



PUBLIC NOTICE

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INTERNATIONAL BUREAU RELEASES LIST OF INCUMBENT EARTH STATIONS IN THE 3.7-4.2 GHZ BAND IN THE CONTIGUOUS UNITED STATES

IB Docket No. 20-205

With this Public Notice, the International Bureau (the Bureau) releases the list of those Fixed Satellite Service (FSS) earth stations in the 3.7-4.2 GHz band in the contiguous United States that the Bureau has found satisfy the criteria to be classified as incumbent earth stations for purposes of the 3.7-4.2 GHz band (C-band) transition.¹

On July 6, 2020, the Bureau released a preliminary list of those FSS earth stations in the 3.7-4.2 GHz band in the contiguous United States (*Preliminary Incumbent Earth Station List Public Notice*) that the Bureau found may satisfy the criteria to be classified as incumbent earth stations for purposes of the C-band band transition.² The Bureau invited informal e-mails and formal comments on the preliminary list to provide minor corrections to site address and/or GPS coordinates of an existing earth station location or minor changes in operations (*e.g.*, change in an emission designator or an antenna no longer in use, or other information that would help inform the satellite operators' transition plans). The Bureau received dozens of requests for minor corrections and notices of antennas no longer in use, and has implemented those changes in IBFS and in the attached list.³ In addition, the Bureau received several more substantial requests and legal arguments, described in more detail below.⁴

¹ See 47 CFR § 27.1411(b)(3). The C-Band transition is not occurring outside the contiguous United States, but U.S. licensed or registered earth stations in those locations may seek reimbursement of costs directly related to the transition if they satisfy the criteria for incumbent earth station status. Those earth stations, however, are not eligible to elect lump sum payments.

² See *International Bureau Releases Preliminary List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-703, 2020 WL 3867168 (July 6, 2020) (*Preliminary Incumbent Earth Station List Public Notice*).

³ National Translator Association filed comments seeking an extension in the deadline for filing comments until August 31, 2020, arguing that LPTV stations in particular need more time to submit comments because of the incentive broadcast auction activities. See Comments of National Translator Association at 1 (filed July 16, 2020). Given the compressed 3.7 GHz transition timeline, we deny this request.

⁴ Some responses to the Preliminary List were fashioned as requests for waivers but for reasons discussed below fail to establish good cause for such a waiver or demonstrate that particular facts that would make strict compliance with the Commission's rules inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

As a reminder, the Commission in the *3.7 GHz Band Report and Order* defined the criteria that earth stations must satisfy to be eligible as incumbent earth stations to receive their reasonable relocation costs.⁵ The International Bureau is bound by these criteria in issuing this list on delegated authority.

Specifically, incumbent earth stations are those FSS earth stations that have demonstrated that they meet the following requirements:

- (1) The FSS earth station must have been operational as of April 19, 2018 filing freeze and remain operational; and must have been registered (receive-only) or licensed (transmit/receive) in the 3700-4200 MHz band.
- (2) If the FSS earth station was unregistered or unlicensed before April 19, 2018, its registration or license applications must have been filed by November 7, 2018.⁶
- (3) If the FSS earth station was registered or licensed before April 19, 2018, the registrant or licensee must have:
 - a. Certified the accuracy of the registration/license information in the International Bureau Filing System (IBFS) by May 28, 2019; OR
 - b. Filed a modification/update to the registration or license in IBFS during the April 19, 2018 – November 7, 2018 filing window; OR
 - c. Filed a timely renewal application for the existing registration or license by May 28, 2019.⁷

The Bureau analyzes the categories of requests received in response to the *Preliminary Incumbent Earth Station List Public Notice* below:

Registered earth stations that failed to certify the accuracy of their information in IBFS. The Commission's July 2018 Order and Notice of Proposed Rulemaking (*July 2018 Order and NPRM*) all earth stations (except for those that were licensed/registered during the 2018 freeze window) to submit a certification; this requirement was reiterated in a public notice issued April 11, 2019, which announced Paperwork Reduction Act approval for this information collection and established a submission deadline of May 28, 2019.⁸ In response to the Preliminary List, the Bureau received approximately forty requests from registered earth station operators that failed to certify the accuracy of their information in IBFS by the May 28, 2019 deadline. Many of these operators claim that they were unaware of the certification requirement, and they request that the Bureau accept their late-filed certifications.⁹ We deny these requests.

