



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES PROCEDURES FOR APPEALS OF RELOCATION PAYMENT CLEARINGHOUSE DECISIONS

WT Docket No. 21-333

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) establishes procedures for the filing and processing of challenges to decisions made by the 3.7-4.2 GHz (C-band) Relocation Payment Clearinghouse (Clearinghouse).¹

In the *3.7 GHz Report and Order*, the Commission found that selecting a single, independent clearinghouse to oversee cost-related aspects of the C-band transition in a fair and transparent manner, subject to Commission oversight, would best serve the public interest.² Among its duties set forth by the Commission, the Clearinghouse is responsible for making initial determinations about the reasonableness of transition-related cost reimbursement claims.³ The Clearinghouse also apportions costs among 3.7 GHz Service Licensees and distributes payments to claimants that incur compensable costs.⁴ The *3.7 GHz Report and Order* also specified that the Clearinghouse will serve “in an administrative role and in a function similar to a special master in a judicial proceeding” and “may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora.”⁵ Any unresolved issues relating to Clearinghouse decisions may be appealed to the Bureau.⁶

This Public Notice sets forth the procedures by which eligible parties may appeal Clearinghouse decisions to the Bureau. As an initial matter, we clarify that before the Bureau will consider any appeal, the relevant party or parties, whether an eligible incumbent claimant or eligible 3.7 GHz Service

¹ 47 CFR § 27.1421(b); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Proposed Modification, 35 FCC Rcd 2343, 2449, para. 268 (2020) (*3.7 GHz Report and Order*). WTB adopts these procedures, as directed by the Commission, as part of its oversight of the transition process and to “make further determinations related to reimbursable costs, as necessary, throughout the transition process.” *Id.* at 2448, para. 262; 47 CFR § 27.1412(h).

² *3.7 GHz Report and Order*, 35 FCC Rcd at 2446-47, paras. 255, 259.

³ *Id.* at 2447, para. 260 (“The Clearinghouse shall review reimbursement requests to determine whether they are reasonable and to ensure they comply with the requirements adopted in this *Report and Order*. The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.”).

⁴ *Id.* at 2448, para. 263.

⁵ *Id.* at 2449, para. 268-9; 47 CFR § 27.1421(b).

⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 269. The Bureau previously opened the above-referenced docket in anticipation of such appeals. See *The Wireless Telecommunications Bureau Establishes a New Docket for C-band Relocation Payment Clearinghouse Dispute Referrals and Appeals*, WT Docket No. 21-333, Public Notice, DA 21-1014 (Aug. 18, 2021) (*Clearinghouse Appeals Docket Public Notice*).

Licensee, must first timely file a notice of objection with the Clearinghouse as required by the Commission's rules and pursuant to the process established in the Clearinghouse Dispute Resolution Plan (RPC DRP).⁷ Interlocutory appeals, before a timely notice of objection is filed with the Clearinghouse, will not be considered by the Bureau.

The RPC DRP identifies different scenarios and timeframes within which eligible parties must file a notice of objection. Specifically, the RPC DRP requires eligible incumbent claimants⁸ or eligible 3.7 GHz Service Licensees⁹ to file a notice of objection with the Clearinghouse within twenty (20) days of invoice issuance following Clearinghouse review of lump sum or reimbursement claims.¹⁰ Where the eligible incumbent claimant first files a notice of objection to the Clearinghouse's decision on its lump sum or reimbursement claim within the applicable twenty (20) day timeline, and an eligible 3.7 GHz Service Licensee also wishes to be a party to that objection, that eligible 3.7 GHz Licensee must itself file an objection within thirty (30) days of invoice issuance.¹¹ We clarify that the same approach and timeline will apply in cases where the first notice of objection to a lump sum or reimbursement claim is filed by the eligible 3.7 GHz Service Licensee within the applicable twenty (20) day timeline and the eligible incumbent claimant wishes to be a party to that appeal.¹² In such cases, that eligible incumbent claimant must itself file an objection with the Clearinghouse within thirty (30) days of invoice issuance. Where one or more eligible 3.7 GHz Service Licensees wish to dispute any type of payment or cost sharing decision by the Clearinghouse other than a lump sum or reimbursement claim, they must file an objection within twenty (20) days of statement or invoice issuance.¹³ We further clarify that any other eligible 3.7 GHz Service Licensee wishing to be a party to an objection of this type first filed by a different eligible 3.7 GHz Service Licensee must itself file an objection with the Clearinghouse within thirty (30) days of statement or invoice issuance.¹⁴

⁷ 47 CFR § 27.1421(a); see C-band RPC, *Dispute Resolution Plan (version 1.2)*, available at <https://cbandrpc.com/resources/> (RPC DRP). While version 1.2 of the RPC DRP is the version of the document available at the time of adoption and release of this Public Notice, potential appellants should consult the most recent version of the RPC DRP available at the Clearinghouse's website at the time their dispute arises.

