



# PUBLIC NOTICE

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## WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES IMPLEMENTATION OF THE COMMISSION'S INCREMENTAL REDUCTION PLAN FOR PHASE I ACCELERATED RELOCATION PAYMENTS

### GN Docket No. 18-122; GN Docket No. 21-320

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) announces its implementation of the Commission's incremental reduction plan for Phase I Accelerated Relocation Payments (ARP) relating to the ongoing transition of the 3.7 GHz band.<sup>1</sup> On August 4, 2021, as directed by the Commission in the *3.7 GHz Report and Order*, WTB issued a Public Notice to seek comment on its proposed approach for calculating an incremental reduction for an eligible space station operator's ARP due to its failure to meet the Phase I Accelerated Relocation Deadline.<sup>2</sup> The Bureau received six comments.<sup>3</sup> After reviewing this record, we adopt the proposals outlined in the *Phase I Incremental Reduction Comment PN*, with certain clarifications described below.

In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band (*i.e.*, 4.0-4.2 GHz).<sup>4</sup> The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees would reimburse the reasonable, actual relocation costs of eligible FSS space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band.<sup>5</sup>

<sup>1</sup> See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2456-57, at paras. 297-300 (2020) (*3.7 GHz Report and Order*).

<sup>2</sup> *Wireless Telecommunications Bureau Seeks Comment on Implementation of the Commission's Incremental Reduction Plan for Phase I Accelerated Relocation Payments*, Public Notice, GN Docket Nos. 18-122 and 21-320, DA 21-958 (WTB 2021) (*Phase I Incremental Reduction Comment PN*); *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297; 47 CFR § 27.1422(d).

<sup>3</sup> Eutelsat S.A Comments (Eutelsat Comments); Intelsat License LLC Comments (Intelsat Comments); NCTA – The Internet & Television Association (NCTA Comments); SES Americom, Inc. Comments (SES Comments); T-Mobile USA, Inc. (T-Mobile Comments); Verizon Comments.

<sup>4</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

<sup>5</sup> *Id.* at 2391, 2465-66, paras. 111, 326; 47 CFR § 27.4. The *3.7 GHz Band Report and Order* defined the incumbents that will be eligible to be reimbursed for their reasonable relocation costs. An eligible space station operator is defined as “an incumbent space station operator” that “must have demonstrated, no later than February 1, 2020, that it has an existing relationship to provide service via C-band satellite transmission to one or more incumbent earth stations in the contiguous United States.” See *id.* at 2426, para. 200; 47 CFR § 27.1411(b)(1)-(2). Incumbent earth stations are defined as those Fixed Satellite Service earth stations that “(1) were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS

(continued....)

The *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.<sup>6</sup> All five eligible space station operators elected to transition on the accelerated schedule.<sup>7</sup> By electing accelerated relocation, the eligible space station operators have, among other things, voluntarily committed to perform all the tasks necessary to enable any incumbent earth station (except those that have elected instead to receive lump sum payments) that receives or sends C-band signals to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band.<sup>8</sup> The *3.7 GHz Report and Order* stated that “[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines.”<sup>9</sup> Once validated, the ARPs will be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).<sup>10</sup>

The *3.7 GHz Report and Order* specified that an “eligible space station operator’s satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline,” and directed WTB to prescribe the form of such Certifications.<sup>11</sup> Further, “the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.”<sup>12</sup>

The *3.7 GHz Report and Order* also directed that if “credible challenges as to the space station operator’s satisfaction of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges and will render a final decision as to the validity of the certification no later than 60 days

