

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

In the Matter of)	
)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band)	GN Docket No. 18-122
)	
International Bureau Releases Preliminary List of)	IB Docket No. 20-205
Incumbent Earth Stations in the 3.7-4.2 GHz Band)	
In the Contiguous United States)	
)	

ORDER

Adopted: December 1, 2021

Released: December 1, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

1. In this Order, the Wireless Telecommunications Bureau (Bureau) dismisses a letter request filed by PSSI Global Services, L.L.C. (PSSI) to modify a 2020 Public Notice that adopted the 3.7 GHz Transition Final Cost Category Schedule relating to relocation expenses for eligible incumbents (*Final Cost Catalog Public Notice*) as part of the ongoing transition of the 3.7-4.2 GHz band (C-band).¹ PSSI argues that the *Final Cost Catalog Public Notice* should be adjusted to take into account specific types of equipment relating to the transportable fixed earth stations (TFEs) that it operates.² As discussed below, the *Final Cost Catalog Public Notice* establishes a cost category schedule of the types of relocation expenses that incumbents are likely to incur and are presumptively reasonable.³ Because PSSI's request was filed nearly a year after the applicable deadline established in Section 405 of the Communications Act and the Commission's rules for the filing of petitions for reconsideration⁴ with respect to the *Final Cost Catalog Public Notice*, we dismiss this request as untimely.

2. 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).⁵ The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees would reimburse the reasonable, actual relocation costs of eligible

¹ See Letter from Stephen Diaz Gavin, counsel for PSSI Global Services, L.L.C., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, IB Docket No. 20-205 (filed July 12, 2021) (PSSI Request); *Wireless Telecommunications Bureau Releases Final Cost Category Schedule For 3.7-4.2 GHz Band Relocation Expenses And Announces Process And Deadline For Lump Sum Elections*, 35 FCC Rcd 7967 (2020) (*Final Cost Catalog Public Notice*).

² See PSSI Request at 1.

³ See *Final Cost Catalog Public Notice*.

⁴ 47 U.S.C. § 405(a). See also 47 C.F.R. § 1.429(d).

⁵ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2345, para. 4 (2020) (*3.7 GHz Report and Order*).

space station operators, incumbent earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band.⁶

3. To provide incumbents and new 3.7 GHz Service licensees with a range of presumptively reasonable transition costs, the *3.7 GHz Report and Order* directed the Bureau to establish a cost category schedule of the types of expenses that incumbents are likely to incur.⁷ The *3.7 GHz Report and Order* provided for the creation of a Relocation Payment Clearinghouse (Clearinghouse) to oversee the cost-related aspects of the transition, including collecting relocation payments from overlay licensees and disbursing those payments to incumbents.⁸ In determining the reasonableness of costs for which incumbents seek reimbursement, the *3.7 GHz Report and Order* provided that the Clearinghouse would presume as reasonable all submissions that fall within the estimated range of costs in the final cost category schedule.⁹ Incumbent earth station operators, satellite operators, and Fixed Service licensees are not precluded, however, from obtaining reimbursement for their actual costs that either fall outside of or exceed the amounts in the Cost Catalog, so long as those costs are reasonably necessary to the transition, and incumbents provide justification to the Clearinghouse.¹⁰

4. The *3.7 GHz Report and Order* also established that incumbent earth station operators may accept either: (1) reimbursement for their actual reasonable relocation costs to maintain satellite reception; or (2) a lump sum reimbursement “based on the average, estimated costs of relocating all of their incumbent earth stations” to the upper 200 megahertz of the C-band.¹¹ The *3.7 GHz Report and Order* directed the Bureau to “announce the lump sum that will be available per incumbent earth station

⁶ *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 *3.7 GHz Report and Order*, 35 FCC Rcd 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 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.

⁷ See *3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262 (directing Wireless Telecommunications Bureau to approve a cost category schedule); 47 CFR § 27.1416(a).

⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2446, para. 255.

⁹ *Id.* at 2448, para. 262; 47 CFR § 27.1416(a).

¹⁰ See *3.7 GHz Report and Order*, 35 FCC Rcd at 2447-48, paras. 260-62.

¹¹ *Id.* at 2427-28, paras. 202-203. But see *id.* at 2428, para. 204, n.550 (noting that “incumbent earth stations owners may not elect a lump sum payment for earth stations outside of the contiguous United States”).

as well as the process for electing lump sum payments” and provided that the Bureau should identify lump sum amounts for various classes of earth stations as appropriate.¹²