⁸ Eligible incumbent claimants for a specific lump sum or reimbursement claim can be either an incumbent space station operator, incumbent earth station operator, incumbent fixed service licensee, or a surrogate performing the work on such claim who is authorized by the incumbent to serve as the claimant. RPC DRP at Section 8.1.1.

⁹ Eligible 3.7 GHz Service Licensees are recipients of statements or invoices from the Clearinghouse responsible for payment or cost sharing obligations, including but not limited to lump sum or reimbursement claims. RPC DRP at Section 8.1.2.

¹⁰ RPC DRP at Section 8.1. The date of invoice issuance in such cases is when an eligible 3.7 GHz Service Licensee receives an invoice, or the eligible incumbent claimant either receives notice of such invoice, or a copy of the relevant portion relating to its lump sum or reimbursement claim. *Id.*

¹¹ *Id.*

¹² While version 1.2 and earlier iterations of the RPC DRP did not specify this approach to situations where the first notice of objection of a lump sum or reimbursement claim is filed by an eligible 3.7 GHz Service Licensee, we clarify that this guidance is controlling and future versions of the RPC DRP should be revised accordingly.

¹³ Section 8.1.2 of RPC DRP enables eligible 3.7 GHz Service Licensees to raise these other types of payment or cost sharing disputes, whereas under Section 8.1.1. of the RPC DRP, incumbent claimants are only eligible to raise or participate in disputes involving their own lump sum or reimbursement claims. RPC DRP at Sections 8.1.1-8.1.2.

¹⁴ While version 1.2 and earlier iterations of the RPC DRP did not specify this approach to situations where the first notice of objection of any type of payment or cost sharing decision, other than a lump sum or reimbursement claim, is filed by one 3.7 GHz Service Licensee, we clarify that this guidance is controlling and future versions of the RPC DRP should be revised accordingly. Eligible 3.7 GHz Service Licensees for these purposes include any licensee responsible for a statement or invoice, or whose payment or cost-sharing obligations would increase as a consequence of the initial objection filed by a different 3.7 GHz Service Licensee.

There are two possible paths pursuant to which an appeal of a Clearinghouse decision can be made to the Bureau, depending on which party or parties submit a timely notice of objection with the Clearinghouse. The first path is a single-party dispute where one eligible party (whether an incumbent claimant or 3.7 GHz Service Licensee) files a timely notice of objection with the Clearinghouse and no other eligible party elects to join by filing its own timely notice of objection with the Clearinghouse.¹⁵ The second path is a multi-party dispute where more than one eligible party files a timely notice of objection regarding the same determination with the Clearinghouse, and the mediation and arbitration provisions in section 27.1421(b) of the Commission's rules have already been satisfied.¹⁶ For example, a multi-party dispute could involve both an eligible incumbent claimant or one or more eligible 3.7 GHz Service Licensees in the case of lump sum or reimbursement claim review, or multiple eligible 3.7 GHz Service Licensees where the apportionment of relocation costs is at issue.¹⁷ Below, we detail the specific procedures applicable to each path. In all cases, the requirements (including deadlines) of the *3.7 GHz Report and Order* and this Public Notice, and any other requirements established by the Commission or WTB, must be satisfied before the Bureau will consider an appeal.

Single-Party Disputes: If an eligible incumbent claimant or eligible 3.7 GHz Service Licensee submits a timely objection to the Clearinghouse that is not joined by any other eligible party, the following process applies:

1. The appealing party must directly submit a written appeal to the Bureau seeking review of the Clearinghouse's decision no later than thirty (30) days from the date any other eligible party fails to file a timely notice of objection with the Clearinghouse.¹⁸ While the Clearinghouse should provide notice to the appealing party that no other eligible party has joined its dispute within three (3) business days of such event, we clarify that the appealing party must directly file a written appeal to the Bureau by the requisite thirty (30) day deadline in order for its appeal to be considered by the Bureau.
2. The burden of proof lies on the appealing party to demonstrate in its appeal that the Clearinghouse decision was incorrect. Appealing parties bear responsibility for their costs associated with an appeal, none of which are reimbursable transition expenses.
3. The Bureau will issue regular public notices setting pleading cycles for any single-party appeals received in a given week and assigning file numbers to each appeal.
4. The Clearinghouse will automatically be joined as the opposing party to any such appeal and have ten (10) days from the date of any such public notice to respond, including the submission of any decisional paperwork or supporting materials.
5. The appealing party will have five (5) days thereafter for any reply. Filings by third parties are not permitted.
6. All pleadings and documentation relating to an appeal shall be submitted electronically, using the Commission's Electronic Comment Filing System (ECFS) in WT Docket No. 21-333,

¹⁵ RPC DRP at Section 8.1.

