



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON C-BAND PHASE II CERTIFICATION OF ACCELERATED RELOCATION PROCEDURES AND IMPLEMENTATION OF THE COMMISSION'S INCREMENTAL REDUCTION PLAN FOR PHASE II ACCELERATED RELOCATION PAYMENTS

GN Docket No. 18-122; GN Docket No. 23-97

Comments Due: [30 days after publication in the Federal Register]

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) seeks comment on proposed procedures related to the filing of Phase II Certifications of Accelerated Relocation (Certifications) and on implementation of the Commission's incremental reduction plan for Phase II Accelerated Relocation Payments (ARPs) as part of the ongoing transition of the 3.7 GHz band.¹ We propose adopting filing procedures modeled after those previously adopted for Phase I to allow eligible space station operators to submit Certifications, and stakeholders to file related challenges, with respect to the Phase II migration of incumbent services in this band.² We seek comment on potential adjustments to the Phase I procedures that we believe will create more transparency and efficiency in the Phase II Certification review process. We also propose adopting an approach that parallels the Phase I process for calculating the incremental reduction of an eligible space station operator's ARP should it fail to meet the Phase II Accelerated Relocation Deadline.³ We seek comment on these proposals below. Filers responding to this Public Notice should submit comments in the new docket the Bureau opens here, GN Docket No. 23-97.⁴

Background. 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

¹ *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 *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; 47 CFR § 27.1412(g); *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 Nos. 18-122 and 21-320, Public Notice, 36 FCC 12359 (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); *Wireless Telecommunications Bureau Announces Implementation of the Commission's Incremental Reduction Plan for Phase I Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 21-320, Public Notice, 36 FCC Rcd 14012 (WTB 2021) (*Phase I Incremental Reduction Plan PN*).

⁴ Responsive filings and any subsequent *ex parte* filings on this topic should be filed in GN Docket No. 23-97 and do not also need to be filed in GN Docket No. 18-122.

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 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, 2023.⁶

All five eligible space station operators elected accelerated relocation⁷ which means, among other things, that they voluntarily committed to perform all necessary tasks 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.⁸ The *3.7 GHz Report and Order* provided 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.”⁹ The ARPs are to be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).¹⁰

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.¹¹ Further, “the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.”¹²

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.”¹³ Absent notice from WTB of deficiencies in a Certification within 30 days of its filing, the Certification will be deemed validated.¹⁴ Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice.¹⁵ The Clearinghouse must disburse the ARP to the

⁵ *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4. 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. *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. *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2426, para. 200; 47 CFR § 27.1411(b)(1)-(2) (defining an eligible space station operator); *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, para. 116; 47 CFR §§ 25.138(c), 27.1411(b)(3) (defining incumbent earth stations).

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

⁷ *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).

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

⁹ *Id.* at 2456, para. 297; 47 CFR § 27.1412(b).

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

¹¹ *Id.* at 2457, para. 298; 47 CFR § 27.1412(g).

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

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

¹⁴ 47 CFR § 27.1412(g)(2).

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

eligible space station operator within seven (7) days of receipt.¹⁶ Should an eligible space station operator miss either Accelerated Relocation 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.¹⁷

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.¹⁸ On August 4, 2021, WTB issued a Public Notice implementing filing procedures for Phase I Certifications and related challenges,¹⁹ and adopted the incremental reduction plan for Phase I ARPs on September 29, 2021.²⁰ Each eligible space station operator subsequently filed its Phase I Certification, which were all in turn validated by the Bureau without any challenges or triggering of the incremental reduction plan.²¹ Based upon this experience with the Phase I process, the Bureau here seeks comment on the applicable Certification procedures and incremental reduction plan for the upcoming Phase II Accelerated Relocation Deadline.