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database as of November 7, 2018; and (3) have timely certified, to the extent required by the Order adopted in FCC 18-91 (as we clarify . . . to include certain renewal applications and license and registration applications filed through November 7, 2018), the accuracy of information on file with the Commission.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, para. 116; 47 CFR §§ 25.138(c), 27.1411(b)(3). Incumbent Fixed Service licensees are defined as “[i]ncumbent licensees of point-to-point Fixed Service links that relocate out of the 3.7-4.2 GHz band by December 5, 2023.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2465, para. 326. The *3.7 GHz Band Report and Order* provided for limited instances in which earth stations outside of the contiguous United States are eligible for reimbursement. *See id.* at 2428, para. 204 (providing for reimbursement for expenses of earth stations located outside of the contiguous United States to the extent they can demonstrate that the system modifications for which reimbursement is sought is a direct result of the C-band transition). The process by which costs will be determined to be reimbursable is defined in 47 CFR § 25.1416. The *3.7 GHz Report and Order* also established that incumbent FSS earth station operators may opt out of the formal relocation process and, in lieu of reimbursement, elect to receive a lump sum payment based on an amount to be announced by the Bureau. *3.7 GHz Report and Order*, 35 FCC Rcd at 2427-28, paras. 202-03. Earth station operators electing the lump sum are “responsible for performing any necessary actions” to accommodate the changes in the C-band. *Id.* at 2428, para. 203.

<sup>6</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2408, para. 155; 47 CFR § 27.1412(b)(1)-(2).

<sup>7</sup> *Wireless Telecommunications Bureau Announces Accelerated Clearing in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 5517 (WTB 2020).

<sup>8</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 292.

<sup>9</sup> *Id.* at 2456, para. 297; 47 CFR § 27.1412(b).

<sup>10</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300.

<sup>11</sup> *Id.* at 2457, para. 298; 47 CFR § 27.1412(g).

<sup>12</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457 para. 299; 47 CFR § 27.1412(g)(1).

from its filing.”<sup>13</sup> Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.<sup>14</sup> Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice.<sup>15</sup> The Clearinghouse must then disburse the ARP to the eligible space station operator within seven (7) days of receipt.<sup>16</sup> Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline.<sup>17</sup>

The *3.7 GHz Report and Order* directed WTB to: (1) “prescribe the form” of Certifications and any challenges by relevant stakeholders, and (2) establish the process for how such challenges will impact incremental decreases in the ARP.<sup>18</sup> On August 4, 2021, the Bureau issued a Public Notice implementing filing procedures for Phase I Certifications and related challenges.<sup>19</sup> In the *Phase I Incremental Reduction Comment PN*, also released on August 4, 2021, the Bureau sought comment on how different Phase I Certification scenarios would affect both the challenge process and incremental decreases in the ARP.<sup>20</sup>

*General Matters.* In the *Phase I Incremental Reduction Comment PN*, we sought comment on specific timing scenarios involving credible challenges filed by relevant stakeholders in connection with the ARP certification process.<sup>21</sup> As part of this discussion, WTB also noted the *3.7 GHz Report & Order* directive that “[f]ollowing validation, the Clearinghouse shall *promptly* notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice.”<sup>22</sup> Commenters in response asked

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<sup>13</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

<sup>14</sup> *Id.*

<sup>15</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

<sup>16</sup> *Id.*

<sup>17</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297; 47 CFR § 27.1422(d).

<sup>18</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99.

<sup>19</sup> See *Wireless Telecommunications Bureau Opens a New Docket and Establishes the Process for C-Band Space Station Operator Phase I Certification of Accelerated Relocation*, Public Notice, GN Docket Nos. 18-122 and 21-320, DA 21-957 (WTB 2021) (*Phase I ARP Certification Procedures PN*).

<sup>20</sup> *Phase I Incremental Reduction Comment PN* at 3. As with the *Phase I ARP Certification Procedures PN* and the *Phase I Incremental Reduction Comment PN*, in the instant Public Notice the Bureau is only discussing the challenge and incremental reduction process for Phase I of the C-band transition. This targeted approach will enable the Bureau to evaluate how well these procedures and processes work in practice and afford an opportunity to amend or revise them as appropriate for the Phase II deadline. The *Phase I ARP Certification Procedures PN* stated that Challenges to a Certification must be filed in GN Docket No. 21-320 within ten (10) days after the Certification is published in ECFS and the eligible space station operators’ replies must be filed in that docket within five (5) days. *Id.* at 5.

<sup>21</sup> *Phase I Incremental Reduction Comment PN*.

<sup>22</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c) (emphasis added).

the Bureau to define the terms “credible challenge,”<sup>23</sup> “relevant stakeholders,”<sup>24</sup> and “promptly,”<sup>25</sup> which are all terms used by the Commission in the *3.7 GHz Report and Order*.<sup>26</sup> The *Phase I Incremental Reduction Comment PN* did not seek comment on these definitions and we decline to take action on these requests. We believe the Certification and challenge process will be able to proceed without impediment in the absence of such clarifications and that it is more appropriate to address these questions on a case-by-case basis.