⁵ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2391, paras. 116-23 (2020) (*3.7 GHz Report and Order*). The *3.7 GHz Band Report and Order* specifically rejected a request to open an additional earth station filing window. *Id.* at 2391, paras. 120-21.

⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2391, para. 116.

⁷ *Id.* at 2391, para. 117; 47 CFR § 27.1411(b)(3) (defining incumbent earth stations); 47 CFR § 25.121 (describing earth station renewal requirements). *See also Preliminary Incumbent Earth Station List Public Notice* at 2.

⁸ *See Deadline for Information Submission on Earth Station and Satellite Use in the 3.7-4.2 GHz Band*, IB/WTB/OET Public Notice, DA 19-278 (April 11, 2019) (*April 2019 PN*).

⁹ Comments of WTVQ-TV, LLC at 2-4 (filed July 16, 2020); Comments of Press Communications, LLC at 2-4 (filed July 16, 2020).

One operator, for example, alleges that: (1) the *April 2019 PN* stated only that “[t]he Commission and the public will use the information collected to evaluate future use of the band,” and that the station had no warning that the filing of a certification could be used to modify or limit the interference protection rights conferred by a registration; and (2) because the April 2019 Information PN stated that the “earth station certification requirement is not considered information for purposes of the Paperwork Reduction Act,” submission of such information was not intended to be determinative of a registration’s status.¹⁰ Other filers make similar arguments.¹¹

The Bureau finds these arguments unavailing. The *July 2018 Order and NPRM* establishing the certification requirement noted that information collected “may...be used in defining incumbent earth stations to be protected from harmful interference consistent with parameters that may be developed in this proceeding,” providing earth station operators with notice that submitting all required information could affect the protection status of their facilities.¹² The Commission’s finding that the certification was not an “information collection” under the Paperwork Reduction Act only reflects the Commission’s determination that such a certification imposed a minimal burden on the submitting entity, in that all it requires is the affirmation of information already known to that entity.

The Commission announced the certification requirement in an *Order* published in the Federal Register and followed this up with a Public Notice reminding earth stations of their obligations to file such certifications.¹³ Further, the *3.7 GHz Band Report and Order* expressly directed the Bureau to automatically terminate the registrations of earth stations that failed to file timely certifications and the Bureau lacks delegated authority to change that decision.¹⁴ The *3.7 GHz Band Report and Order* provided no exception for an earth station that has been acquired by a new entity; the failure of acquiring parties to conduct due diligence regarding the certification status of an earth station does not justify granting an exception. Given the importance of repurposing the 3.7-4.0 GHz band and the Commission’s commitment to an expedited timeline for the transition, we cannot grant requests that could give rise to delay.

Registered earth stations included on the preliminary list that seek to add antenna(s). In addition, the Bureau received requests from several registrants that seek to add antennas to their registrations.¹⁵ Several filers argue that when the Commission opened the earth station filing window in 2018 they

¹⁰ Email from Anne Crump, Counsel for Wake Forest University, to IBFSINFO@fcc.gov, FCC International Bureau, Attach (July 16, 2020, 09:31 EDT); See Office of Information and Regulatory Affairs, Office of Management and Budget, *Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations*, ICR No. 201811-3060-018 (Jan. 28, 2019). The operator also argues that, in contrast to certifications required of FSS earth stations, the Commission did consider certifications provided by temporary-fixed earth stations or space stations to be “information.” However, the Commission did not require certifications from satellite or fixed service operators.

¹¹ See Comments and Request for Waiver of Spokane Television Inc. at 2 (filed July 16, 2020); Letter from Jennifer B. Venable, Vice President and General Counsel, Capitol Broadcasting Company Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (filed July 16, 2020).

¹² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, 6923, para. 16 (July 13, 2018).

¹³ See *April 2019 Information Submission PN*.

¹⁴ *3.7 GHz Report and Order*, 35 FCC Rcd at 2394, para. 123.