Phase II Certification Process. In order to qualify for its ARP, an eligible space station operator is required to complete its transition obligations and timely file a Certification no later than the applicable Accelerated Relocation Deadline, which for Phase II is December 5, 2023.²² For the Phase II Certification process, we propose to implement filing procedures for Certifications and related challenges largely along the lines prescribed in the *Phase I ARP Certification Procedures PN*, subject to potential modifications as set forth below.²³ Specifically, we seek comment on how well the Phase I procedures worked and whether any modifications would allow for a smoother Certification process in Phase II. Should we alter the process established for challenging Certifications, or the means by which the Bureau provides public notice of such challenges or any deficiencies otherwise found in the Certifications?²⁴ We also seek comment on any new or different procedures that may facilitate the Phase II Certification process.

Standardized Format, Terminology, and Descriptions. Each eligible space station operator provided different levels of detail and used unique terminology in its Phase I Certification, particularly in

¹⁶ 47 CFR § 27.1422(c).

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

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

¹⁹ See *Phase I ARP Certification Procedures PN*.

²⁰ See *Phase I Incremental Reduction Plan PN*; *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 297; 47 CFR § 27.1422(d).

²¹ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 15297 (WTB 2021) (*Eutelsat Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of Embratel TVSAT Telecomunicações S.A.*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 15835 (WTB 2021) (*Embratel Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of Intelsat License LLC, debtor in possession, as amended*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 15844 (WTB 2021) (*Intelsat Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of Telesat Spectrum Corporation, as amended*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 16211 (WTB 2021) (*Telesat Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of SES Americom, Inc., as amended*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 16432 (WTB 2021) (*SES Phase I Certification Order*).

²² *3.7 GHz Report and Order*, 35 FCC Rcd at 2456-57, paras. 297-98; 47 CFR § 27.1412(b), (g).

²³ See *Phase I ARP Certification Procedures PN*.

²⁴ See *id.* at 12360, 12363; *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

reporting its incumbent earth station claims, assignments, and change logs.²⁵ As the number of incumbent earth stations involved in the Phase II transition is approximately double that of Phase I, having similar variances across the Phase II Certifications would make the review and validation process more challenging. With this in mind, we propose to require each eligible space station operator to include a specific level of detail in its Certification, particularly with regard to the transition of incumbent earth stations. We seek comment on whether we should require that information be provided in a standardized format, such as having the incumbent earth station antenna claims, assignments, and change logs provided at a feed level in Excel or some other machine-readable format.²⁶ We likewise seek comment on whether establishing a standard set of terms and descriptions for incumbent earth station antenna claims, assignments, and change logs would promote transparency and administrative efficiency by facilitating and expediting Certification review and identification of potential deficiencies. To the extent we adopt such a requirement, which format, terms, and descriptions would be most beneficial? Would the Relocation Coordinator's anticipated earth station claims and assignment list, which includes all the details contained in the Commission's Incumbent Earth Station List (IES List), as well as unique identifiers (ESIDs) jointly used by all the space station operators, and detail at an antenna feed level, provide a useful model? We seek comment on any other formatting, terminology, or standardization requirements that may promote efficiency in the Phase II Certification process and ensure that all required transition work has been completed, as well as on any corresponding burdens that may result for the eligible space station operators.

Variances from Transition Plans. In the *Phase I ARP Certification Procedures PN*, the Bureau required each eligible space station operator to explain any variances from its Transition Plan,²⁷ including situations involving transition agreements between itself and incumbent earth station operators allowing for self-installations by the incumbent earth station operators.²⁸ In addition to adopting this requirement for Phase II, we seek comment on whether we should also require the submission of specific information regarding any such agreements including, for example, the parties to the agreement, the impacted incumbent earth station antennas and feeds, the allocation of transition responsibilities, and confirmed completion dates.

We also seek comment on how to approach other variances from an eligible space station operator's Transition Plan, including situations where an incumbent earth station antenna is pending removal from the IES List.²⁹ For example, we seek comment on whether we should require a specific "justification for change" similar to that provided by Intelsat in its Phase I Certification change log, or a

²⁵ For example, Intelsat and SES used different terminology in the change logs appended to their Phase I Certifications. See generally Intelsat License LLC, debtor in possession, Phase I Certificate of Accelerated Relocation, GN Docket Nos. 18-122 and 21-320 (filed Oct. 4, 2021) (Intelsat Phase I Certification); Intelsat License LLC, debtor in possession, Amendment, GN Docket Nos. 18-122 and 21-320 (filed Oct. 15, 2021) (Intelsat Amendment); SES Americom, Inc., Certification, GN Docket Nos. 18-122 and 21-320 (filed Oct. 1, 2021) (SES Phase I Certification); SES Americom, Inc., Amendment, GN Docket Nos. 18-122 and 21-320 (filed Oct. 26, 2021) (SES Amendment).

