

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

In the Matter of)	
)	
Incumbent Earth Stations)	IB Docket No. 20-205
in the 3.7-4.2 GHz Band)	
in the Contiguous United States;)	GN Docket No. 20-305
Lump Sum Election Corrections)	

ORDER

Adopted: June 22, 2021

Released: June 22, 2021

By the Chief, International Bureau:

I. INTRODUCTION

1. On October 23, 2020, the International Bureau (Bureau) issued an *Order (October 23 Order)* that resolved pending petitions for reconsideration and waiver requests filed in response to the Bureau's August 3, 2020 Public Notice (*August 3 Incumbent Earth Station PN*), which listed those Fixed-Satellite Service (FSS) earth stations in the 3.7-4.2 GHz band in the contiguous United States that the Bureau found satisfy the criteria to be classified as incumbent earth stations for purposes of the C-band transition.¹ On October 30, 2020, the Bureau issued a Public Notice announcing that it had completed its review of lump sum elections submitted by earth stations and attaching a table of lump sum elections that the Bureau deemed either accepted, conditionally accepted, or denied, and providing an opportunity for those conditionally accepted earth stations to submit additional information (*October 30 Lump Sum Election PN*).² On November 30, 2020, the Bureau released a public notice updating the lump sum election table in response to corrective filings made after the *October 30 Lump Sum Election PN (November 30 Lump Sum Election PN)*.³

2. In this *Order*, the Bureau denies the requests of Back Porch and KTBS for their respective earth stations to be granted incumbent earth station status. We grant requests by Maranatha Company, Cocola Company/Boise Telecasters, Prism Company, and WOW! Ohio to make limited corrections to their lump sum elections and find that the petition for reconsideration of the *October 30 Lump Sum Election PN* filed by Ronan Telephone Company and Western Montana CommunityTel is moot, as its lump sum election was accepted in the *November 30 Lump Sum Election PN*.

¹ See *Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Order, IB Docket No. 20-205, GN Docket No. 20-305, 35 FCC Rcd. 11896 (IB 2020) (*October 23 Order*); *International Bureau Releases List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-823 (Aug. 3, 2020) (*August 3 Incumbent Earth Station PN*); 47 CFR § 27.1411(b)(3).

² International Bureau Announces Updated Review of Lump Sum Elections, Public Notice, DA 20-1294 (IB Oct. 30, 2020).

³ See *International Bureau Issues Updated Lump Sum Election Table*, Public Notice, IB Docket No. 20-205, GN Docket No. 20-305, 35 FCC Rcd 13823 (IB 2020) (*November 30 Public Notice*) (*Erratum issued Dec 3, 2020*).

II. BACKGROUND

3. In the *3.7 GHz Band Report and Order*, the Commission defined the criteria that earth stations must satisfy to be eligible as incumbent earth stations to receive reimbursement for their reasonable relocation costs.⁴ 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 the April 19, 2018 filing freeze and remain operational;⁵ 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 IBFS by May 28, 2019; or
 - b. Filed a modification/update to the registration or license in IBFS during the April 19, 2018 to November 7, 2018 filing window; or
 - c. Filed a timely renewal application for the existing registration or license by May 28, 2019.⁷

4. The *3.7 GHz Band Report and Order* also established that incumbent FSS 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.⁸

5. In response to the *October 23 Order* and *November 30 Lump Sum Election PN*, the Bureau received a number of petitions for reconsideration, waiver requests, and *ex parte* letters. We address these filings below.

III. DISCUSSION

6. Petitions for reconsideration are considered under section 1.106 of the Commission’s rules.⁹ Petitions for reconsideration must be submitted within thirty days of public notice of the Commission’s action in the matter,¹⁰ and must state with particularity the findings of fact and/or conclusions of law petitioner believes to be erroneous, the manner in which the Commission’s action should be changed, and the relief sought.¹¹ In addition, petitions for reconsideration of applications for review which the Commission has denied will only be entertained if “[t]he petition relies on facts or

⁴ *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 Band 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.