¹⁵ See, e.g., Comments of NBC Telemundo License LLC at 2 (filed July 16, 2020); Comments of The Church of Jesus Christ of Latter-day Saints at Appendix (filed July 16, 2020); Comments of Cable TV of East Alabama at 2 (filed July 16, 2020).

registered earth station sites to ensure interference protection but did not take the time to register each individual antenna because they did not think that was important or because they felt they could receive adequate interference protection by only listing the largest dish on their registration.¹⁶ These filers complain that they were never told that only those antennas that were included on a registration would be eligible to be classified as incumbent earth stations.¹⁷

The Bureau denies these requests now to add antennas to existing registrations. The Commission's Part 25 rules, consistent with the definition of "station" in the Communications Act, define earth stations as "stations...intended for communication."¹⁸ Parties were free to add existing antennas to registrations during the 2018 filing window, and many did exactly that.¹⁹ Nothing in the Commission's rules regarding earth station registration in this band suggests that an entity could rely on the registration of a single antenna at an earth station site to provide enforceable interference protection for other antennas at that site.²⁰ In other words, an earth station registration applies to the earth stations that are *registered*, that is, the individual antennas set out in the registration.²¹ This approach is consistent with the position taken by the Wireless Telecommunications Bureau in the C-band Cost Catalog, which awards (most) costs on a per-antenna, rather than an per-earth station site, basis, and requires the calculation of such costs based on those antennas included in the list of incumbent earth stations.²²

Expired registrations that did not appear on the preliminary list. The Bureau also received a number of inquiries from operators that had missed the deadline to renew their registrations for various different reasons and circumstances.²³ As a result of the 2018 filing freeze, which the Commission extended in the *3.7 GHz Band Report and Order* until the end of the transition, operators who miss their renewal filing deadline are unable to file a new registration application.²⁴ These operators generally seek

¹⁶ See Comments of The RCN Telecom Services operating companies, Grande Communications Networks, LLC, the Wave Division operating companies, and Astound Broadband, LLC at 6 (filed July 16, 2020).

¹⁷ Comments of Press Communications, LLC at 2 (filed July 16, 2020).

¹⁸ 47 U.S.C. § 153(42); 47 CFR § 25.103 (defining earth station).

¹⁹ See *Bureaus Announce Freeze and Limited Filing Window in the 3.7-4.2 GHz Band*, Public Notice and Frequently Asked Questions, DA 18-398 (April 19, 2018) (*Freeze Public Notice*).

²⁰ 47 CFR 25.115(b); 25.203(b). To the contrary, the longstanding rules governing registration of receive-only earth stations in this band provide that such stations are to be protected against interference from terrestrial fixed wireless transmissions only pursuant to the filing of a coordination report, which requires applicants to submit "all relevant transmitting and/or receiving parameters of the proposed station." In that context, it was not reasonable for a registrant to assume that the registration of a single antenna, either before the 2018 freeze or during the 2018 filing window, would provide enforceable interference protection rights for all other antennas at a site – including antennas with very different receiving parameters. The Bureau's temporary waiver of the coordination report requirement for registration applications during the filing window did not change the basic construct that interference protection adhered to individual antennas. Rather, it just recognized that it made no sense to require coordination reports addressing potential interference from fixed wireless when the Commission was considering the potential reallocation of spectrum to terrestrial mobile wireless service. *Freeze Public Notice* at 4.

²¹ Indeed, Schedule B to Form 312, which filers are required to use to register their earth stations, instructs the applicant to list specific antennas.

²² See *Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, DA 20-457, Attachment at 4 (April 27, 2020).

²³ Under Commission rules, a renewal application for an earth can be filed during a window beginning 90 days, and no later than 30 days, before the expiration date. 47 CFR § 25.121(e).

²⁴ See *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2407, para. 149-151.

a waiver to reinstate their registration or permit a new registration in order to qualify for incumbent status. Pursuant to the rules adopted by the Commission in the *3.7 GHz Band Report and Order*, the Bureau denies requests by earth stations that failed to file renewal applications to submit those late-filed renewal applications now, even though some of these earth stations filed certifications.²⁵ The Commission expressly limited the registration of new earth stations in order to provide a stable spectral environment for more intensive terrestrial use of the 3.7-3.98 GHz band and facilitate the rapid transition to terrestrial use. Reinstatement of these expired registrations would conflict with these determinations by the Commission and are therefore not included in the attached list.