²⁶ See *Phase I ARP Certification Procedures PN*, 36 FCC Rcd at 12361-62.

²⁷ In opening a final Phase I Transition Plan amendment window immediately prior to start of the Phase I Certification process, the Bureau indicated that "[f]urther guidance about Transition Plan amendments relative to Phase II of the C-band transition will be provided at a future date." *Wireless Telecommunications Bureau Opens Window for Eligible C-Band Satellite Operators to Account for Final Phase I Updates to Their Transition Plans*, GN Docket Nos. 18-122 and 20-173, Public Notice, 36 FCC Rcd 13306 (2021). We anticipate opening a similar window for any Phase II Transition Plan amendments in conjunction with issuance of our final Phase II Certification procedures and incremental reduction plan.

²⁸ *Phase I ARP Certification Procedures PN*, 36 FCC Rcd at 12361-62.

²⁹ 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. 20-205, GN Docket No. 20-305, Public Notice, DA 22-1282 (IB Dec. 9, 2022).

separate list of provisional claims pending removal from the IES List.³⁰ To the extent that an incumbent earth station antenna is ultimately not removed from the IES List, how can we ensure that all necessary Phase II transition work is promptly completed and accounted for by the responsible space station operator?

Finally, we note that in the *Phase I ARP Certification Procedures PN*, eligible space station operators were required to include details relating to circumstances beyond the control of the eligible space station operator that prevented incumbent earth station transition work from being completed and were thus subject to a transition delay notice.³¹ Per the *3.7 GHz Report and Order*, eligible space station operators that wish to partake in this exception must submit a notice of any incumbent earth station transition delays to WTB within seven (7) days of discovering an inability to accomplish the assigned earth station transition task.³² We anticipate strictly enforcing this notice requirement as part of the Phase II Certification process, and propose that such notice must be timely submitted before any eligible space station operator invoking this exception can file its Phase II Certification. We seek comment on this Certification-related requirement.

Threshold Trigger. The *3.7 GHz Report and Order* directs each eligible space station operator to submit a Certification of its completion of the necessary clearing actions by the applicable Accelerated Relocation Deadline.³³ To the extent that Phase II Certification procedures are issued before all five eligible space station operators complete their transition work, we seek comment on a potential threshold trigger before Phase II Certifications may be submitted for validation. Adopting a trigger mechanism could potentially allow the Bureau, Clearinghouse, and relevant stakeholders to contemporaneously review the filings and more easily identify deficiencies and concerns. We seek comment on whether to adopt such a threshold and, if so, what the appropriate trigger should be. For example, one potential trigger could be submission of a final Phase II claims and assignment list by the Relocation Coordinator, showing the claims and assignments of all incumbent earth station antennas down to the feed level.³⁴ Alternatively, the trigger could be the completion of a set percentage of incumbent earth station field visits, as reported by either the eligible space station operators or the Relocation Coordinator. We seek comment on the benefits and tradeoffs associated with use of a threshold, as well as other potential triggers we might consider. To the extent we do not adopt any threshold trigger, what impact would that have on the ability of the Bureau, Clearinghouse, and stakeholders to evaluate the completeness of the Phase II Certifications?

Remedial Condition. In the *Phase I ARP Certification Procedures PN*, the Bureau stated that “[i]f, 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

³⁰ See generally Letter from Michelle V. Bryan, General Counsel, Intelsat License LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (filed Sept. 30, 2022); Letter from Michelle V. Bryan, General Counsel, Intelsat License LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (filed Dec. 22, 2022) (using color codes to depict changes to previous reporting).

³¹ *Phase I ARP Certification Procedures PN*, 36 FCC Rcd at 12361-62. The *3.7 GHz Report and Order* stated “[o]nly 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.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294.

