



Federal Communications Commission
Washington, D.C. 20554

April 13, 2022

DA 22-405

Brian Stanley
Owner
ARCTEK Satellite Productions, LLC
PO Box 10888
White Bear Lake, MN 55110

Re: ARCTEK Satellite Productions, LLC Request for Consideration to be Included as an Incumbent Related to the C-band Earth Station Compensation for Relocation Program
Call Signs: E070045 & E100093; IB Docket No. 20-205

Dear Mr. Stanley:

We have received your letter dated June 12, 2021, to the Commission submitted on behalf of ARCTEK Satellite Productions (ARCTEK), a temporary fixed services satellite operator, regarding ARCTEK's two temporary-fixed earth stations (TFEs).¹ In that letter, you request that these ARCTEK TFEs be included as incumbent earth stations for purposes of the C-band transition. For the reasons provided below, we deny your request.

According to your letter, ARCTEK currently holds two Commission licenses, both of which were granted before April 19, 2018, that provide only for temporary fixed services in the transmit portion of the C band (5925-6425 MHz). ARCTEK has never modified, or sought to modify, those licenses to provide for use of the receive band (3700-4200 MHz).² In early 2020, the *3.7 GHz Report & Order* established certain requirements for existing earth stations to qualify as "incumbent earth stations," requirements designed to ensure an expedited and efficient clearing of the 3.7 GHz band for provision of terrestrial 5G services.³ In particular, "incumbent earth stations" were defined as those operating in the 3700-4200 MHz band as of April 19, 2018, if the earth station operator either: (1) had filed, within a 2018 window specified by the Bureau, an application to register or license a station already operating in the 3.7 GHz band that had not been registered or licensed as of that date, or to modify an existing registration or license to add antennas already operating in the 3.7 GHz band to such registration or license, or (2) if already authorized in the 3.7 GHz band as of April 19, 2018, had timely certified in 2019 the accuracy of information in IBFS regarding their 3.7 GHz operations already licensed or registered as of that date.⁴ Because ARCTEK did not satisfy either of these requirements for its two TFEs, those TFEs have never

¹ Letter from Brian Stanley, ARCTEK Satellite Productions, LLC, to Marlene Dortch, FCC, June 12, 2021 (*ARCTEK Letter*).

² *ARCTEK Letter*, at 1-2 (Call Signs: E070045 & E100093).

³ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Report and Order*).

⁴ 47 CFR §§ 25.138(c); 27.1411(b)(3). See *3.7 GHz Report and Order*, 35 FCC Rcd at 2391-93, paras. 116-23. The window for certification was April 11 to May 28, 2019. See *Deadline for Submission of Information on Earth Station and Satellite Use of the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, 34 FCC Rcd 2287 (2019).

qualified for incumbent status and have not been included in any of the International Bureau's releases of the Incumbent Earth Station List, dating back to the first such list which was released on July 6, 2020.⁵

ARCTEK argues that its TFEs should be considered "incumbent earth stations," and ARCTEK should be compensated for expenses incurred to transition its unregistered use of 3700-4200 MHz to 4000-4200 MHz, because the transition of the receive band directly impacts its TFEs' use of the transmit band and because the Commission was not clear about the steps that TFEs only licensed in the transmit portion of the C band were required to take regarding use of 3700-4200 MHz for that use to be considered as part of any C-band transition.⁶

We disagree. Prior to the Commission's repurposing of the 3700-4200 MHz portion of the C-band, the International, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus (the Bureaus), on delegated authority, had provided notice to all stakeholders of the steps they could take to establish that they owned stations operating in that portion of the band, and thereby position themselves to receive the treatment that the Commission might accord incumbents in the event that the Commission repurposed all or part of 3700-4200 MHz. To recap the sequence of relevant events, the Commission initiated a proceeding in 2017 to consider, among other things, several possible options for transitioning 3700-4200 MHz in whole or in part to terrestrial mobile use.⁷ In April 2018, during pendency of that proceeding, the Bureaus jointly instituted a temporary freeze on the filing of new earth station registration or license applications in the 3700-4200 MHz frequency band, and opened a 90-day filing window for earth stations that were constructed and operational in that band as of that date but were unregistered or unlicensed for such use to update their entries in the International Bureau Filing System (IBFS).⁸ The Public Notice establishing the filing window was clear that it was targeted to use of the 3700-4200 MHz band, and advised all potential applicants that the Commission might, as it considered further action on repurposing the band, "choose to take into consideration only those earth stations that are licensed, registered, or having pending applications on file" as of the close of the filing window.⁹