Several commenters also raised matters directly addressed in the *Phase I ARP Certification Procedures PN*<sup>27</sup> or otherwise outside the scope of the instant public notice.<sup>28</sup> As these topics were not raised in the *Phase I Incremental Reduction Comment PN*, we do not address them here.

*Certification and Incremental Reduction Scenarios.* At its outset, the *Phase I Incremental Reduction Comment PN* recognized the two most straightforward Certification and incremental reduction scenarios. First, all Certifications filed without subsequent change—whether by amendment or superseded by a refiled Certification—will not be subject to any incremental decrease in the ARP if the Certification was filed before the Phase I deadline and is ultimately validated.<sup>29</sup> Second, any

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<sup>23</sup> SES asked that WTB define a “credible challenge” and stated that the Commission should not waste resources on “immaterial challenges.” SES Comments at n.4. While we decline to specifically define the term “credible challenge,” we agree with Verizon that the Relocation Coordinator or the Relocation Payment Clearinghouse may be better forums in which to raise concerns that do not rise to the level of a credible challenge to an ARP Certification. Verizon Comments at 3-4.

<sup>24</sup> SES and Intelsat asserted that “relevant stakeholders” should be limited to satellite operator customers that were migrated in Phase I, incumbent earth station operators that have not opted out of the process by electing a lump sum, and new overlay licensees. SES Comments at n. 10; Intelsat Comments at 3. Eutelsat suggested that we should require each challenger to explain how it qualifies as a relevant stakeholder. Eutelsat Comments at 4.

<sup>25</sup> SES and Intelsat advocated that WTB define “promptly” in connection with Clearinghouse notifications to overlay licensees of a validated Certification, with SES requesting that WTB instruct the Clearinghouse to provide notice within seven (7) days of the Certification’s validation and Intelsat proposing a deadline of five (5) days. Intelsat Comments at 4; SES Comments at 7. While we decline to adopt these specific proposals, the Commission retains oversight authority over the Clearinghouse and can take action or provide additional clarification should the Clearinghouse not promptly notify the overlay licensees of a validated Certification. *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 259.

<sup>26</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299-300; 47 CFR § 27.1412(g)(1)-(2).

<sup>27</sup> For example, Verizon stated that the Bureau should adopt comment and reply dates that conform to section 1.45 of the Commission’s rules. Verizon Comment at 7. Intelsat asserted that “[t]he five-day reply window should be used to address only challenges relevant to the tasks required to be performed as part of a satellite operator’s Phase I transition.” Intelsat Comments at 4. Intelsat also advocated that the *Phase I ARP Certification Procedures PN* “does not clearly require challenges be tightly focused on ‘potential deficiencies’ in a satellite operator’s Certification” and requests that the Commission specify that a challenge “must relate directly to an alleged deficiency in the satellite operator’s performance of its Phase I Transition Plan and require the challenger to articulate how it is directly and concretely affected by the alleged deficiency.” Intelsat Comments at 2.

<sup>28</sup> For example, Intelsat proposed “that the FCC’s authority to require a satellite operator to return some or all of ARP based on a finding of a Section 1.17 violation should be consistent with the statute of limitation applicable to its forfeiture proceedings and therefore should terminate after a year following the validation of the Certification.” Intelsat Comments at 9. T-Mobile asked the Bureau to “clarify that as long as one satellite operator has submitted a validated Certification by the relevant accelerated relocation deadline, auction winners may begin to access their licensed spectrum by that relocation deadline.” T-Mobile at 6.

<sup>29</sup> This includes situations where: (1) the Bureau’s determination of validity falls after the Phase I deadline, so long as the Certification was filed before such deadline; and (2) a Certification filed before the Phase I deadline is credibly challenged and the Bureau nonetheless finds that such Certification—without amendment or refiled—is valid.

