



# PUBLIC NOTICE

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DA 21-957

Released: August 4, 2021

## THE WIRELESS TELECOMMUNICATIONS BUREAU OPENS A NEW DOCKET AND ESTABLISHES THE PROCESS FOR C-BAND SPACE STATION OPERATOR PHASE I CERTIFICATION OF ACCELERATED RELOCATION

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

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) prescribes the form by which eligible C-band space station operators should submit Phase I Certifications of Accelerated Relocation (Certifications) and establishes the process by which stakeholders can file related challenges to those Certifications. The *3.7 GHz Report and Order* required that, in order to be eligible for an Accelerated Relocation Payment (ARP), an eligible space station operator must file a Certification “demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline.”<sup>1</sup> An eligible space station operator is required to complete its obligations and then file a Certification by the applicable Accelerated Relocation Deadline, which for Phase I is December 5, 2021. Certifications should be filed both in GN Docket No. 18-122 and in the new docket the Bureau opens here, GN Docket No. 21-320; stakeholders should file any related challenges in GN Docket No. 21-320.<sup>2</sup>

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>3</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>4</sup>

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<sup>1</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2457 at para. 298 (2020) (*3.7 GHz Report and Order*); 47 CFR § 27.1412(g).

<sup>2</sup> While eligible space station operators are required to file their Certifications in both GN Docket No. 18-122 and GN Docket No. 21-320, *3.7 GHz Report and Order*, 35 FCC Rcd at 2458, n.692, challenges, replies or *ex partes* are only required to be filed in GN Docket No. 21-320.

<sup>3</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

<sup>4</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 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*,

(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>5</sup> All five eligible space station operators elected accelerated relocation.<sup>6</sup> By electing accelerated relocation, the eligible space station operators, among other things, have voluntarily committed to perform all the tasks necessary to enable any incumbent earth station 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>7</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>8</sup> Once the eligible space station operator’s Certification is validated, the ARPs will be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).<sup>9</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>10</sup> Further, “the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.”<sup>11</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 from its filing.”<sup>12</sup> Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.<sup>13</sup> Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the

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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>5</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2408, para. 155; 47 CFR § 27.1412(b)(1)-(2).

<sup>6</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>7</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 292.

<sup>8</sup> *Id.* at 2456, para. 297; 47 CFR § 27.1412(b).

<sup>9</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300.

<sup>10</sup> *Id.* at 2457, para. 298; 47 CFR § 27.1412(g).

<sup>11</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(1).

<sup>12</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

<sup>13</sup> *Id.*

notice.<sup>14</sup> The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt.<sup>15</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>16</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 the incremental decreases in the ARP.<sup>17</sup> With this Public Notice, the Bureau establishes the requisite filing procedures and challenge process relating to the Phase I Accelerated Relocation Certification process.<sup>18</sup>

*Filing Procedures.* To claim an ARP, eligible space station operators must submit Certifications to the Clearinghouse via any of the communication methods established between those parties. In addition, these space station operators must file their Certifications with WTB, which may be done electronically with a submission to the FCC’s Electronic Comment Filing System (ECFS). While Certifications must be filed in GN Docket No. 18-122, WTB hereby creates new docket, GN Docket No. 21-320, in which Certifications should also be filed. In addition, any related challenges from stakeholders must be filed in this new docket. If a stakeholder seeks to challenge multiple eligible space station operator Certifications, each challenge must be filed separately with respect to each Certification in GN Docket No. 21-320.

*Certification Content.* To satisfy the Phase I deadline, the Certification must describe in detail each action that was taken by the eligible space station operator, including the date of completion, in a similar format and content to that operator’s Transition Plan. This description should include (but is not limited to):

- The operations that were repacked to satisfy the Phase I deadline;
- The number of new satellites, if any, that the eligible space station operator launched, including the dates of launch, reaching final orbit, and start of operations;
- A description of how services were migrated to the upper portion of the band, including the pre- and post-transition frequencies that each customer occupied and now occupies;
- Any necessary technology upgrades or other solutions, such as video compression or modulation, that the eligible space station operator implemented, described on a per antenna and/or feed basis, as appropriate;

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<sup>14</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2456, para. 297; 47 CFR § 27.1422(d).