¹⁶ 47 CFR § 27.1421(b).

¹⁷ See RPC DRP at Sections 8.1.1 and 8.1.2 (detailing the types of disputes that incumbent claimants and 3.7 GHz Service Licensees may raise with the Clearinghouse).

¹⁸ For example, in the case of a dispute over the Clearinghouse's decision on a lump sum or reimbursement claim, the date by which any other eligible party fails to file a timely notice of objection with the Clearinghouse would be thirty (30) days after invoice issuance. RPC DRP at Section 8.1. The appealing party would then have an additional thirty (30) days from that date to submit its written appeal to the Bureau. As clarified above, where an eligible 3.7 GHz Service Licensee wishes to dispute any other type of payment or cost sharing decision by the Clearinghouse, the date by which any other eligible party fails to file a timely notice of objection with the Clearinghouse would be thirty (30) days after statement or invoice issuance. If no such objections are filed by another eligible party, the appealing party would then have an additional thirty (30) days from that date to submit its written appeal to the Bureau.

- with a copy thereof served electronically on the Clearinghouse as opposing party. These pleadings and documents must also comply with section 1.49 of the Commission's rules.
7. The first page of any pleading or other document filed by a party shall be captioned with the name and address of the parties and the file number assigned by the Bureau.
 8. Any party may request confidential treatment of any document, or portion thereof, pursuant to section 0.459 of the Commission's rules.¹⁹
 9. The Bureau may, at its discretion, designate the matter for an evidentiary hearing before an Administrative Law Judge, making the Enforcement Bureau a party.²⁰

Multi-Party Disputes: If an eligible incumbent claimant or eligible 3.7 GHz Service Licensee submits a timely objection to the Clearinghouse that is joined by at least one other eligible party, the following process applies:

1. Following the filing of timely notices of objection by multiple eligible parties with the Clearinghouse, such parties must first satisfy the mediation and arbitration provisions in section 27.1421(b) of the Commission's rules.²¹
2. Should any issues still remain unresolved and the parties have not opted for arbitration pursuant to Section 9 of the RPC DRP, the Clearinghouse may refer the matter to the Bureau within ten (10) days of the recommended decision or advice of the Clearinghouse (qua mediator) or other mediator.²² Should all parties elect to seek non-binding expedited arbitration, the same ten (10) day timeframe will be applicable to referral of the matter to the Bureau for review following issuance of a recommended decision or advice from the Clearinghouse (qua arbitrator) or other arbitrator.
3. The Clearinghouse shall forward the entire record on any disputed issues, including such dispositions thereof that the Clearinghouse has considered.²³ The Bureau will rely on the factual record before it as provided by the Clearinghouse.²⁴
4. The burden of proof is on each party to demonstrate that their view is correct. All eligible parties that filed timely notices of objection with the Clearinghouse and participated in the

¹⁹ See 47 CFR § 0.459. Pursuant to earlier instructions regarding 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, 35 FCC Rcd 2973 (2020).

²⁰ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 269; 47 CFR § 27.1421(c)(2); see, e.g., *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, MB Docket No. 10-204, 25 FCC Rcd 14149, 14165 (MB 2010) (*Tennis Channel HDO*) (making the Enforcement Bureau a party with discretion as to the extent of participation).

²¹ As set forth by the Commission, the Clearinghouse may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration, or refer the disputant parties to alternative dispute resolution fora. *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 268; 47 CFR § 27.1421(b). Any dispute submitted to the Clearinghouse, or other mediator, shall be decided within thirty (30) days after the Clearinghouse has received a submission by one party and a response from the other party. *Id.* After a decision by the mediator, any party in a multi-party dispute may seek expedited non-binding arbitration, which must be completed within thirty (30) days of the recommended decision or advice of the Clearinghouse or other mediator. *Id.* See also RPC DRP Sections 8-9.

²² See RPC DRP Section 9; *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 269; 47 CFR § 27.1421(c).

²³ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 269 (“[T]he Clearinghouse shall forward the entire record on any disputed issues, including such dispositions thereof that the Clearinghouse has considered. Upon receipt of such record and advice, the Bureau will decide the disputed issues based on the record submitted.”); see also 47 CFR § 27.1421(c)(1).

²⁴ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 269; 47 CFR § 27.1421(c)(2).

