



PUBLIC NOTICE

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DA 23-408

Released: May 15, 2023

WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES PROCEDURES FOR FILING OF C-BAND PHASE II CERTIFICATIONS OF ACCELERATED RELOCATION 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

I. INTRODUCTION

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) announces its procedures related to the filing of Phase II Certifications of Accelerated Relocation (Certifications) and 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 On March 13, 2023, as directed by the Commission in the *3.7 GHz Report and Order*, WTB issued a Public Notice which proposed adopting filing procedures largely 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 WTB also proposed 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 The Bureau received one comment⁴ and three *ex parte* submissions.⁵ After reviewing the record, we adopt certain of

¹ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2456-57, paras. 297-300 (2020) (*3.7 GHz Report and Order*).

² *Id.* at 2457, para. 298; 47 CFR § 27.1412(g); *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 Nos. 18-122 and 23-97, Public Notice, DA 23-204, 3-6 (WTB 2023) (*Phase II Certification Procedures and Incremental Reduction Comment PN*); *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); *Phase II Certification Procedures and Incremental Reduction Comment PN* at 6; *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 Embratel TVSAT Telecomunicações S.A. Comments (filed Apr. 7, 2023) (Embratel Comments).

⁵ Letter from Brian D. Weimer, counsel to SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 23-97 (filed Apr. 5, 2023) (*SIT April 5 Ex Parte*) (SES Americom, Inc., Intelsat, and Telesat, jointly participated in this *ex parte* presentation); Letter from Richard Cameron, Counsel for Eutelsat Americas, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 23-97 (filed Apr. 12, 2023) (*Eutelsat April 12 Ex Parte*); Letter from Brian D. Weimer, Counsel to SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, GN

(continued...)

the proposals outlined in the *Phase II Certification Procedures and Incremental Reduction Comment PN*, with the modifications described below.

II. 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 into the upper 200 megahertz of the C-band (*i.e.*, 4.0-4.2 GHz).⁶ 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 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.⁹ 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.”¹⁰ The ARPs are to 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

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

Docket Nos. 18-122 and 23-97 (filed Apr. 17, 2023) (*SSO April 17 Ex Parte*) (SES, Intelsat, Telesat, Eutelsat, and Embratel, jointly participated in this *ex parte* presentation).

⁶ *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).

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).

to the validity of the certification no later than 60 days from its filing.”¹⁴ Absent notice from WTB of deficiencies in a 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 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.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, WTB issued a Public Notice implementing filing procedures for Phase I Certifications and related challenges,²⁰ and adopted the incremental reduction plan for Phase I ARPs on September 29, 2021.²¹ 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.²²

III. RECORD AND DISCUSSION

In the *Phase II Certification Procedures and Incremental Reduction Comment PN*, we solicited comment on using the Phase I Certification procedures and incremental reduction plan as the baseline for Phase II, subject to certain proposed modifications. The record reflects support for using the Phase I Certification procedures as a starting point for Phase II, and three of the five eligible space station operators, SES Americom, Intelsat, and Telesat, jointly proposed to the Commission a standardized model for submission of the Phase II Certifications, which is intended to facilitate their review by the Bureau, along with other responsive points.²³ Embratel and Eutelsat, the two remaining eligible space

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

¹⁵ 47 CFR § 27.1412(g)(2).

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

¹⁷ 47 CFR § 27.1422(c).

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*.

²¹ *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).

²² *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*).

²³ *SIT April 5 Ex Parte; SSO April 17 Ex Parte*.

station operators, later confirmed their general agreement with the Bureau's proposal,²⁴ subject to minor differences discussed below. With respect to the incremental reduction plan, no commenters disagreed with replicating the Phase I process approach for Phase II, and all the eligible space station operators specifically noted their agreement with our proposal in this regard.²⁵

Sections IV and V *infra* delineate the specific Certification of Accelerated Relocation procedures and incremental reduction plan that we are adopting for the Phase II transition. Below we more generally address the record received in response to each topic raised in the *Phase II Certification Procedures and Incremental Reduction Comment PN* with respect to potential modifications to the Phase I procedures for Phase II.