Certifications filed for the first time after the Phase I deadline and later validated without amendment or refiling will be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order*, using the Certification filing date as the “Date of Completion” for determining the applicable percentage by which the ARP will be reduced.<sup>30</sup> In both situations, the challenge process laid out in the *Phase I ARP Certification Procedures PN* would remain unaffected.<sup>31</sup> No commenters disagreed with these baseline premises, and we adopt this approach.

The Bureau also sought comment on more complex scenarios involving the potential amendment or refiling of Certifications, as well as on how to take into account possible remedial actions and agreements between eligible space station operators and other stakeholders as part of the Certification process.<sup>32</sup> After considering the record, we generally adopt the approach proposed in the *Phase I Incremental Reduction Comment PN*, with certain clarifications described below.<sup>33</sup>

*Amending or Refiling a Certification by the Phase I Deadline.* In the *3.7 GHz Report and Order*, the Commission stated that it was adopting accelerated relocation rules “to facilitate the expeditious deployment of next-generation services nationwide across the entire 280 megahertz made available for terrestrial use.”<sup>34</sup> In furtherance of this goal, we concluded in the *Phase I Incremental Reduction Comment PN* and affirm here that eligible space station operators may amend or refile an incomplete or invalid Certification without any incremental reduction in the ARP if, before the Phase I deadline,<sup>35</sup> the eligible space station operator corrects any underlying problems and submits an amended or refiled Certification that has no invalidating infirmities. Such amendment or refiling may be either on the eligible space station operator’s own motion,<sup>36</sup> in response to a challenge, or in response to the Bureau’s determination that the original Certification was invalid.<sup>37</sup> If WTB ultimately determines (before or after the Phase I deadline) that all the underlying problems have been resolved, the certifying space station operator will, in fact, have come into compliance with all the requirements for claiming the ARP by the Phase I deadline, provided the operator had resolved those problems before said deadline and such resolutions were reflected by the filing—also before this deadline—of an amendment or refiled Certification.

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<sup>30</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297 (containing Incremental Reduction Schedule).

<sup>31</sup> See *Phase I ARP Certification Procedures PN*.

<sup>32</sup> *Phase I Incremental Reduction Comment PN* at 4.

<sup>33</sup> *Id.*

<sup>34</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297.

<sup>35</sup> *Id.*; 47 CFR § 27.1422(d).

<sup>36</sup> Eutelsat argued that if an eligible space station operator “believes that a challenge is without merit, it may simply explain that fact in its reply to the challenge, and need not separately refute the challenge in an amendment to the Certification.” Eutelsat Comments at 5. Eutelsat further elaborated that, “[t]o the extent that a challenge can be addressed on reply simply by providing more information concerning the satellite operator’s relocation activities, methods, or process, with no additional field work needed, the satellite operator should not be required to amend its Certification.” Eutelsat Comments at 5. The *3.7 GHz Report and Order* directed WTB to decide if a challenge is credible, to issue a public notice identifying such challenges, and issue a final decision on the validity of the Certification. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2). It remains within the discretion of an eligible space station operator as to whether it wishes to amend or refile its Certification in response to a challenge. To the extent the eligible space station operator opts to address a challenge in reply comments without submitting an amendment or refiling, it remains free to do so but assumes the risk that the Bureau may ultimately conclude that its Certification was invalid when filed. Eligible space station operators should also take into account that, as detailed above, WTB will consider remedial action that an eligible space station operator may take only if said operator has memorialized that action in a Certification (whether amended or refiled).

<sup>37</sup> See *Phase I ARP Certification Procedures PN*.

T-Mobile agrees with the Bureau's proposal that, in these circumstances, the amended or refiled Certification should take the place of the original and start a new challenge process.<sup>38</sup> Eutelsat and Verizon support limiting new challenges to matters involving changes to the original Certification,<sup>39</sup> while Intelsat advocates that we consider only "substantial" or "major" amendments or revisions as starting a new comment cycle and review period.<sup>40</sup> Based upon the record, we agree with our initial proposal from the *Phase I Incremental Reduction Comment PN*.<sup>41</sup> New challenges to an amended or refiled Certification will be permitted but must be limited to matters involving changes made to the original Certification (whether the addition of new information, modifications of information that had been included in the original Certification, or the deletion of previously included information).<sup>42</sup> While we agree that limiting the scope of challenges to an amendment or refiling in this way is warranted, we decline to distinguish between different types of substantive amendments or revisions as Intelsat suggests. We did not seek comment on this issue in the *Phase I Incremental Reduction Comment PN*. Additionally, we note that adopting Intelsat's approach could lead to confusion and disputes in the record over whether an amendment was "substantive" or "major," taking the focus off the Commission's goal for the certification process—to accurately determine, based on the record, whether an operator has fully satisfied its Phase I clearing obligations by December, 5, 2021. We reiterate our earlier tentative conclusion that if the Bureau has not already ruled on the original Certification, we may nevertheless consider all points raised during the original challenge cycle to the extent those points may still be relevant to the amended or refiled Certification.