5. The Commission engaged a third-party contractor, RKF Engineering Solutions, LLC (RKF), to assist in identifying the costs that incumbents might incur, developing a cost category schedule, and calculating the lump sum payment amounts. To compile the information needed to develop a cost catalog, RKF considered the *3.7 GHz Report and Order*'s initial relocation cost estimates, derived from comments and filings in the record,¹³ and it then conducted confidential interviews with a broad range of stakeholders, including satellite operators, earth station operators, Fixed Service licensees, and vendors.¹⁴ With input from RKF, the Bureau developed a preliminary cost catalog, which it released for public comment on April 27, 2020.¹⁵ Comments on the preliminary cost catalog were due May 14, 2020.¹⁶ The preliminary cost catalog included classes of earth stations for which the Bureau would establish lump sum payments. After review of the record, the Bureau issued a public notice seeking further comment on a revised list of earth station classes, preliminary lump sum payment amounts, and the methodology for calculating those amounts.¹⁷ After considering the comments in response to the *Cost Catalog Comment Public Notice* and the *Lump Sum Comment Public Notice*,¹⁸ on July 30, 2020, the Bureau released the *Final Cost Catalog Public Notice*.¹⁹

6. On July 12, 2021, PSSI filed the pending request, in which it “seeks adjustment of the *Final Cost Catalog Public Notice* to account for four types of equipment” relating to the transition of TFEs that it operates: feed assemblies; compression equipment; low-noise block downconverters; and testing equipment for use at live event sites.²⁰ PSSI indicates that it “will itself assume the responsibility for the turnkey migration of its earth stations” and directly submit all of its transition cost claims to the Clearinghouse.²¹ PSSI argues that the four categories of equipment mentioned above should be

¹² See *3.7 GHz Report and Order*, 35 FCC Rcd at 2428, para. 203.

¹³ See *id.* at 2428-30, 2465-66, paras. 206-10, 326-27.

¹⁴ See *Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 4440, 4441 (WTB 2020) (*Cost Catalog Comment Public Notice*).

¹⁵ *Cost Catalog Comment Public Notice*, Attach., 35 FCC Rcd at 4444 (3.7 GHz Transition Preliminary Cost Category Schedule of Potential Expenses and Estimated Costs).

¹⁶ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Order, 35 FCC Rcd 4819 (WTB 2020).

¹⁷ *Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7-4.2 GHz Band Incumbent Earth Station Relocation*, Public Notice, DA 20-586, at 1-5 (WTB June 4, 2020) (*Lump Sum Comment Public Notice*).

¹⁸ To the extent relevant, the Bureau also considered the preliminary Transition Plans filed by eligible satellite operators in assessing reasonable costs and lump sum amounts for the Cost Catalog. See, e.g., Letter from Michelle V. Bryan, Secretary, Intelsat License LLC, and Executive Vice President, General Counsel, and Chief Administrative Officer, Intelsat US LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173, Attach. (filed June 19, 2020) (Intelsat Transition Plan); Letter from Brian D. Weimer, Counsel to SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173, Attach. (filed June 19, 2020) (SES Transition Plan).

¹⁹ See *Final Cost Catalog Public Notice*. The *Final Cost Catalog Public Notice* was published in the Federal Register on August 4, 2020, making any petitions for reconsideration due by September 3, 2020. See 85 Fed. Reg. 47209 (August 4, 2020).

²⁰ PSSI Request at 1.

²¹ *Id.* at 1, 9. PSSI notes that it has entered into agreements with the incumbent space station operators that otherwise would be responsible for transitioning its TFEs, which is why PSSI will perform its own transition work

(continued...)

specifically included in the *Final Cost Catalog Public Notice* as line items that would be presumptively reasonable for the transitioning of TFE systems.²²

7. We reject the PSSI letter request as an untimely petition for reconsideration of the *Final Cost Catalog Public Notice*. Under Section 405 of the Communications Act of 1934, any party in a proceeding may file a petition of reconsideration within 30 days of public notice of the decision.²³ The issue raised by PSSI's letter request—the types of transition expenses that incumbents are likely to incur and should be identified as presumptively reasonable—was decided in the *Final Cost Catalog Public Notice*, which published in the Federal Register on August 4, 2020, making the deadline for filing a petition for reconsideration September 3, 2020.²⁴ We note that all earth station operators, including PSSI and other incumbent TFE operators, had an opportunity to comment on and participate in development of the *Final Cost Catalog Public Notice* and to file a timely petition for reconsideration. Because PSSI's letter request asks the Bureau to reconsider its determination in the *Final Cost Catalog Public Notice*, the Bureau finds that PSSI's request is an untimely petition for reconsideration and dismisses it on that basis.²⁵

8. To the extent that PSSI believes the equipment it seeks to have included in the *Final Cost Catalog Public Notice* is reasonable and necessary for the C-band transition, PSSI is able to submit its actual costs for such claims with the Clearinghouse pursuant to the process set out in the *3.7 GHz Report and Order*.²⁶ This *Order* is without prejudice to any determination of the reasonableness or necessity of PSSI's claims, which would be addressed in the first instance by the Clearinghouse. If the Clearinghouse ultimately denies PSSI's submitted claims as not reasonable or necessary for the C-band transition, the *3.7 GHz Report and Order* also established a dispute resolution process pursuant to which PSSI could object to that Clearinghouse decision and ultimately appeal to the Bureau.²⁷