³² *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294 (“Such a request must include supporting documentation to allow for resolution as soon as practicable and must be submitted before the Accelerated Relocation Deadlines.”).

³³ *Id.* at 2456, para. 298.

³⁴ 47 CFR § 27.1413(d); see e.g., Letter from Andrew C. Ely, Relocation Coordinator, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173, Exh. E (filed Oct. 15, 2021) (showing a complete claims and assignment list for Phase I).

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.”³⁵ To this end, each of the Phase I Certification validation orders imposed an ongoing condition to remediate,³⁶ a requirement which we likewise anticipate will be imposed in any Phase II Certification validation orders the Bureau may issue. In recognition that the Phase II Accelerated Relocation Deadline marks the end of the C-band transition process, we seek comment on whether to impose related timing or documentation requirements to ensure any such remedial work is promptly completed and accounted for by the responsible eligible space station operator.

Phase II Incremental Reduction Plan. 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.”³⁷ In its *Phase I Incremental Reduction Plan PN*, the Bureau adopted its 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.³⁸ For Phase II, we propose adopting the same approach for failure to meet the Phase II Accelerated Relocation Deadline and seek comment on this proposal.

Paperwork Reduction Act. This *Public Notice* does not adopt or propose new or substantively modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4). The non-substantive information collection changes for voluntary CEFS filing have been approved. The Commission will seek approval for mandatory filing of SSI plans or any other alternative requiring a non-substantive information collection change, if adopted.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA),³⁹ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.⁴⁰ If an agency files a certification with a rulemaking, the certification must

³⁵ *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294 (“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.

³⁶ *Eutelsat Phase I Certification Order*, 36 FCC Rcd at 15301-302; *Embratel Phase I Certification Order*, 36 FCC Rcd at 15838-39; *Intelsat Phase I Certification Order*, 36 FCC Rcd at 15849; *Telesat Phase I Certification Order*, 36 FCC Rcd at 16215; *SES Phase I Certification Order*, 36 FCC Rcd at 16436-37.

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

³⁸ *Phase I Incremental Reduction Plan PN*; *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, 36 FCC Rcd 12366 (WTB 2021).

³⁹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁰ *Id.* § 605(b).

contain a statement that provides a factual basis for its conclusion that there will not be significant economic impact on a substantial number of small entities.⁴¹ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Certification (IRFC) certifying that any rules subject to the Regulatory Flexibility Act that may be contained in this *Public Notice* will not have a significant economic impact on a substantial number of small entities. The IRFC is set forth in Appendix A.

Filing Requirements. All comments must reference GN Docket No. 23-97. 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 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)).

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴² 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

⁴¹ *Id.*

⁴² See 47 CFR § 1.1200 *et seq.*

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).⁴³ 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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⁴³ *Id.* § 1.1206(b).

APPENDIX A

Initial Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concerns” under the Small Business Act.⁴ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵

2. The two statutorily-mandated criteria to be applied in determining the need for an RFA analysis are (1) whether the proposed rules, if adopted, would have a *significant economic effect*, and (2) if so, whether the economic effect would directly affect a *substantial number of small entities*.⁶ For the reasons discussed below, we have determined that any rules subject to the Regulatory Flexibility Act that may be contained in this *C-Band Phase II Certification of Accelerated Relocation Procedures and Implementation of the Commission’s Incremental Reduction Plan for Phase II Accelerated Relocation Public Notice (Phase II ARP Certification and Incremental Reduction Plan Public Notice)* will not have a significant economic impact on a substantial number of small entities. Accordingly, the Wireless Telecommunications Bureau (Bureau) has prepared this Initial Regulatory Flexibility Certification (IRFC).

3. In 2020, 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). Incumbent space station operators were 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, as described in 47 CFR § 27.1412. Incumbent space station operators were required to file a Transition Plan, as described in 47 CFR § 27.1412(d) and a Certification of accelerated relocation for each phase, as described in 47 CFR § 27.1412(g). The Bureau was to prescribe the form of such Certifications and any challenges by relevant stakeholders and establish a process for how such challenges will impact incremental decreases in the accelerated relocation payment.⁷ On August 4, 2021, WTB issued a Public Notice implementing filing procedures for Phase I

¹ See 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Id.* § 605(b).

