



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON IMPLEMENTATION OF THE COMMISSION'S INCREMENTAL REDUCTION PLAN FOR PHASE I ACCELERATED RELOCATION PAYMENTS

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

Comments Due: [15 days after publication in the Federal Register]

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) seeks comment on its proposed 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.¹ On August 4, 2021, as directed by the Commission in the *3.7 GHz Report and Order*, WTB issued a Public Notice to prescribe the filing procedures for eligible space station operators to submit Certifications of Accelerated Relocation (Certifications) and stakeholders to submit related challenges as part of the Phase I migration of incumbent services in this band.² Related to this process, WTB hereby seeks 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.³ Filers responding to this Public Notice should submit comments in GN Docket No. 21-320.⁴

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

¹ 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*).

² *Id.* at 2457, para. 298; 47 CFR § 27.1412(g); *The Wireless Telecommunication Bureau Opens a New Docket and Establishes the Process for C-band Space Station Operator Phase I Certification of Accelerated Relocation*, GN Docket Nos. 18-122 and 21-320, Public Notice, (WTB 2021) (*Phase I ARP Certification Procedures PN*).

³ *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297; 47 CFR § 27.1422(d).

⁴ Responsive filings and any subsequent *ex parte* filings on this topic should be filed in GN Docket No. 21-320 and do not also need to be filed in GN Docket No. 18-122.

⁵ *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

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, (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, 2023.⁷ All five eligible space station operators elected accelerated relocation.⁸ 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.⁹ 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.”¹⁰ Once validated, the ARPs will be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).¹¹

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.¹² Further, “the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.”¹³

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

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

⁸ *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).

⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 292.

¹⁰ *Id.* at 2456, para. 297; 47 CFR § 27.1412(b).

¹¹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300.

¹² *Id.* at 2457, para. 298; 47 CFR § 27.1412(g).

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

such challenges and will render a final decision as to the validity of the certification no later than 60 days from its filing.¹⁴ Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.¹⁵ Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice.¹⁶ The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt.¹⁷ 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.¹⁸

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.¹⁹ On August 4, 2021, the Bureau issued a Public Notice implementing filing procedures for Phase I Certifications and related challenges.²⁰ With the instant Public Notice, the Bureau seeks comment on how different Phase I Certification scenarios will affect both the challenge process and incremental decreases in the ARP.²¹

At the outset, we recognize the two most straightforward 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.²² Second, any Certifications filed for the first time after the Phase I deadline and later validated without amendment or refiled 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

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

¹⁵ *Id.*

¹⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

¹⁷ *Id.*

¹⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297; 47 CFR § 27.1422(d).

¹⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99.

²⁰ See *Phase I ARP Certification Procedures PN*. As with the *Phase I ARP Certification Procedures PN*, in the instant PN the Bureau is only soliciting comment on impacts on the challenge and incremental reduction process for Phase I of the C-band transition. *Id.* 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.

²¹ We hereby waive section 1.415 of our rules. 47 CFR §1.415(c) (“A reasonable time will be provided for filing comments in reply to the original comments, and the time provided will be specified in the notice of proposed rulemaking”). The Commission may waive its rules for “good cause shown.” *Id.* at § 1.3. Good cause exists where “particular facts would make strict compliance inconsistent with the public interest.” *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir.1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir.1969), cert. denied, 409 U.S. 1027, 93 S.Ct. 461, 34 L.Ed.2d 321 (1972)). We are not soliciting reply comments to facilitate swift action on the incremental reduction and challenge process, which will in turn facilitate ARP certifications and thus put “valuable spectrum to its highest valued use pursuant to statutory criteria designed to promote competition and other important public interest goals, and provid[ing] reasonable accommodations to eligible space station operators and incumbent earth stations.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2353, para. 22.

²² 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.

“Date of Completion” for determining the applicable percentage by which the ARP will be reduced.²³ In both situations, the challenge process laid out in our recent Public Notice would remain unaffected.²⁴ Below we seek 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 on the Certification process.

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.”²⁵ In furtherance of this goal, we propose that eligible space station operators may amend or refile an incomplete or invalid Certification without any incremental reduction in the ARP if, prior to the Phase I deadline,²⁶ 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, in response to a challenge, or in response to the Bureau’s determination that the original Certification was invalid.²⁷ In this scenario, any issues in the Certification would be resolved before the Phase I deadline, and the certifying space station operator would have, in fact, come into compliance with all the requirements for claiming the ARP by said deadline.