⁵ Lump sum electors, however, may discontinue use of the C-band (*e.g.*, switch to fiber or another technology). *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2427, para. 202.

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 August 3 Incumbent Earth Station PN* at 2.

⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2427-28, paras. 202-203.

⁹ 47 CFR § 1.106(j) (The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its Order will contain a concise statement of the reasons for the action taken.).

¹⁰ *See* 47 CFR § 1.106(f).

¹¹ *See* 47 CFR § 1.106(d).

arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission,” or “[t]he petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”¹²

7. Waiver is appropriate where good cause has been demonstrated and the particular facts make strict compliance inconsistent with the public interest.¹³ In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest, and the waiver does not undermine the validity purpose of the general rule.¹⁵

A. Incumbent Earth Station Waiver Requests

8. On March 26, 2021, Back Porch Radio Company, Inc. (Back Porch) filed an *ex parte* letter noting that it has not appeared on the incumbent earth station list despite operating in the C-band and purchasing the appropriate filter to continue operations.¹⁶ We find that Back Porch’s earth station does not meet the incumbent earth station requirements specified in the *3.7 GHz Band Report and Order* because it failed to certify the accuracy of its information in IBFS in the required filing window and has offered no justification for failing to do so. Accordingly, we deny Back Porch’s request to add it to the incumbent earth station list.

9. KTBS LLC (KTBS) was included on the Preliminary Incumbent Earth Station List, but its earth station registration subsequently expired on June 27, 2020, without renewal and so it has not appeared on any incumbent earth station list issued after that date. On September 16, 2020, KTBS submitted an “Application to Renew” its expired registration in the “Pleadings and Comments” tab of its expired registration record in IBFS, at which time it also requested the International Bureau waive the requirements set forth in the *3.7 GHz Band Report and Order* so as to reinstate its earth station’s registration and add it to the incumbent earth station list. On April 19, 2021, KTBS submitted a “Notice of Continued Operational Status” in this docket indicating its earth station remains operational and it intends to participate in the C-band transition.¹⁷ In addressing KTBS’s waiver request, we refer to the *October 23 Order*, which addressed the issue of expired registration when addressing certain other waiver requests. As a result of the 2018 filing freeze, operators who missed their renewal filing deadlines were unable to file a new registration application.¹⁸ The *October 23 Order* recognized that failure to renew registrations would cause operators like KTBS to experience financial hardship, but the Commission expressly froze 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.¹⁹ KTBS failed to renew the registration on a timely basis (by June 27, 2020), or petition for

¹² See 47 CFR § 1.106(b)(2).

¹³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). See also 47 CFR § 1.3.

¹⁴ *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.

¹⁵ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008) (*NetworkIP*); *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1158.

¹⁶ See Letter from Thom Jones, Back Porch Radio Company, Inc., IB Docket No. 20-205, GN Docket No. 20-305 (filed Mar. 26, 2021).

¹⁷ See “Notice of Continued Operation Status” filed by KTBS LLC, IB Docket No. 20-205 (filed Apr. 19, 2021).

¹⁸ See *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2407, para. 149-151.

¹⁹ See *October 23 Order* at para. 37; *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2407, para. 149-151.

reinstatement within 30 days of the expiration date as permitted under section 25.163(a)(3),²⁰ and has not shown good cause to justify waiver of the Commission's clearly articulated requirements. We therefore deny KTBS's waiver request.