Existing Earth Stations That Did Not Register in the Filing Window. Finally, we received inquiries from earth station operators who did not register their earth stations within the filing window, and now seek relief to allow them to submit applications for registrations that would allow them to qualify for incumbent status. The Commission made clear in the *Freeze Public Notice* that “for purposes of further action following the NOI” the Commission “may...choose to take into consideration only those earth stations that are licensed, registered, or have pending applications for license or registration on file” as of the close of the filing window, and reminded earth stations that they “may be subject to any rule changes the Commission may adopt in the future, in light of information in the record about the nature and extent of existing uses of the band.”²⁶ The *3.7 GHz Band Report and Order* specifically rejected requests to open a new registration window and reconsideration has not been sought.²⁷ The Bureau cannot change that decision on delegated authority.²⁸

Dismissals for Non-Payment of Application Fees. A handful of filers seek reinstatement of registration applications that have been dismissed over time for non-payment of application fees, and thus did not appear on the preliminary list. In cases in which the filer has demonstrated payment or the Bureau has confirmed a misapplication of an otherwise timely fee payment in IBFS, the Bureau has reinstated those applications, and they appear on the list.²⁹ In other cases, when the payment was not made or delayed by more than 14 days after the application was made, the Bureau has declined to reinstate the application, which is consistent with its general policies requiring the timely receipt of application fee payments.

Modification of earth station registrations to reflect site and/or antenna moves since registration. In response to the preliminary list, the Bureau also received specific requests from certain operators who moved registered antennas since registration grant, and ask that the Bureau update their registrations to reflect the new address and coordinates.³⁰ Many of these moves have been made due to the broadcast incentive auction re-packing.³¹ In response to these specific requests, the Bureau has updated those current registrations to reflect antennas moved in the past two years. The *April 2018 Freeze PN* expressly

²⁵ See 47 CFR § 25.138(c).

²⁶ See *Freeze Public Notice* at 5.

²⁷ See *3.7 GHz Band Report and Order*, 35 FCC Red at 2391, para. 120.

²⁸ Moreover, shortly before releasing the Preliminary List, the Bureau rejected a number of generalized waiver requests to allow late-filed registrations. See International Bureau Report No. SES-02281, Satellite Communications Services Information Re: Action Taken (July 1, 2020).

²⁹ See, e.g., International Bureau Report No. SES-02286, Satellite Communications Services Information Re: Action Taken (July 29, 2020).

³⁰ See Comments of Gray Television, Inc., EW Scripps Co., ION Media Networks, Inc., at 2-3 (filed July 16, 2020).

³¹ See, e.g., Comments of ION Media Networks, Inc. at 1-2 (filed July 16, 2020).

allowed the filing of modifications to correct location data.³² Such changes in locations are still well in advance of the C-Band auction and can be considered by bidders. Future changes in earth station locations – other than minor corrections -- including those made “in the normal course of business” will need to be considered on an individual basis and will not necessarily allow an earth station to retain incumbent status.

Incumbent Earth Station List Attached. The Bureau has reviewed the status of all earth stations in IBFS with active or pending licenses or registrations to receive in the 3.7-4.2 GHz band pursuant to the above criteria. The list attached to this Public Notice includes all such earth stations that the Bureau has determined, after its review and assessment of corrections and comments received both informally and formally in this docket, satisfy the incumbent earth station criteria.³³

The attached list includes several pending applications to register earth stations that are in red light status, meaning that the applicant owes some outstanding debt to the Commission. Because these earth station applicants have failed to satisfy all requirements to be classified as incumbent earth stations, they are not eligible at this time for incumbent status. As we noted in the *Preliminary Incumbent Earth Station List PN*, under its “red light” rules, the Commission may not grant license applications from applicants who have outstanding debts to the U.S. Government.³⁴ These applicants are hereby informed that action will be withheld on their applications until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and/or that the application may be dismissed. Should these earth station applicants make full payment, or arrange for full payment, of their debt, by no later than September 2, 2020, the Bureau will review and, if appropriate, grant their application and add those earth stations to the List of incumbent earth stations. The Bureau will dismiss those earth station applications where the applicant has failed to resolve its red light status by September 2, 2020.

The *3.7 GHz Band Report and Order* directed the Bureau to complete the processing of all earth station license or registration applications (whether for an initial grant, modification, or renewal) that were filed during the limited freeze window.³⁵ The Bureau has processed the applications that were timely filed during the earth station freeze.³⁶ The Bureau has not included on the list those earth stations whose applications it has dismissed as not meeting the criteria for incumbent status, including those earth stations where the dismissal is not yet final under the Commission’s rules.³⁷ The Bureau also has not

³² See *Freeze Public Notice* at 5.