In these circumstances, we propose that the amended or refiled Certification take the place of the original and start a new challenge process.²⁸ Thus, new challenges to this amended or refiled Certification would be permitted but would 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).²⁹ If, however, WTB has not already ruled on the original Certification, the Bureau could 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. We seek comment on this approach.

If WTB ultimately decides that the amended or refiled Certification was valid, the eligible space station operator’s ARP would be based on the filing date of the amended or refiled Certification. As noted above, where the amended or refiled Certification is submitted before the Phase I deadline, we propose that there will be no reduction in the ARP.³⁰

²³ *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297 (containing Incremental Reduction Schedule).

²⁴ *See Phase I ARP Certification Procedures PN*.

²⁵ *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297.

²⁶ *Id.*; 47 CFR § 27.1422(d).

²⁷ *See Phase I ARP Certification Procedures PN*.

²⁸ 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, with a sixty (60)-day total period from the date of the filing of the amended Certification for WTB to issue a decision on that amended or refiled Certification.

²⁹ 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.

³⁰ 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

(continued....)

Amending or Refiling a Certification After the Phase I Deadline. Alternatively, if WTB rejects a Certification filed before the Phase I deadline (whether the original or an amended or refiled one), the eligible space station operator would have to finish any incomplete aspects of the transition and file a new, valid Certification before its entitlement to an ARP could be determined. Where the filing date of this new, valid Certification falls after the Phase I deadline, the ARP would thus be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order*, as applicable based on such Certification's filing date.³¹ We propose the same treatment in cases where the Bureau has not yet ruled on a Certification and the eligible space station operator either submits an amended or refiled Certification on its own motion, or in response to a challenge, after the Phase I deadline. We seek comment on this approach.

Where a Certification is amended or refiled after the Phase I deadline, we propose 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 would be permitted but would 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). If, however, WTB has not already ruled on the original Certification, the Bureau could nevertheless also consider all points raised during the original challenge cycle to the extent those points may still be relevant to the amended or refiled Certification. We seek comment on this approach.

Accounting for Remedial Action by Eligible Space Station Operators. WTB proposes to 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). Thus, if WTB issues a final determination rejecting a Certification, the fact that the eligible space station operator may have 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 would not in itself invalidate or otherwise affect WTB's determination. Rather, for such remedial action to be considered, the eligible space station operator would need to submit an amended or refiled Certification reflecting that remedial action. The amended or refiled Certification would initiate a new challenge process as to those aspects that had not yet been subject to the initial challenge process and would establish a new date by which the eligible space station operator's ARP was calculated. We seek comment on this approach.

Agreements. Notwithstanding the proposals in the preceding sections, we propose to allow eligible space station operators and stakeholders (including, but not limited to, incumbent earth station operators) to 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. 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 to resolve all outstanding issues between those parties and submit this agreement to WTB. If after review WTB accepts this agreement as a good faith resolution of issues in the eligible space station operator's Certification, the Bureau would find that the original Certification is valid and dismiss the related outstanding challenges. If such agreement resolved all outstanding challenges, the Bureau would calculate the ARP as of the date the original Certification was filed. If the agreement does not resolve all outstanding issues in an eligible space station operator's Certification and requires further remedial steps by the operator, then the Bureau proposes that it would calculate the ARP as of the date the eligible space station operator files an amended 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.

³¹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297 (containing Incremental Reduction Schedule).

attesting that it has completed the remedial steps as per its agreement with the challenging parties (and assuming this Certification is found valid). We seek comment on this approach.

Although we propose to 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 also propose to bar the use of greenmail³² in agreements to avoid incremental reductions. For example, whenever a challenge against a Certification is withdrawn through an agreement with an eligible space station operator, we propose to require that the written withdrawal agreement be accompanied by an affidavit certifying that no parties involved have received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the agreement or withdrawal of the challenge.³³ We seek comment on this approach.

Finally, we propose that if the eligible space station operator takes remedial action to address any challenges 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). We seek comment on this approach.

Filing Requirements. All comments must reference GN Docket No. 21-320. Submissions may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments 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 12th 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**

³² 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 . . .").

³³ See e.g., 47 CFR § 73.3588.

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.

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Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁴ 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) 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).³⁵ 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.

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³⁴ See 47 CFR § 1.1200 *et seq.*

³⁵ *Id.* § 1.1206(b).