Earth Station Freeze or Freeze).¹ As discussed below, we find that this waiver to permit a previously licensed earth station to operate again in this band in Kotlik, Alaska will serve the public interest by allowing GCI to support services to the local health clinic, school, and community in an extremely remote portion of Alaska, and that unique circumstances presented in this waiver application will not undermine the purposes of the Freeze.

II. BACKGROUND

2. On April 19, 2018, the International, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus announced a temporary freeze on the filing of new or modification applications for fixed-satellite service (FSS) earth station licenses, FSS receive-only earth station registrations, and fixed microwave licenses in the 3.7-4.2 GHz frequency band.² The International Bureau also announced a 90-day filing window during which operators of existing, but unregistered or unlicensed, earth stations operating in the 3.7-4.2 GHz band could continue to file applications.³ The Bureau extended this filing window for an additional 90 days until October 17, 2018, and announced

¹ The Bureau will act separately on the earth station application and issue license terms and conditions in the International Bureau Filing System.

² *Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band; 90-Day Window to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band*, GN Docket Nos. 17-183, 18-122, Public Notice, DA 18-398, 2 (IB/PSHSB/WTB Apr. 19, 2018), 2018 WL 1898716 (*Earth Station Freeze Notice*).

³ *Id.* at 3.

additional filing options for earth stations with multiple antennas.⁴ On July 13, 2018, the Commission released an *Order and Notice of Proposed Rulemaking (Order and NPRM)* that identifies several potential options for expanded flexible use of the 3.7-4.2 GHz band.⁵ In the *NPRM*, the Commission proposes to protect “incumbent” earth stations and to exclude earth stations failing to meet certain criteria, including a requirement that the earth stations were operational as of April 19, 2018, from the definition of incumbents. Additionally, the Commission proposes to permanently extend the Freeze on applications for new earth station licenses and registrations in the 3.7-4.2 GHz band.

3. On May 9, 2019, GCI filed an application for a license for a previously licensed transmit-receive earth station operating in the 3.7-4.2 GHz (space-to-Earth) and 5.925-6.425 GHz (Earth-to-space) frequency bands, typically referred to as the “Conventional C-band.”⁶ As part of its application, GCI requests a waiver of the Earth Station Freeze to enable it to operate an earth station that was not currently licensed on or before April 19, 2018.⁷ GCI states that the earth station is necessary to ensure provision of critical communications services to the approximately 650 Alaskans residing in the rural Alaskan village of Kotlik.⁸ These services include mobile voice and broadband, telehealth, school access, rural wireless services, and wireless Internet access. The application was placed on Public Notice on July 24, 2019.⁹ No comments were received. On July 22, 2019, GCI filed a letter providing additional details about the lack of suitable transmission alternatives to the C-band to serve the village of Kotlik, Alaska.¹⁰

III. DISCUSSION

4. We grant GCI’s request for a waiver of the ongoing Earth Station Freeze. In the Public Notice announcing the Freeze, the Bureau stated that requests for waiver of the Freeze would be assessed on a case-by-case basis and upon a demonstration that the waiver will serve the public interest and not undermine the objectives of the Freeze.¹¹ Generally, the Commission may waive any rule for good cause

⁴ *International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band; Filing Options for Operators with Multiple Earth Station Antennas*, GN Docket Nos. 17-183, 18-122, Public Notice, DA 18-639, 1 (IB June 21, 2018), 2018 WL 3090857. The filing window was extended again until October 31, 2018. See *International Bureau Announces Two-Week Extension of Filing Window for Earth Stations Currently Operating in 3.7-4.2 GHz Band*, Public Notice, DA 181061 (IB Oct. 17, 2018), 2018 WL 5112022.

⁵ See *Expanding Flexible Use of the 3.7-4.2 GHz Band*, GN Docket Nos. 17-183, 18-122, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915 (2018) (*Order and NPRM*).

⁶ IBFS File No. SES-LIC-20190509-00583 at 2-3. This earth station was previously licensed and operational, but the 15-year license term expired in June 2017 without a timely renewal request, and therefore the license was automatically terminated under Section 25.161(b). Accordingly, since GCI’s earth station was not licensed as of April 19, 2018, waiver of the Earth Station Freeze is required to grant the license application. Our action here in granting GCI’s waiver request is without prejudice to potential future enforcement action for the provision of any unauthorized services provided after GCI’s initial license for this earth station expired.

⁷ GCI Request for Waiver of Temporary Freeze, IBFS File Nos. SES-LIC-20190509-00583, Exhibit E (GCI Waiver Request).