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.²⁶ In the *Phase II Certification Procedures and Incremental Reduction Comment PN*, we sought comment on whether to adopt a trigger mechanism that would potentially allow the Bureau, Clearinghouse, and relevant stakeholders to contemporaneously review the Phase II Certifications and more easily identify deficiencies and concerns.²⁷ We also sought comment on what impact not adopting any threshold trigger would have on the ability of the Bureau, Clearinghouse, and stakeholders to evaluate the completeness of the Phase II Certifications.²⁸ The eligible space station operators were supportive of a trigger mechanism for the filing of Phase II certifications,²⁹ with a view towards establishing June 1, 2023 as the key date in initiating the required next steps towards completing the Phase II Certification process.³⁰ Specifically, the eligible space station operators jointly proposed that the following should occur no later than June 1, 2023: (1) WTB would open a filing window for the eligible space station operators to submit their Phase II Certifications;³¹ (2) WTB would open a window for the eligible space station operators to update their Phase II Transition Plans, if necessary;³² and (3) the Relocation Coordinator would file with the Commission a final and complete list of incumbent earth station antenna claims and assignments down to a feed level.³³

²⁴ Embratel Comments; *Eutelsat April 12 Ex Parte*.

²⁵ *SSO April 17 Ex Parte* at 2.

²⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 298.

²⁷ See *Phase II Certification Procedures and Incremental Reduction Comment PN* at 5.

²⁸ *Id.*

²⁹ *SIT April 5 Ex Parte* at Attachment A at 3 (expressing support for two triggering events to the filing of Phase II Certifications: (1) the filing by the Relocation Coordinator of a final and complete list of incumbent earth station claims, including the SSO responsible for each earth station and each feed of each earth station; and (2) the submission of updated Transition Plans); *SSO April 17 Ex Parte*. Eutelsat also agreed that a "final list prepared and filed by the Relocation Coordinator to reflect the satellite operators' consensus on all incumbent earth station claims would help ensure comprehensive earth station coverage during Phase II." *Eutelsat April 12 Ex Parte* at 2.

³⁰ *SSO April 17 Ex Parte* at 1-2; see also Embratel Comments at 1 (supporting the proposal that eligible space station operators may certify completion of their Phase II transition work beginning no later than June 1, 2023). In an *ex parte* filing, Eutelsat argued that the Relocation Coordinator should be directed to file its final list upon resolution of the "small number of incumbent earth station claims issues that remain unresolved," rather than waiting until June 1. *Eutelsat April 12 Ex Parte*. However, we find that establishing a uniform June 1st date initiating the Certification filing window and related processes will promote efficiency and will potentially allow the Bureau, Clearinghouse, and relevant stakeholders to contemporaneously review all necessary information to evaluate the Certifications.

³¹ *SSO April 17 Ex Parte* at 1-2.

³² *Id.*

³³ *Id.*

We agree that adopting a coordinated approach will aid in a timely and fulsome review of the Phase II Certifications and related information by the Bureau, Clearinghouse, and interested parties to ensure that all necessary Phase II transition work has been duly completed. Such an approach will ensure that stakeholders have access to accurate, final submissions from each satellite operator during the short review period provided by the *Report and Order*. As proposed in the *SSO April 17 Ex Parte*, we find it in the public interest to set a unified June 1, 2023 start date for various Phase II transition actions, in lieu of identifying a specific triggering event. Establishing a set date will better satisfy the goals of providing clarity and uniformity for stakeholders regarding the Phase II certification timeline. Accordingly, we will open a window commencing June 1, 2023 for the filing of Phase II Certifications by the eligible space station operators and, through a separate Bureau action also released today, open a limited and final window for the submission of Transition Plan amendments also starting June 1, 2023.³⁴