<sup>17</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99.

<sup>18</sup> While this Public Notice is not intended to lay out procedures for how *sua sponte* agency action might intersect with the Certification challenge process, the Bureau has the independent authority to reject a defective Certification even in the absence of a third-party challenge; *Id.* at 2457, para. 298 (“Subject to confirmation as to the validity of the certification, 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.”). See also *Wireless Telecommunications Bureau Seeks Comment on Implementation of the Commission’s Incremental Reduction Plan for Phase I Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 21-320, Public Notice, (WTB 2021) (*Phase I Incremental Reduction Comment PN*). As with the *Phase I Incremental Reduction Comment PN*, in the instant PN the Bureau is only establishing procedures for Certifications and related challenges for Phase I of the C-band transition. *Id.* This targeted approach will enable the Bureau to evaluate how well these procedures work in practice and afford an opportunity to amend or revise them as appropriate for the Phase II deadline.

- The number and location of antennas and feeds that were transitioned to satisfy the Phase I deadline, including the actions taken (e.g., retuning and repointing) for each;
- The date of completion of the above items;
- A description of the steps that the eligible space station operator has taken to identify all associated earth stations, antennas, and feeds, and to ensure that they are all transitioned as of the date of Certification;
- Details relating to any variances from the eligible space station operator's Transition Plan, such as antennas and feeds involving circumstances beyond the control of the eligible space station operator and therefore subject to a transition delay notice,<sup>19</sup> and antennas and feeds that are otherwise pending removal from the most recent Incumbent Earth Station list<sup>20</sup> or subject to an agreement regarding the transition between the eligible space station operator and the earth station operator.<sup>21</sup>

The eligible space station operator must certify that it attests to the truthfulness of the above information and is making the Certification in good faith.<sup>22</sup> Eligible space stations operators are reminded that Certifications are subject to section 1.17 of the Commission's rules and violators will be subject to potential enforcement action, including monetary penalties or actions affecting the eligible space station operator's market access authorization or status as a licensee.<sup>23</sup> The Bureau will determine that a

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<sup>19</sup> The *3.7 GHz Report and Order* stated, "Only incumbent earth station transition delays that are beyond the control of the incumbent space station operators will not impact their eligibility for the accelerated relocation payment. However, to partake of this exception, we require that any eligible space station operator submit a notice of any incumbent earth station transition delays to the Wireless Telecommunications Bureau within seven days of discovering an inability to accomplish the assigned earth station transition task. Such a request must include supporting documentation to allow for resolution as soon as practicable and must be submitted before the Accelerated Relocation Deadlines." *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294. The filing of such notice in circumstances that the eligible space station operator believes are likely to jeopardize its ability to meet the Phase I deadline does not, in and of itself, remove an earth station, antenna, or feed from said operator's Transition Plan. Further, the eligible space station operator remains responsible for transitioning the earth station, antenna, or feed at issue until the Certification process is complete. Any such notices and supporting information should be publicly filed in GN Docket No. 21-320 and be simultaneously provided to the affected earth station operator. The Bureau will take such notices, and the weight, if any, they should be accorded, into account when determining whether the eligible space station operator has met its transition obligations for ARP purposes.

<sup>20</sup> See *International Bureau Release Updated List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket No. 2-205, GN Docket No. 20-305, Public Notice, DA 21-731 (IB June 22, 2021).

<sup>21</sup> Such agreements may, for example, reflect that the earth station operator, whose station is associated with the eligible space station operator and included on its Transition Plan, has relieved said eligible space station operator of any obligation to effectuate the transition (in whole or in part, as per the agreement) of the subject earth station.

<sup>22</sup> *3.7 GHz Report and Order*, 35 FCC Rcd. at 2457, para. 298.