9. In anticipation of any such claims, we address here PSSI's statement in its request that “from a legal perspective . . . the Commission is now estopped from denying PSSI inclusion of compressed equipment in the Cost Catalog and reimbursement for such equipment” because in opposing

and intends to file its transition cost claims directly with the Clearinghouse. *Id.* at 1. See Letter from Robert C. Lamb, CEO, PSSI Global Services, LLC, and Hector M. Fortis Sanchez, Director of Regulatory and International Affairs, Satelites Mexicanos, S.A. de C.V. d/b/a Eutelsat Americas, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (June 10, 2021); Letter from Stephen Díaz Gavin, Counsel to PSSI Global Services, LLC, and Brian D. Weimer, Counsel to SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (June 18, 2021); Letter from Robert C. Lamb, CEO, PSSI Global Services, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (June 18, 2021).

²² PSSI Request at 1, 9.

²³ “A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.” 47 U.S.C. § 405(a). See also 47 C.F.R. § 1.429(d).

²⁴ *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7969, para 5.

²⁵ 47 CFR § 1.429(l)(5), (l)(9).

²⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260. In recent correspondence, PSSI indicates that action on its letter request is needed before it can obtain financing and order the equipment for which it plans to seek reimbursement, and submit any reimbursement claims to the Clearinghouse. Letter from Stephen Díaz Gavin, counsel for PSSI Global Services, L.L.C., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, IB Docket No. 20-205 at 2 (filed Nov. 30, 2021). While the *3.7 GHz Report and Order* does require that any relocation costs be reasonable and actual to be eligible for reimbursement, inclusion in the *Final Cost Catalog Public Notice* is not required for reimbursement. *3.7 GHz Report and Order*, 35 FCC Rcd at 2447-48, paras. 260-62; 47 CFR § 27.1416(a). PSSI voluntarily assumed responsibility for any transition work relating to its TFEs subsequent to issuance of both the *3.7 GHz Report and Order* and *Final Cost Catalog Public Notice*, and was thus aware of the Commission's rules and policies relating to the reimbursement process.

²⁷ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449-50, paras. 268-9.

PSSI's judicial challenge to the *3.7 GHz Report and Order* the Commission "specifically cited to [compression] equipment as preventing harm to PSSI."²⁸ To the contrary, the Commission has never represented that PSSI—or any other incumbent—would necessarily require or be reimbursed for any particular equipment or upgrades. The *3.7 GHz Report and Order* said incumbents would be entitled to reimbursement for "reasonable," "prudent," and "efficient" costs that are "necessitated by the relocation" to "continue . . . provid[ing] substantially the same or better service" after the transition, while cautioning that incumbents would not be reimbursed for costs that are not necessary to maintain comparable service.²⁹ PSSI quotes an earlier stay denial by the Bureau noting that eligible space station operators will be able to "improve spectral efficiency" by "'tak[ing] advantage of new technologies' 'such as improved data compression and modulation techniques.'"³⁰ This language simply acknowledged the role that compression equipment, when reasonably necessary, could play in the C-band transition. PSSI similarly argues that the D.C. Circuit's decision upholding the *3.7 GHz Report and Order* "explain[ed] why data compression and other technology—which PSSI may install and be reimbursed for—would ensure that the remaining spectrum is adequate for satellite operators and their customers."³¹ Contrary to PSSI's assertion, the Court did not find that PSSI is necessarily entitled to be reimbursed for any compression or similar technology it wants, but rather observed that under the Commission's rules PSSI is entitled to reimbursement to the extent necessary "to ensure that the remaining spectrum is adequate."³² Exactly what—if any—upgrades are necessary to ensure PSSI retains "substantially the same or better service" after the transition is a fact-specific and highly technical issue that neither the Commission nor the Court purported to address. These fact-intensive issues require a full and complete record before they are ripe for decision, and therefore are more appropriately addressed through the Clearinghouse review process in the first instance, and any subsequent appeal to the Bureau.

10. ACCORDINGLY, IT IS ORDERED pursuant to Sections 4(i), 4(j), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 405, as well as delegated authority in Section 1.429(l) of the Commission's rules, 47 CFR § 1.429(l), that the request filed by PSSI Global Services, L.L.C. on July 12, 2021 IS DISMISSED.

11. IT IS FURTHER ORDERED that this ORDER SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Acting Chief, Wireless Telecommunications Bureau

²⁸ PSSI Request at 5.

²⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-23, paras. 194-5.

³⁰ PSSI Request at 5; *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Order Denying Stay Petition, 35 FCC Rcd 6771, 6772, para. 3 (WTB 2020).

³¹ PSSI Request at 5-6; *PSSI Global Services, L.L.C. v. Federal Communications Commission*, 983 F.3d 1, 10 (D.C. Cir. 2020).

³² *PSSI Global Services*, 983 F.3d at 10.