To facilitate stakeholder review of satellite operator Certifications and Transition Plans, we further direct the Relocation Coordinator to file, by June 1, 2023,³⁵ a final list of all incumbent earth stations included on the *March 2023 Incumbent Earth Station List Public Notice*³⁶ and all antennas and feeds associated with each incumbent earth station, including the eligible space station operator responsible for transitioning each antenna and feed (whether by claim or assignment), utilizing the format the incumbent satellite operators proposed in the *SSO April 17 Ex Parte*.³⁷ The Relocation Coordinator should, prior to filing this final list with the Commission, coordinate with Space Bureau staff as to the implementation of this format. The final list should be filed through ECFS in GN Docket Nos. 18-122 and 23-97. Once the Relocation Coordinator final list is publicly filed with the Commission, we will deem all Incumbent Earth Station antenna and feed claims or assignments to be frozen for the remainder of the Phase II transition.³⁸

In order to establish a common baseline for comparison, we clarify that the *March 2023 Incumbent Earth Station List Public Notice* also should be used by the eligible space station operators in the preparation of their Phase II Certifications and Transition Plan amendments, subject to guidance below on the treatment of antennas pending removal from such list. Our expectation is that each

³⁴ *Wireless Telecommunications Bureau Opens Window For Eligible C-Band Satellite Operators To Account For Final Updates to Their Transition Plans*, GN Docket Nos. 18-122 and 20-173, Public Notice, DA 23-409 (WTB 2023) (Final Transition Plan Amendment PN).

³⁵ These procedures will be effective upon publication in the Federal Register. We recognize that the effective date of any rules that may be contained in this *Phase II ARP Certification Procedures and Incremental Reduction Plan Public Notice* will therefore be less than 30 days following its publication in the Federal Register, as generally required. See 5 U.S.C. § 553(d). However, we believe the nature of this proceeding, which has been consistently focused on expediting clearing of the C-band, and in particular the fact that these procedures will apply only to a limited number of entities which have been closely involved in the planning of these procedures and have themselves proposed an abbreviated deadline, constitutes “good cause” for a shorter time period. See *id.* § 553(d)(3).

³⁶ See *International Bureau Releases 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 23-176 (IB Mar. 3, 2023) (*March 2023 Incumbent Earth Station List Public Notice*). We note that although this list may be subject to further updates, for example as a result of the most recent pending inactive earth station public notice, it will represent the most up-to-date list available when the Phase II Certification window opens. See *International Bureau Identifies Earth Station Antennas on C-Band Incumbent List that may be Inactive or Otherwise Not Operational on the 3.7 GHz Band*, IB Docket No. 20-205, Public Notice, DA 23-237 (IB Mar. 21, 2023) (*March 21 Inactive IES Public Notice*).

³⁷ *SSO April 17 Ex Parte*, Attach. B.

³⁸ *SIT April 5 Ex Parte*, Attach. A at 2 (“Accordingly, after June 1, 2023, changes to a SSO’s IES claims or assignments should only occur in the event of administrative errors.”). This freeze on claims and assignments applies only to the Certification and Transition Plan amendment process for Phase II. The status of incumbent earth stations listed on the *March 21 Inactive IES Public Notice* will be determined through that ongoing process.

incumbent earth station antenna and each feed on a shared multi-feed antenna relating to Phase II of the C-band transition from the *March 2023 Incumbent Earth Station List Public Notice* will be claimed by, or assigned to, one or more eligible space station operators on both the final list provided by the Relocation Coordinator, as well as across the individual Phase II Certifications and final Transition Plans of the eligible space station operators.

Standardized Format, Terminology, and Descriptions. In the *Phase II Certification Procedures and Incremental Reduction Comment PN*, we sought comment on requiring the eligible space station operators to utilize standardized forms, terminology, and descriptions in their Phase II Certifications – particularly with respect to transition work relating to incumbent earth station antennas and feeds – to promote transparency and administrative efficiency.³⁹ The joint proposal advanced by the eligible space station operators provides for standardization across their Phase II Certifications by specifying that they will all mirror the format and terminology used by the Relocation Coordinator in the Excel spreadsheet reflecting its final incumbent earth station claims and assignments list.⁴⁰