³ *Id.* § 601(6).

⁴ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵ 15 U.S.C. § 632.

⁶ 5 U.S.C. § 603, *et seq.* See also *Mid-Tex Electric Cooperative, Inc., v. FERC*, 773 F.2d 327, 342-343 (D.C. Cir. 1985) (*Mid-Tex Electric*).

⁷ 47 CFR § 27.1412(g).

Certifications and related challenges,⁸ and adopted the incremental reduction plan for Phase I ARPs on September 29, 2021.⁹ This information collection has been approved by the Office of Management and Budget, control number 3060-0678.¹⁰

4. In the *Phase II ARP Certification and Incremental Reduction Plan Public Notice*, we propose adopting filing procedures modeled after those previously adopted for Phase I to allow eligible space station operators to submit Certifications, and stakeholders to file related challenges, with respect to the Phase II migration of incumbent services in this band. We propose to modify those procedures by requiring information be provided in a standardized format, and seek comment on how eligible space station operators should describe variances from their transition plans. In addition, we propose a potential threshold trigger before Phase II Certifications may be submitted for validation. The Bureau believes that these proposals will create more transparency and efficiency in the Phase II Certification review process. We also propose adopting an approach that parallels the Phase I process for calculating the incremental reduction of an eligible space station operator's ARP should it fail to meet the Phase II Accelerated Relocation Deadline. We believe these proposals will provide eligible space station operators certainty and streamline the process for filing Certifications. Currently, the five eligible space station operators that have filed Phase I Certifications which have been validated by the Bureau are not small entities.¹¹

5. The entities subject to the proposals are wireless telecommunications carriers and satellite telecommunications service providers that must provide Certifications through the process we propose in the *Phase II ARP Certification and Incremental Reduction Plan Public Notice* and are specific to those entities and their transition obligations. The proposed processes does not impose increased reporting burdens on telecommunications carriers or satellite telecommunications service providers, nor do we expect the proposed processes to result in increased costs for such businesses. Moreover, the proposals largely parallel the processes that the eligible space station operators complied with in Phase I and do not create any new burdens on the entities.

6. Accordingly, based on our application of the two statutorily-mandated criteria, we concluded that any rules subject to the Regulatory Flexibility Act that may be contained in the *Phase II ARP Certification and Incremental Reduction Plan Public Notice* will not have a significant economic impact on a substantial number of small entities. We therefore certify that the *Phase II ARP Certification*

⁸ See *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 Nos. 18-122 and 21-320, Public Notice, 36 FCC 12359 (WTB 2021) (*Phase I ARP Certification Procedures PN*).

⁹ See *Wireless Telecommunications Bureau Announces Implementation of the Commission's Incremental Reduction Plan for Phase I Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 21-320, Public Notice, 36 FCC Rcd 14012 (WTB 2021) (*Phase I Incremental Reduction Plan PN*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2456, para. 297 (2020) (*3.7 GHz Report and Order*).

¹⁰ See OMB Approvals for Non-Substantive Changes to Currently Approved Information Collections (OMB Control No. 3060-0678), July 16, 2021.

¹¹ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 15297 (WTB 2021) (*Eutelsat Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of Embratel TVSAT Telecomunicações S.A.*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 15835 (WTB 2021) (*Embratel Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of Intelsat License LLC, debtor in possession, as amended*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 15844 (WTB 2021) (*Intelsat Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of Telesat Spectrum Corporation, as amended*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 16211 (WTB 2021) (*Telesat Phase I Certification Order*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation of SES Americom, Inc., as amended*, GN Docket Nos. 18-122 and 21-320, Order, 36 FCC Rcd 16432 (WTB 2021) (*SES Phase I Certification Order*).

and Incremental Reduction Plan Public Notice will not have a significant economic impact on a substantial number of small entities.

7. The *Phase II ARP Certification and Incremental Reduction Plan Public Notice* and this Initial Regulatory Flexibility Certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.¹²

¹² 5 U.S.C. § 605(b).