- underlying mediation or arbitration will automatically be parties to the appeal unless they opt out by providing written notice to the Bureau as set forth below. Appealing parties bear responsibility for their costs associated with an appeal, none of which are reimbursable transition expenses.
5. The Bureau will issue a public notice upon receipt of the record from the Clearinghouse and assign a file number to the appeal.
 6. Each party has ten (10) days from the date of such public notice to either submit statements of position or opt out of the appeal by providing written notice to the Bureau. Statements shall comply with section 1.49 of the Commission's rules.²⁵ Statements must be strictly limited to issues raised in the course of mediation and/or arbitration and facts contained in the record. In their statements, parties may not introduce facts not contained in the record or introduce arguments on issues that were not presented to the mediator and/or arbitrator for consideration. Any material not conforming to these restrictions will be stricken. Reply filings and filings by third parties are not permitted. The Clearinghouse and any party to the appeal may file other documents or pleadings only if specifically requested by the Commission.
 7. Parties' statements, any record documents, and opt out notices shall be submitted electronically, using the Commission's ECFS in WT Docket No. 21-333, with a copy thereof served electronically on any other party to the appeal and the Clearinghouse. These documents must also comply with section 1.49 of the Commission's rules.²⁶
 8. The first page of any statement or other document filed by a party shall be captioned with the name and address of the parties and the file number assigned by WT B.
 9. The Clearinghouse and any party to the appeal may request confidential treatment of any document, or portion thereof, pursuant to section 0.459 of the Commission's rules.²⁷
 10. The Bureau may, at its discretion, designate the matter for an evidentiary hearing before an Administrative Law Judge, making the Enforcement Bureau a party.²⁸

Following a Bureau decision in either a single-party or multi-party dispute, any party to a specific matter wishing to appeal that decision may do so by filing with the Commission, within ten (10) days of the effective date of the Bureau decision, a petition for *de novo* review, whereupon the Commission will set the matter for an evidentiary hearing before an Administrative Law Judge.²⁹ Parties seeking *de novo* review of a decision by the Bureau are advised that, in the course of the evidentiary hearing, the Commission may require complete documentation relevant to any disputed matters, and, where necessary, and at the presiding judge's discretion, require expert engineering, economic, or other reports, or testimony, and that the cost of producing such documentation is not a reimbursable transition expense.³⁰ Parties may therefore wish to consider possibly less burdensome and expensive means of resolving their disputes, such as alternative dispute resolution.³¹

A party to any appeal, whether single-party or multi-party, must certify in each submission that it attests to the truthfulness of the information it is providing and is making the submission in good faith.

²⁵ See 47 CFR § 1.49 (specifying the typographical parameters of pleadings filed with the Commission).

²⁶ *Id.*

²⁷ See 47 CFR § 0.459 (governing requests that materials or information submitted to the Commission be withheld from public inspection).

²⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449, para. 269; 47 CFR § 27.1421(c)(2); *see, e.g., Tennis Channel HDO*, 25 FCC Rcd at 14165.

²⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449-50, para. 269; 47 CFR § 27.1421(c)(2); *see also* 47 CFR § 1.115.

³⁰ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449-50, para. 269.

³¹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2449-50 at para. 269; 47 CFR § 27.1421(c)(3).

We remind parties of their obligations under section 1.17 of the Commission's rules, and note that violators will be subject to potential enforcement action.³² The Bureau will determine a submission has been made in bad faith if, for example, the submitting 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.³³

Restricted Proceeding. This docket and each appeal is a "restricted" proceeding under section 1.1208 of the Commission's rules, and thus *ex parte* presentations to or from Commission decision-making personnel, including the Chief and staff of the Wireless Telecommunications Bureau, are prohibited, except as otherwise provided in the Commission's rules.³⁴

Filing Requirements. All submissions must reference WT Docket No. 21-333. Submissions may be filed using the Commission's 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 45 L ST NE, 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**

³² 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).

³³ *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).

³⁴ See 47 CFR § 1.1208 ("Proceedings in which *ex parte* presentations are prohibited, referred to as 'restricted' proceedings, include . . . all proceedings that have been designated for hearing . . ."); see also 47 CFR §§ 1.1202(b) (describing what constitutes an *ex parte* presentation), 1.1204 (exemptions). The Bureau previously released a Public Notice creating WT Docket No. 21-333 stating that the proceeding was "permit-but-disclose." *Clearinghouse Appeals Docket Public Notice* at 1. We change the status of this proceeding to restricted under section 1.1208. 47 CFR § 1.1208. Submissions necessary for any individual appeals should still be filed in WT Docket No. 21-333.

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-changeshand-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 or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

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