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<sup>38</sup> T-Mobile stated it "agrees that an amended or refiled Certification must initiate a new challenge process." T-Mobile Comments at 2. In contrast, SES disagreed "that the filing of an amended or refiled Certification should trigger a new 'challenge process.'" SES Comments at 5.

<sup>39</sup> Eutelsat Comments at 3; Verizon Comments at 8. In contrast, T-Mobile provided "there is no reason for the Bureau to limit challenges to the new information included." T-Mobile Comments at 3. Eutelsat further stated that "a challenger should be required to demonstrate that its challenge relates to information that was added, modified, or deleted, as compared to the original (or previous) Certification." *Id.* We disagree with this proposed requirement. While we are not establishing a formal pleading requirement in this regard, we expect any challenge to clearly identify what deficiency in the original Certification the eligible space station operator had failed to correct adequately.

<sup>40</sup> Intelsat Comments at 6. Intelsat also argued that "WTB [should] provide for an 'equitable tolling' of the deadline for remediation of minor deficiencies that are remedial, at the discretion of the WTB." Intelsat Comments at 7. We reject Intelsat's proposal. We note that other than the incremental reductions, the *3.7 GHz Report and Order* did not provide for accelerated payments in cases where a satellite operator fails fully to comply with its relocation obligations. To the extent that there is a minor failing, the ARP Certification process provides for corrections without undue penalties (*e.g.*, by acting responsibly to remediate the small problems before the deadline passes; by correcting errors after the deadline and facing up to the incremental reductions in payment that the Commission determined was appropriate, based on the degree of assiduous effort the satellite operator takes in correcting its failure to have met all its relocation obligations on a timely basis). This approach incentivizes satellite operators diligently to clear the band in order to promote 5G deployment without delay, as contemplated by the Commission's order.

<sup>41</sup> *Phase I Incremental Reduction Comment PN* at 4. Thus, WTB would place the amended or refiled Certification on Public Notice for a new challenge cycle, *i.e.*, ten (10) days from the release of the Public Notice to file oppositions, and five (5) days to file replies.

<sup>42</sup> We note, however, that the filing of an amended Certification would not cut off a potential challenger's right to raise objections to still-relevant aspects of the original Certification, to the extent that time remained within the cycle established for filing challenges to the original Certification. Thus, potential challengers would have that remaining time within the original cycle to raise such objections, and WTB would take those objections into account to the extent relevant when adjudicating the validity of the amended Certification. SES stated in its comments that "[t]o the extent this additional challenge process is valid, the Commission should clarify that it applies equally to relevant stakeholders as well as the Clearinghouse." SES Comments at n.9. We agree.

Several commenters also raised timing considerations relative to Certification review by the Bureau.<sup>43</sup> In response, we clarify that where an eligible space station operator either amends or refiles its Certification, the filing date of the amendment or refiled Certification will open a new 30-day window for the identification of any deficiencies by the Bureau in the entire Certification, as amended or refiled. Further, it also triggers a new 60-day window for a final Bureau determination on the validity of the entire Certification, as amended or refiled, where the Bureau identifies any deficiencies in the entire Certification within the new 30-day window.<sup>44</sup> In other words, the amending or refiled Certification restarts the clock for Bureau review of that Certification. This clarification conforms with the *3.7 GHz Report and Order*'s directive to the Bureau to "render a final decision as to the validity of the certification no later than 60 days from its filing," because an amendment or refiled Certification will necessarily alter or replace the underlying Certification and otherwise make it impossible to ascertain whether the eligible space station operator had fulfilled its transition responsibilities absent a full review. Indeed, we would risk frustrating the Commission's objective of making an accurate determination on a Certification if we were to conclude, as some satellite operators suggest, that corrections to a Certification or remedial actions made during the 60-day review period would not affect when the date by which a final determination must be made. For instance, if an eligible space station operator were to substantially or entirely replace its Certification fifty-nine (59) days after its original filing and the Bureau took the position that this action had no effect on the timing of a final determination, then both outside parties and the Bureau would be deprived of the ability to assess the Certification's validity before the Bureau issued a final determination, which we believe would be inconsistent with the Commission's directive in the *3.7 GHz Report and Order*. Eligible space station operators are strongly encouraged to ensure their original filings are complete and conform to the requirements specified in our *Phase I ARP Certification Procedures PN* to avoid the need for any amendments or refiled Certification.<sup>45</sup>