³³ Any earth station registrations that fail to qualify for incumbent status will be removed as an active registration from IBFS. See *3.7 GHz Report and Order*, 35 FCC Rcd at 2394, para. 123.

³⁴ See 47 CFR § 1.1910(b)(2).

³⁵ *3.7 GHz Report and Order*, 35 FCC Rcd at 2393-94, para. 122. Similarly, the Bureau is charged with assessing whether certifications were filed on a timely basis.

³⁶ A limited number of applications that appear on the attached list remain pending because they appeared on a Bureau Accepted for Filing Public Notice fewer than 30 days ago and so are not yet ripe for final determination.

³⁷ An applicant seeking to challenge a dismissal of its application has 30 days from public notice of the dismissal to challenge that dismissal. 47 CFR § 1.106, 1.115. See, e.g., *Public Notice*, Rep. No. SES-02267 (IB May 13, 2020). Applications dismissed within 30 days of this Public Notice include those dismissed in International Bureau Report No. SES-02281, *Satellite Communications Services Information Re: Action Taken* (July 1, 2020); International Bureau Report No. SES-02282, *Satellite Communications Services Information Re: Action Taken* (July 8, 2020); and International Bureau Report No. SES-02282, *Satellite Communications Services Information Re: Action Taken* (July 15, 2020).

included earth stations whose authorizations are classified as transmit-only in the 5.925-6.425 GHz portion of the C-Band.³⁸

In addition, several commenters have provided the Bureau with notice of earth stations that are no longer needed or in use or entries on the preliminary list that were duplicative.³⁹ The Bureau has processed these notices as surrender notices or has dismissed the underlying authorizations on delegated authority, and has removed any duplications.⁴⁰ The list should reflect these changes. As a reminder, all incumbent earth stations that intend to continue to operate on the 4.0-4.2 GHz band must maintain a valid registration in IBFS; incumbent earth stations that are electing the lump sum and transitioning to fiber, or that intend to terminate their operations, are required to submit a surrender application to the Commission pursuant to the Commission's rules.⁴¹

For ease of identification, the list of earth stations includes the following information from the IBFS database: (1) Licensee/Registrant/Applicant name; (2) Earth Station Callsign; (3) Site ID; (4) Antenna ID; (5) number of antennas/dishes associated with that Antenna ID; (6) site address; (7) GPS coordinates of the antenna; and (8) File Number(s) of current authorization and/or pending application.⁴²

³⁸ See Comments of PSSI Global Services, L.L.C. at 3 (filed July 16, 2020) (listing E110081, E130075, E920096, E080053, E090175, E080052, and E980388). Authorizations to transmit in the 5.925-6.425 GHz band are unaffected. See *infra* note 28.

³⁹ See, e.g., Comments of AT&T (filed July 16, 2020).

⁴⁰ See, e.g., International Bureau Report No. SES-02281, Satellite Communications Services Information Re: Action Taken (July 1, 2020); International Bureau Report No. SES-02282, Satellite Communications Services Information Re: Action Taken (July 8, 2020); and International Bureau Report No. SES-02282, Satellite Communications Services Information Re: Action Taken (July 15, 2020).

⁴¹ 47 CFR § 25.115(b)(8).

⁴² Certain C-Band certifications were timely filed in association with File Numbers that have since been superseded by later filings; in the list, those earth stations can be identified by the subsequent File Number. The status of an earth station antenna under the *3.7 GHz Report and Order* pertains only to the reception of satellite transmissions on 3.7-4.2 GHz by fixed earth stations and transportable (temporary fixed) earth stations. Authorizations to transmit and receive transmissions on other satellite frequencies, including the 5.925-6.425 GHz portion of the C-Band, are unaffected. Finally, under the terms of the *3.7 GHz Band Report and Order*, authorizations to receive transmissions in 3.7-4.2 GHz for other Classes of Earth Stations (e.g., Earth Stations on Vessels, Blanket-Licensed Earth Stations) are not eligible to become incumbent earth stations. *3.7 GHz Report and Order*, 35 FCC Rcd at 2391, paras. 122-23.