The International Bureau (the Bureau) issued a number of public notices about the filing window, ultimately extending the filing period for 3700-4200 MHz updates until November 7, 2018 – more than

⁵ See *International Bureau Releases List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 21-1157 (IB Sept. 15, 2021); *International Bureau Releases List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-1424, 36 FCC Rcd 2368 (IB Nov. 30, 2020) (*November 30 Incumbent Earth Station List PN*); *Erratum*, DA 20-1448, 36 FCC Rcd 3844 (IB Dec. 3, 2020); *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, 35 FCC Rcd 16614 (IB Aug. 3, 2020); *International Bureau Releases Preliminary List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-703, 35 FCC Rcd 17018 (IB July 6, 2020).

⁶ *ARCTEK Letter*, at 1-2.

⁷ *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, GN Docket No. 17-183, Notice of Inquiry, 32 FCC Rcd 6373 (2017) (*Mid-Band NOI*).

⁸ *Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band*, GN Docket No. 17-183, Public Notice, 83 Fed. Reg. 21746 (May 10, 2018), 33 FCC Rcd 3841 (IB/PSHSB/WTB 2018) (*Freeze and 90-Day Earth Station Filing Window Public Notice*).

⁹ *Id.* at 3845.

six months after the opening of the window.¹⁰ As a result, the Bureau received thousands of applications to register earth stations or update earth station filings during the filing window.

After review of all the filings received, the Bureau issued a preliminary incumbent earth station list on July 6, 2020, which provided 10 days for parties to file corrections.¹¹ The Preliminary List did not include ARCTEK because it had not submitted a modification application to add the 3700-4200 MHz portion of the band to its existing C-band transmit-only licenses either before the freeze, or within the filing window.¹² ARCTEK did not submit any filing in response to the Preliminary List, and was not included on the final list of incumbent earth stations released on August 3, 2020, or any of the subsequent versions of incumbent earth station list.¹³

¹⁰ *International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band, GN Docket No. 17-183*, Public Notice, 83 Fed. Reg. 35454 (July 26, 2018), 33 FCC Rcd 6115 (IB 2018); *International Bureau Announces Two-Week Extension of Filing Window for Earth Stations Currently Operating in 3.7-4.2 GHz Band, GN Docket No. 18-122*, Public Notice, 33 FCC Rcd 10054 (IB 2018)(collectively, the *Earth Station Filing Window Public Notices*); see also *International Bureau Reminds Earth Station Operators in 3.7-4.2 GHz Band that Application Filing Window Closes October 17, 2018*, GN Docket No. 18-122, Public Notice, 33 FCC Rcd 8591 (IB 2018). Because of technical issues with the International Bureau Filing System portal around the filing deadline that significantly limited applicants' ability to file, the International Bureau has accepted as timely filed any application filed by November 7, 2018.

¹¹ *International Bureau Releases Preliminary List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-703, 35 FCC Rcd 17018 (IB July 6, 2020).

¹² ARCTEK's submission of an email from counsel in support of the proposition that license designation of transmit-only was "standard practice" in the C-band satellite uplink industry does not persuade us to grant incumbent status. *ARCTEK Letter* at 2. Among other things, this email is from 2016 and therefore predates all the public notices starting in 2018 that provided extended opportunities for, and identified the potential benefits of, registering use of 3700-4200 MHz – that is, that their use could be taken into account in any C-band transition that the Commission might adopt.

¹³ In addition, under the terms of the *3.7 GHz Report & Order*, incumbent earth stations included C-band earth station authorizations that existed as of April 18, 2018, only if their operators certified the accuracy of their information in IBFS during a window that ended May 28, 2019. ARCTEK states that it did not file a certification, but argues that it was unclear that transmit-only TFEs needed to certify the accuracy of its information in IBFS. *ARCTEK Letter* at 3. Transmit-only TFEs, however, were treated no differently than other fixed earth stations for purposes of the certification requirement. In the *2018 Order*, the Commission directed all operators of earth stations, whether fixed or TFEs, to certify the accuracy of the information in IBFS regarding such earth stations, and proposed to protect only those earth stations licensed or registered in IBFS before April 19, 2018, that timely filed such a certification – a proposal it adopted in the *3.7 GHz Report & Order*. See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Order and Notice of Proposed Rulemaking, GN Docket No. 18-122, 33 FCC Rcd 6915, 6923-25 (2018) (2018 Order/NPRM or 2018 Order)*. In addition to the certification requirement, which applied to all earth stations, in the *2018 Order* the Commission required a supplemental filing from operators of TFEs regarding their operations. *Id.* at paras. 20-21. Of course, the failure of ARCTEK to add 3700-4200 MHz to its license during the 2018 filing window would not have been cured simply by making a C-band certification filing in 2019, because ARCTEK had never sought to include in IBFS the TFEs' use of 3700-4200 MHz.