We adopt our proposal that, if WTB decides that the amended or refiled Certification was valid, the eligible space station operator's ARP will be based on the filing date of the amended or refiled Certification.<sup>46</sup> As noted above, where the amended or refiled Certification is submitted before the Phase I deadline and that Certification is found to be valid, there will be no reduction in the ARP.<sup>47</sup>

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<sup>43</sup> Eutelsat Comments at 4-5; Intelsat Comments at 2, 5-6; SES Comments at 3-5; Verizon Comments at 5-8. Verizon specifically encouraged "the Bureau to inform a space station operator as soon as possible, rather than 30 days after Certification filing, of any concerns so that it can quickly work to resolve potential issues with its Certification." Verizon Comments at 5. Verizon also advocated that the "Bureau should confirm that where a Certification is filed—even if it is an amended or refiled Certification and the Bureau restarts the challenge clock—the Certification will be deemed validated absent notice from the Bureau within 30 days of any deficiencies." Verizon Comments at 7-8. Several eligible space station operators commented that the Bureau should "issue a 'final decision' no later than 60 days from when the original Certification was filed, while allowing the satellite operators to make corrections or take remedial actions without penalty during the 60-day review period," and asked that WTB "clarify that the Bureau must issue a 'final decision' on the amended Certification no later than 60 days from when the original Certification was filed." Intelsat Comments at 6; SES Comments at 4; Eutelsat Comments at 4-5. Verizon also argued that, "if a space station operator files an amended Certification on its own motion, the Bureau should not automatically be provided 60 days to issue a decision as to the validity of that Certification." Verizon at 8.

<sup>44</sup> *Phase I Incremental Reduction Comment PN* at 4. As discussed above, the filing of an amended Certification also opens a 10-day filing window for challenges related to any new or revised information not included in the original Certification.

<sup>45</sup> See *Phase I ARP Certification Procedures PN*.

<sup>46</sup> *Phase I Incremental Reduction Comment PN* at 4.

<sup>47</sup> This includes situations where: (1) the Bureau's determination of validity falls after the Phase I deadline, so long as the amended or refiled Certification was filed before such deadline; and (2) an amended or refiled Certification filed before the Phase I deadline is credibly challenged and the Bureau nonetheless finds such Certification is valid without subsequent additional amendment or refiled Certification.

*Amending or Refiling a Certification After the Phase I Deadline.* As commenters largely focused on the effects of amending or refileing a Certification before the Phase I deadline of December 5, 2021, the record does not reflect detailed input on similar scenarios occurring after the Phase I deadline. We therefore adopt our proposals from the *Phase I Incremental Reduction Comment PN*, consistent with the clarifications articulated above.<sup>48</sup> Thus, if WTB rejects a Certification filed before the Phase I deadline (whether the original or an amended or refiled Certification), then the eligible space station operator will have to finish any incomplete aspects of the transition and file a new Certification that the Bureau will have to find to be valid before its entitlement to an ARP could be determined. If the filing date of this new, valid Certification falls after the Phase I deadline, then the ARP will be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order*, as applicable, based on that Certification's filing date.<sup>49</sup> We establish the same treatment in cases where the Bureau has not yet ruled on a Certification and, after the Phase I deadline, the eligible space station operator either submits an amended or refiled Certification on its own motion, or in response to a challenge.