B. Lump Sum Election Corrections

10. The *3.7 GHz Band Report and Order* required that incumbent earth station operators (including any affiliates) elect the lump sum option for either all of their incumbent earth stations (within the contiguous United States) or none of them.²¹ On July 30, 2020, the Wireless Telecommunications Bureau released a Public Notice establishing the process for electing lump sum payments, including the specific information required to make a lump sum election and a requirement that the election include a six-part certification by a duly authorized representative with authority to bind the earth station.²² In the *November 30 Lump Sum Election PN*, the International Bureau denied the Lump Sum Elections of Maranatha Company, Cocola Company/Boise Telecaster, Prism Company, and Wow! Ohio, which were all listed as "denied" because each of them had unresolved issues at the time our *November 30 Lump Sum Election PN* was issued. However, each of these incumbent earth station operators have since corrected minor and inadvertent mistakes in their lump sum elections. Two of these four corrections were simply to *remove* from entitlement to lump sum payments earth station antennas that either did not qualify for incumbent status or were incapable of operating in the C-Band;²³ one merely corrected a prior failure to include the required word "irrevocable" in its release of claims for actual reimbursement;²⁴ and the fourth corrected the number of antennas, from four to the five for which the incumbent is entitled to receive reimbursement.²⁵ Given that these elections are now accurate and complete, we accept these lump sum election requests and add them to the final lump sum election list. Unlike the request by KTBS above, which would grant incumbent status, with its entitlement to interference protection from the deployment of networks by wireless overlay licensees, these earth station antennas remaining in the four elections all clearly qualify for incumbent status. The relief requested here only affects whether they are eligible for lump sum payments or cost reimbursement. Particularly given that the earth station transition process is well under way, correcting these errors will help facilitate a smooth, efficient transition and thus is in the public interest. We therefore grant the accompanying petitions for reconsideration of Maranatha and Prism requesting acceptance of their respective corrective lump sum election requests, and accept the other correction submissions. Finally, we dismiss as moot Ronan/Western Montana's petition for reconsideration, which was filed *before* the Bureau accepted its lump sum election in the *November 30*

²⁰ 47 CFR § 25.121(e) states that applications for renewals of earth station licenses must be submitted no earlier than 90 days, and no later than 30 days, before the expiration date of the license; 47 CFR § 25.161(b) states that a station authorization shall be automatically terminated in whole or in part without further notice to the licensee upon expiration of the license term. Once a registration has expired, the file in IBFS becomes "closed," *i.e.*, renewal is not permitted through the "renewal" selection in IBFS.

²¹ See *3.7 GHz Report and Order*, 35 FCC Rcd. at 2427-28, paras. 202-04 & n.550. Payment of lump sum amounts will be the obligation of 3.7 GHz Service licensees after completion of the 3.7 GHz auction and the licensing of winning bidders. *Id.* at 2553; 47 CFR § 27.1418.

²² *Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 7967 (WTB 2020) (*July 20 Lump Sum Election PN*).

²³ Wow! Ohio submitted an erratum removing from its lump sum election two earth stations that were not included on the incumbent earth station list. See Errata of WOW! Ohio, IB Docket No. 20-205, GN Docket No. 20-305 (filed Jan. 15, 2021). Maranatha Company filed a petition for reconsideration after removing earth stations not capable of operating in the C-band from its lump sum election. See Petition for Reconsideration of Maranatha Company, IB Docket No. 20-205, GN Docket No. 20-305 (filed Dec. 1, 2020).

²⁴ See Errata of Cocola Company Company/Boise Telecasters, IB Docket 20-205, GN Docket No. 20-305 (filed Jan. 12, 2021).

²⁵ See Petition for Reconsideration of Prism Company, IB Docket No. 20-205, GN Docket No. 20-305 (filed Jan. 21, 2021).

*Lump Sum Election PN.*²⁶

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), (j), 405, and sections 1.3 and 1.106 of the Commission's rules, 47 CFR §§ 1.3, 1.106, the Bureau GRANTS the petitions for reconsideration and waiver requests to the extent described herein. The Bureau DENIES the petitions for reconsideration and waiver requests to the extent described herein.

12. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release, in accordance with section 1.102 of the Commission's rules, 47 CFR § 1.102. This action is taken pursuant to the authority delegated by sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Sullivan
Chief, International Bureau

²⁶ Petition for Reconsideration of Ronan Telephone Company and Western Montana CommunityTel, Inc., IB Docket No. 20-205 (filed Nov. 13, 2020).