⁸ *Id.* at 2.

⁹ *Satellite Communications Services re: Satellite Radio Applications Accepted For Filing*, Public Notice, Report No. SES-02184 at 6 (July 24, 2018).

shown.¹² The Commission may also grant a request for waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹³ Waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁶

5. In the present case, we conclude that grant of this waiver will not undermine the purpose of the Earth Station Freeze. The Earth Station Freeze is intended to “preserve the current landscape of authorized operations in the 3.7-4.2 GHz band” pending further consideration of the Commission’s ongoing inquiry into expanded flexible use of the band. The Freeze is also intended to prevent the filing of speculative earth station applications in anticipation of potential future actions in the band by the Commission. Grant of this waiver will not undermine these purposes. First, the earth station requested by GCI is located in a remote part of western Alaska, far from any major urban areas or population centers. As such, grant of this waiver will result in no more than a *de minimis* change to the existing landscape of authorized operations in the 3.7-4.2 GHz band. Second, it is clear from GCI’s waiver request that this application is not speculative, but instead is a necessary extension of existing services provided by GCI in remote parts of western Alaska. Finally, we note that grant of this waiver is a Bureau-level decision and does not prejudice the Commission’s ability to take any action with respect to the Commission’s ongoing *NPRM* identifying potential opportunities for flexible use in the 3.7-4.2 GHz band.

6. In addition, we conclude that grant of the waiver is in the public interest based on the unique factual circumstances in this case. Specifically, grant of a waiver of the Earth Station Freeze is in the public interest in this case based on: (1) the unique operational conditions in remote western Alaska, (2) the absence of viable alternatives, and (3) the importance of the services that GCI provides to these remote Alaskan villages. The Commission has previously observed that certain conditions unique to Alaska make the provision of communications services in the state particularly difficult.¹⁷ GCI cites these

¹⁰ Letter from Kara Leibin Azocar, Regulatory Counsel, Federal Affairs, GCI Communications Corp. to International Bureau, Federal Communications Commission, IBFS File No. SES-LIC-20190509-00582 (July 22, 2019) (GCI Letter).

¹¹ *Earth Station Freeze Notice* at 3.

¹² 47 CFR §§ 1.3; 1.925(3).

¹³ 47 CFR § 1.925(3).

¹⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162-63, para 72 (2016) (*Alaska Plan Order*) (quoting *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829 (2011)) (noting unique conditions in Alaska, including “its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season”).

same unique conditions as justification for its own request for a waiver of the Earth Station Freeze.¹⁸ Specifically, GCI explains that these satellite links will support mobile wireless voice and broadband services, aviation safety, and critical community services, including telehealth services to support Yukon Kuskokwim Health Corporation telehealth services, Lower Yukon School District distance learning services, GCI's rural wireless system, and GCI's wireless Internet access system.¹⁹ GCI notes that the village of Kotlik is approximately 35 miles away from the nearest microwave radio system location (Emmonak). Connecting Emmonak to Kotlik, however, would require the construction and installation of 400-foot towers at each end location. Doing so would be particularly challenging given bird and other animal migration schedules, as well as the short construction periods due to severe weather and lack of light in the winter.²⁰

7. GCI has also attempted to use alternative satellite bands, but states that Ku- and Ka-band options are not realistic alternatives for technical reasons: specifically, due to limited lower link availability resulting from propagation conditions and the higher link margins required for Ku- or Ka-band fading.²¹ Other barriers include the high costs of replacing ground segment equipment, and the lack of available Ku- or Ka-band satellites with adequate coverage in Alaska. Fiber is not a viable option due to the freeze-thaw cycles experienced in this region of Alaska. The nearest location to Kotlik that has existing fiber optic facilities is Nome, Alaska, which is hundreds of miles away and across the Bering Sea.²²

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to authority in section 1.3 of the Commission's rules, 47 CFR § 1.3, the request of GCI Communications Corp. for waiver of the Earth Station Freeze, as established by Public Notice DA 18-398 (rel. Apr. 19, 2018) IS GRANTED for the reasons set forth herein. This waiver applies only to the earth station associated with IBFS File Nos. SES-LIC-20190509-00583. This waiver is granted without prejudice to potential future enforcement action for the provision of any unauthorized services after GCI's previous license for this earth station expired.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Sullivan
Chief, International Bureau

¹⁸ Waiver Request at 1-2.

¹⁹ *GCI Letter at 2.*

²⁰ *GCI Letter at 2.*

²¹ *GCI Letter at 2-3.*

²² *GCI Letter at 3.*