Where a Certification is amended or refiled after the Phase I deadline, we establish the same challenge process as where an amended or refiled Certification is filed before the Phase I deadline. Thus, new challenges to the amended or refiled Certification will be permitted but must be filed within 10 days of the filing of the Certification and be limited to matters involving changes made to the original Certification (whether the addition of new information, modifications of information that had been included in the original Certification, or the deletion of previously included information).<sup>50</sup> If the Bureau has not already ruled on the original Certification, we may nevertheless consider all timely filed points raised during the original challenge cycle (even if that cycle ends after the filing of an amended or refiled Certification) to the extent those points may still be relevant to the amended or refiled Certification.

*Accounting for Remedial Action by Eligible Space Station Operators.* Subject to the provision on agreements below, we affirm that WTB will consider remedial action taken by an eligible space station operator only if said operator has memorialized that action in a Certification (whether amended or refiled).<sup>51</sup> Thus, if WTB issues a final determination rejecting a Certification, the fact that the eligible space station operator has taken remedial action—after filing its Certification but before WTB's decision—to address the problems in said Certification that had prompted WTB's rejection will not, in and of itself, invalidate or otherwise affect WTB's determination. Rather, for such remedial action to be considered, the eligible space station operator will need to submit an amended or refiled Certification reflecting that remedial action. The amended or refiled Certification will initiate a new challenge process as to those aspects that had not yet been subject to the initial challenge process, will be subject to 60 day review by the Bureau, and will, if accepted as valid, establish a new date by which the eligible space station operator's ARP will be calculated.

*Agreements.* We adopt our proposal that eligible space station operators and stakeholders (including, but not limited to, incumbent earth station operators) may enter into agreements to resolve any outstanding issues raised in a challenge to a Certification and submit any such agreements to WTB before the Bureau has made a final determination regarding the validity of the Certification without refileing or

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<sup>48</sup> *Phase I Incremental Reduction Comment PN* at 5.

<sup>49</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297 (containing Incremental Reduction Schedule).

<sup>50</sup> As discussed above, we also decline to distinguish between different types of substantive amendments or revisions.

<sup>51</sup> T-Mobile stated that it "agrees with the Bureau's proposal that space station operators' remedial action to correct deficiencies in a Certification must be memorialized in a (likely) amended or refiled Certification." T-Mobile Comments at 4. However, T-Mobile proposed that "the challenge process must be re-initiated (not only for the newly submitted information, but for the entire Certification)." T-Mobile Comments at 4. As discussed above, challenges to an amended or refiled certification are limited to matters involving changes made to the original.



amending that Certification.<sup>52</sup> For instance, if an eligible space station operator submits a Certification (either before or after the Phase I deadline) that is credibly challenged, and it attempts to address any alleged deficiency before WTB has issued a decision, the eligible space station operator and challenging parties can enter into an agreement(s) to resolve all outstanding issues between those parties and submit this agreement(s) to WTB. If, after review, WTB accepts this agreement(s) as a good faith resolution of issues in the eligible space station operator's Certification, the Bureau will find that the original Certification is valid and dismiss the related outstanding challenges. If such an agreement resolved all outstanding challenges, the Bureau would calculate the ARP as of the date the original Certification was filed. If the agreement, or agreements, entered into by the eligible space station operator and the relevant challenger(s) does not resolve all outstanding issues in an eligible space station operator's Certification, then the Bureau will proceed to make a determination on any outstanding issues not addressed by the agreement or agreements. To the extent the eligible space station operator files an amended Certification before such determination is made, attesting that it has completed the necessary remedial steps on any outstanding issues, then we will calculate the ARP as of the date of the amended Certification (assuming this amended Certification is found valid). While we decline to adopt certain proposals advanced by Eutelsat relating to our review of agreements,<sup>53</sup> we clarify that parties to an agreement may request confidential treatment under section 0.459 of the Commission's rules.<sup>54</sup>

Although we allow eligible space station operators and stakeholders to enter into agreements to resolve issues raised in challenges, to ensure the integrity of the transition process, we affirm our proposal to bar the use of greenmail to reach agreements designed to avoid incremental reductions.<sup>55</sup> When a challenge against a Certification is withdrawn as the result of an agreement with an eligible space station operator, we will require that the written withdrawal agreement be accompanied by an affidavit from all parties certifying that no parties involved have received or will receive any money or other consideration, or pay any money or other consideration, in excess of legitimate and prudent expenses in exchange for the

