

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

In the Matter of)
)
Alaska Communications Internet LLC) IBFS File No. SES-MOD-20180626-01472
) Call Sign: E170205
Request for Waiver of the Temporary Freeze on)
Applications for New or Modified Fixed Satellite)
Service Earth Stations in the 3.7-4.2 GHz Band)

ORDER

Adopted: July 31, 2019

Released: August 1, 2019

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order the International Bureau (Bureau) grants the request of Alaska Communications Internet LLC (ACI) for a waiver of the temporary freeze on applications for new or modified earth stations in the 3.7-4.2 GHz band (Earth Station Freeze or Freeze). As discussed below, we find that this waiver to permit 10 new earth stations in the Kuspuk School District in Alaska will serve the public interest by allowing ACI to provide critical services to remote portions of Alaska and that the 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. 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. The Bureau extended this filing window for an additional 90 days until October 17, 2018 and announced additional filing options for earth stations with multiple antennas. On July 13, 2018, the Commission

1 The Bureau will grant the above-captioned earth station modification application separately and issue modified 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.

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

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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.⁶ Additionally, the Commission proposes to permanently extend the Freeze on applications for new earth stations in the 3.7-4.2 GHz band.⁷

3. On June 26, 2018, ACI filed an application to modify its existing network earth station license.⁸ Specifically, ACI seeks to add ten additional earth station sites to its license, and additional frequencies to its network.⁹ ACI currently operates a network of earth stations controlled by a hub in Anchorage, Alaska and provides satellites services to remote regions of Alaska.¹⁰ ACI states that these additional earth station sites and the additional frequencies requested are necessary for ACI to expand the service it provides to the Kuspuk School District in Alaska.¹¹ As part of that application, ACI requests a waiver of the Earth Station Freeze to enable it to operate earth stations that were not operational on or before April 19, 2018.¹² The application was placed on Public Notice on September 26, 2018.¹³ No comments were received. On July 25, 2019, ACI filed a letter providing additional details about the lack of suitable transmission alternatives to the C-band to serve the Kuspuk School District in Alaska.¹⁴

III. DISCUSSION

4. We grant ACI’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.¹⁵ Generally, the Commission may waive any rule for good cause shown.¹⁶ Waiver is appropriate where the particular facts make strict compliance inconsistent with the

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Extension of Filing Window for Earth Stations Currently Operating in 3.7-4.2 GHz Band, Public Notice, DA 18-1061 (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 *Id.* at paras. 27-28.

⁷ *Id.* at para 30.

⁸ IBFS File No. SES-MOD-20180626-01472.

⁹ Legal Narrative, IBFS File No. SES-MOD-20180626-01472 at 4-5 (Legal Narrative). Specifically, ACI seeks to add operations in the 3944-4016 MHz (space-to-Earth) and 6169-6241 MHz (Earth-to-space) frequency bands to its earth station network. *Id.* at 4.

¹⁰ Legal Narrative at 3-4.

¹¹ Legal Narrative at 2. ACI has been operating these earth stations under a grant of special temporary authority since June 29, 2018.

¹² Legal Narrative at 15-18. Although ACI’s application was filed during the earth station filing window, the filing window only permitted applications for earth stations that were constructed and operational. As the earth stations proposed by ACI are new earth stations, they fall outside the scope of the filing window. ACI also requests a waiver of Section 25.115(c)(2)(i)(B), 47 CFR § 25.115(c)(2)(i)(B), to permit the use of additional frequency bands across its network license. Legal Narrative at 12-15. ACI’s request for waiver of Section 25.115 is not addressed in this Order.

¹³ *Satellite Communications Services re: Satellite Radio Applications Accepted For Filing*, Public Notice, Report No. SES-02100 at 1-7 (Sept. 26, 2018).

public interest.¹⁷ In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁹

5. In the present case, we conclude that there is good cause to grant of a waiver of the Earth Station Freeze based on: (1) the unique operational conditions in remote portions of Alaska, (2) the importance of the services that ACI provides to Alaskan villages, and (3) the limited scope of operations proposed by ACI. The Commission has previously observed that certain conditions unique to Alaska make the provision of telecommunications services there particularly difficult,²⁰ and those same conditions create a demand for satellite services like ACI offers in remote regions. ACI asserts that the current microwave system serving these communities is congested, oversubscribed, and unreliable due to adverse weather conditions and icing.²¹ The closest fiber link, ACI reports, is in Nome, Alaska, at least 260 miles over undeveloped roadless wilderness.²² As a result, fiber is not a viable alternative to C-band service for these communities. ACI also notes that Ku- and Ka-band options are not realistic alternatives because of limited satellite coverage and susceptibility to rain fade in poor weather conditions.²³ Additionally, ACI uses these earth stations to provide critical connectivity to the Kuspuk School District that will improve the educational opportunities available to students in the area.²⁴ Finally, ACI notes that its operations in the C-band are limited to what is necessary to provide service to the Kuspuk School District, thereby minimizing the impact of its operations on any current and future authorized users of the band.²⁵ In summary, the particular facts in this case make strict compliance with the Earth Station Freeze inconsistent with the public interest, and warrant a deviation.

6. Additionally, we conclude that grant of this waiver will not undermine the purpose of the 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

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¹⁴ See Letter from Richard Cameron, LMI Advisors LLC, Counsel for Alaska Communications Internet, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, IBFS File No. SES-MOD-20180626-01472 (ACI Letter).

¹⁵ *Earth Station Freeze Notice* at 3.

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *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.

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ 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”).

²¹ ACI Letter at 1-2.

²² *Id.*

²³ *Id.* at 4-5.

²⁴ Legal Narrative at 16-17.

expanded flexible use of the band.²⁶ The Freeze was also intended to avoid the filing of speculative earth station applications in anticipation of potential future actions by the Commission.²⁷ Grant of this waiver will not undermine these purposes. First, the earth stations requested by ACI are located in remote parts of Alaska, far from any major urban areas or population centers. As a result, 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.²⁸ Second, it is clear from ACI's waiver request that these earth stations are not speculative and that they are a necessary extension of existing services provided by ACI in remote parts of Alaska.²⁹ 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* for the 3.7-4.2 GHz band.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to authority in Section 1.3 of the Commission's rules, 47 CFR § 1.3, the request of Alaska Communications Internet, LLC 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 stations associated with IBFS File No. SES-MOD-20180626-01472.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Sullivan
Chief, International Bureau

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²⁵ Legal Narrative at 18.

²⁶ *Earth Station Freeze Notice* at 2-3.

²⁷ *Earth Station Freeze Notice* at 3.

²⁸ ACI notes in its application that the portions of Alaska where it will place these earth stations are unlikely to see "5G deployment anytime in the foreseeable future." Legal Narrative at 17.

²⁹ See IBFS File Nos. SES-STA-20180626-01443; SES-STA-20180828-02530.