<sup>23</sup> *Id.* No entity may "in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." 47 CFR § 1.17(a)(2). "In any investigatory or adjudicatory matter within the Commission's jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall: (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." 47 CFR § 1.17(a)(1)-(2).

Certification has been made in bad faith if, for example, the certifying party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted.<sup>24</sup> In cases where it is found that the ARP was disbursed based on a Certification that the eligible space station operator had filed in bad faith, the operator may be subject to the additional consequence of having to return some or all of the ARP, depending on the circumstances.<sup>25</sup>

We note that subsequent to the filing of the Certification the Bureau may, based on the information filed by the eligible space station operator or contained in a challenge to that operator's Certification, request additional information from the operator. Because such information may prove necessary to determine whether the eligible space station operator completed the relocation by the relevant accelerated deadline, eligible space station operators must respond to such requests for information in a prompt and complete manner.

If, after the resolution of any credible challenges and the disbursement of the ARP, it is subsequently found, by the Relocation Coordinator, Clearinghouse, or WTB, that the eligible space station operator should have transitioned additional earth stations, antennas, or feeds that it did not account for in its Transition Plan and Certification(s), the eligible space station operator will be required to remediate such earth stations, antennas, or feeds in a prompt and effective manner.<sup>26</sup>

*Challenges.* 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.<sup>27</sup> Pursuant to the *3.7 GHz Report and Order*, WTB will announce by Public Notice whether credible challenges have been made within 30 days of the Certification's filing.<sup>28</sup> After reviewing a Certification and any relevant challenges, WTB will issue one of two Public Notices. If there are no credible challenges, WTB will issue a Public Notice that lists the submitted challenges (if any), states that none constitutes a "credible challenge" to the validity of the Certification, and provides a brief explanation for the finding that said challenges are non-credible. If there is at least one credible challenge, WTB will issue a Public Notice announcing that one or more credible challenges have been made and instructing the Clearinghouse not to issue the ARP until WTB has made a final determination as to the validity of the challenge. WTB will issue a final determination on the challenge no later than sixty (60) days after the eligible space station operator files its Certification.<sup>29</sup> If WTB ultimately finds the Certification was valid, disbursement of the Phase I ARP to the eligible space station operator will proceed as outlined above and in the *3.7 GHz Report and Order*.<sup>30</sup>

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<sup>24</sup> *In Re Amend. of Section 1.17 of Commission's Rules Concerning Truthful Statements to Comm'n*, 18 FCC Rcd. 4016, 4021 at para. 12 (2003).

<sup>25</sup> See 47 CFR § 27.1412(a).

<sup>26</sup> *Id.* ("Eligible space station operators are responsible for all necessary actions...to migrate the existing services of incumbent earth stations in CONUS to the 4000-4200 MHz band (unless the incumbent earth station opts out of the formal relocation process, per paragraph (e) of this section), as of December 5, 2025. Eligible space station operators that fail to do so will be in violation of the conditions of their license authorization and potentially subject to forfeitures and other sanctions"). The obligation to remediate is independent from, and without prejudice to, any determination that the Certification (or any subsequent remediation effort) was made in bad faith.

<sup>27</sup> 47 CFR § 1.45(b)-(c). This requirement applies to all challenges filed by stakeholders as well as the Clearinghouse.

<sup>28</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299.

<sup>29</sup> *Id.*; 47 CFR § 27.1412(g)(2).

<sup>30</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297; 47 CFR § 27.1422 (a)-(b).

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*Filing Requirements.* All Certifications must reference GN Docket No. 18-122 and GN Docket No. 21-320. All challenges and replies must reference GN Docket No. 21-320. Submissions may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Submissions may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service First-Class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.
  - **Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>**

**During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.**

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

*Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>31</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f)

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<sup>31</sup> See 47 CFR § 1.1200 *et seq.*

of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).<sup>32</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*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>32</sup> *Id.* § 1.1206(b).