We also note that ARCTEK apparently failed to file the specific information required by the Commission of all temporary fixed or transportable earth station operators in its *2018 Order/NPRM*.¹⁴ The Commission required submission of the information regarding such use of 3700-4200 MHz “to better understand the use of the band by” such operations and to allow it to address the “unique challenges” presented by such use.¹⁵ After review of our records, we are unable to find that ARCTEK filed the required information about TFE use of 3700-4200 MHz.

ARCTEK argues that its failure to file should not preclude the relief it seeks because it had not received “any direct correspondence from the FCC or IBFS system regarding any actions [it] was required to take.”¹⁶ In an October 2020 Order denying a number of waiver requests, the Bureau rejected similar arguments raised by other operators that argued that they should be granted incumbent status via waiver despite not having met the requirements of the *3.7 GHz Report & Order*, claiming that they did not know about the filing windows.¹⁷ The Bureau found that it had reasonably relied on the numerous public notices and orders that the Commission and the Bureau had issued throughout this proceeding, and published in the Federal Register, to notify potential applicants for incumbent status.¹⁸ The Bureau also conducted frequent outreach to relevant industry associations to promote awareness among their members.

ARCTEK also argues that it is being treated differently from another temporary fixed earth station operator, PSSI, all of whose transmit-only TFEs, ARCTEK claims, have been granted incumbent status.¹⁹ To the contrary, PSSI has a number of transmit-only Call Signs, analogous to ARCTEK’s two Call Signs, that have not been granted incumbent status and are not included in the incumbent list because PSSI, like ARCTEK, did not seek to modify those licenses to include receive-only operations in the 3700-4200 MHz portion of the band.²⁰

ARCTEK urges the Commission to open a new window to allow all transmit-only licensees to update their licenses to a transmit/receive designation or to include all transmit-only licenses to be eligible to be listed as an incumbent. The Commission rejected requests in the *3.7 GHz Report & Order*, adopted in early 2020, to open an additional window for the registration of antennas in 3700-4200 MHz, in light of the many opportunities afforded earth station operators to update their records in IBFS.²¹ For similar reasons, we will not open a new window or, upon delegated authority, fundamentally revisit the

¹⁴ See *2018 Order* at 6924. See also *Deadline for Submission of Information on Earth Station and Satellite Use of the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, 84 Fed. Reg. 22733 (May 20, 2019), 34 FCC Rcd 2287, 2288 (2019).

¹⁵ See *2018 Order* at 6924.

¹⁶ *ARCTEK Letter* at 2.

¹⁷ 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, 11907 (IB 2020) (*October 23 Order*).

¹⁸ *October 23 Order*, at 11907.

¹⁹ *ARCTEK Letter* at 3.

²⁰ PSSI holds authorizations under the names PSSI Global Services, LLC, and Production & Satellite Services, Inc. Call Signs: E080052, E0800053, E090175, and E980388 are examples of PSSI Transmit-Only Call Signs not included in the Incumbent List because they do not include 3700-4200 MHz in the authorization.

²¹ *3.7 GHz Report & Order* at 2393.

requirements for incumbent status, especially given the upcoming implementation of the Phase 1 transition as of December 5, 2021.

In sum, the vast majority of earth station operators successfully complied with the requirements set forth by the Commission to qualify as an incumbent earth station for purposes of the transition. We recognize that some earth station operators, including ARCTEK, may incur financial costs imposed as a result of their failure to register or modify the licenses of their existing earth stations, but the Commission's decisions reflect the importance of complying with the rules and procedures adopted in this proceeding, which were designed to facilitate the timely transition necessary to make this critical spectrum available for terrestrial 5G services while providing a process to ensure that incumbent earth station operators may continue to receive signals in the upper portion of the band.

Sincerely,

/Thomas P. Sullivan/

Thomas P. Sullivan
Chief
International Bureau