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<sup>52</sup> T-Mobile argued that any agreement should be deemed a refiled or amended Certification that initiates a new challenge process. T-Mobile at 4. Verizon disagreed, stating that “[t]he Bureau should encourage efforts to resolve any challenges without requiring a space station operator to file an amended Certification, which would kick off another challenge period, possibly” causing deployment delays. Verizon at Comments 5. We agree with Verizon. The *3.7 GHz Report and Order* only mandates that relevant stakeholders have the opportunity to review Certifications, not agreements between parties. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

<sup>53</sup> Eutelsat Comments at 6-7. Eutelsat advocated that: (1) Commission will not “second guess” agreements; (2) an earth station operator can agree to perform the work on its own behalf, releasing the satellite operator from further relocation responsibilities and assuming the risk of harmful interference after the deadline; (3) if more than one challenge were filed, the Bureau should not require the satellite operator to reach agreement with all challengers;; (4) if a single challenge raises multiple issues (*e.g.*, regarding multiple earth stations owned by the same operator), and the parties are only able to reach agreement concerning a portion, then the Bureau should confirm that it will proceed to rule on the remainder, rather than waiting for the satellite operator to amend or re-file its Certification. *Id.* We clarify that the Bureau will review all agreements and determine whether any residual issues in a challenge remain post-agreement that still necessitate a final determination by the Bureau or whether there are any greenmail concerns with such agreement. *Phase I Incremental Reduction Comment PN* at 6.

<sup>54</sup> 47 CFR § 0.459. Under earlier instructions on the submission of confidential materials during the COVID-19 pandemic, filers are directed to contact FCC staff for instructions on how to upload unredacted confidential submissions via Box. A redacted version of the confidential submission should be filed through ECFS in the above-referenced docket. *See FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, DA 20-361, 35 FCC Rcd 2973 (2020).

<sup>55</sup> 47 CFR § 1.935 (settlement agreements require Commission approval and applicants may not “receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection, or other pleading in exchange for withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading”).

agreement or withdrawal of the challenge.<sup>56</sup> We otherwise decline to clarify the Commission's greenmail policy as some commenters suggest, finding that the approach we adopt will ensure the integrity of the transition without imposing unnecessary or onerous requirements on the parties to such agreements.<sup>57</sup> We believe it is more appropriate to address specific applications of this policy on a case-by-case basis, and will reject any agreement where we have reason to believe greenmail has changed hands.

Finally, if the eligible space station operator takes remedial action to address any challenges to a filed Certification but does not attempt to negotiate with the challengers or such negotiations fail, WTB will proceed to make a decision based on the information submitted by the eligible space station operator in its Certification (original, amended, or refiled, as applicable).

*Additional Information.* For further information concerning this Public Notice, please contact Susan Mort, Wireless Telecommunications Bureau, (202) 418-2429, [Susan.Mort@fcc.gov](mailto:Susan.Mort@fcc.gov).

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<sup>56</sup> See e.g., 47 CFR § 73.3588.

<sup>57</sup> The record generally supports the Bureau's proposal to bar greenmail. See Intelsat Comments at 8; Verizon Comments at 6. Eutelsat and NCTA, however, sought clarification that: (1) "the parties are permitted to determine any payment under such an agreement based on a reasonable, good faith estimate of 'legitimate and prudent relocation expenses,' rather than retrospectively based on actual documented costs;" (2) "the agreement may include compensation for reasonable internal project management or other costs that the relevant stakeholder, in good faith, expects to incur;" and (3) "the greenmail rule would not bar a challenger that enters into an agreement with a space station operator to resolve concerns from accepting the reasonable consideration necessary to resolve those concerns." Eutelsat Comments at 8-9; NCTA Comments at 2. As noted, we decline to adopt these clarifications and note that our greenmail policy does not specifically require any documentation be submitted to the Commission other than the affidavit described above. The policy was constructed to allow the parties to submit an affidavit as to the nature of the expenses covered, rather than submitting documentation of those expenses to us. Parties must submit their affidavit based on legitimate, prudent, and reasonable expenses.