We find that this proposal furthers the goals of transparency and administrative efficiency we identified in the *Phase II Certification Procedures and Incremental Reduction Comment PN*. We therefore adopt the requirement that, in the filing of Phase II Certifications to demonstrate the completion of their transition responsibilities, the eligible space station operators must utilize the format and terminology provided in the attachment to the *SSO April 17 Ex Parte* to report their transition work relating to incumbent earth station antennas and feeds in an Excel spreadsheet.⁴¹ Where certain fields may not be relevant to a given eligible space station operator, it may indicate that such field is not applicable.⁴²

Variances from Transition Plans. In the *Phase II Certification Procedures and Incremental Reduction Comment PN*, we proposed to retain our requirement applicable to the Phase I Certifications that an eligible space station operator provide an explanation of any variance from its Transition Plan, including situations involving transition agreements between itself and incumbent earth station operators allowing for self-installations.⁴³ We also sought comment on whether we should require the inclusion of additional information in a Certification change log for any deviations from an eligible space station operator's previous Transition Plan, how to treat incumbent earth station antennas pending removal from the Incumbent Earth Station list, and strict application of the seven day notice requirement of any transition delays as part of the Phase II Certification process.⁴⁴

In the *SIT April 5 Ex Parte*, SES, Intelsat, and Telesat argued that the Commission does not need detailed information about self-installations because the eligible space station operator responsible for that incumbent earth station antenna remains responsible to remedy any issues that might occur in the transition of such an earth station.⁴⁵ The eligible space station operators separately noted their willingness to provisionally claim all antennas that remain pending removal from the Incumbent Earth Station list as

³⁹ See *Phase II Certification Procedures and Incremental Reduction Comment PN* at 4.

⁴⁰ *SSO April 17 Ex Parte* at 2-3, Attach B.; *Eutelsat April 12 Ex Parte* at 1.

⁴¹ Use of this standard form is not intended to obviate the requirements discussed below for an eligible space station operator to include additional required information relating to its incumbent earth station transition work, including completion dates and the identification of self-installations by incumbent earth station operators.

⁴² See, e.g., Embratel Comments at 3-4. Embratel initially argued it should be exempt from any standardization requirements since it has already exited the C-band market and, therefore, such a requirement would not “serve a benefit and would complicate review of Embratel’s certification.” Embratel later indicated that it could put “N/A” on all fields of the form that are not applicable. See *id.*; see also *SSO April 17 Ex Parte* at 2, n.6.

⁴³ See *Phase II Certification Procedures and Incremental Reduction Comment PN* at 4.

⁴⁴ See *id.* at 4-5.

⁴⁵ *SIT April 5 Ex Parte*, Attach. A at 1-2.

of June 1, 2023, to ensure that any such stations will be remediated if it is later determined to be necessary.⁴⁶ Finally, they argued that the form they propose for the spreadsheets to be included in their Certifications would provide sufficient information regarding any variances from their transition plans for stakeholders to review their submissions.⁴⁷ No comment was received on application of the seven day transition delay notice requirement.

While we agree that, given the ongoing responsibility of incumbent space station operators to transition all earth stations that they have claimed or been assigned, detailed documentation or information about self-installations of filters and other equipment by incumbent earth station operators is not necessary for purposes of the Phase II Certification process, we nonetheless will require eligible space station operators to identify which incumbent earth station antennas and feeds were subject to such self-installations by including a “self-installation” note in the Excel spreadsheet accompanying the relevant eligible space station operator’s Certification. In contrast, we will require that any other type of formal written transition agreement should be identified as a variance from the eligible space station operator’s Transition Plan, as per the *Phase I ARP Certification Procedures PN*. We agree that submission of a separate change log of variances from an eligible space station operator’s Transition Plan is not necessary at this final stage, given that the Incumbent Earth Station antenna and feed claims or assignments for all eligible space station antennas will be frozen once the Relocation Coordinator files its final list of claims and assignments with the Commission. As to any incumbent earth stations pending removal from the *March 2023 Incumbent Earth Station List Public Notice* that remain on an incumbent satellite operator’s Transition Plan,⁴⁸ we agree with the proposal for the relevant eligible space station operator(s) to identify such incumbent earth station antenna and feeds as provisional claims on its Phase II Certification, and we will require that in the event that any such incumbent earth station is ultimately not removed from the Space Bureau’s next iteration of the Incumbent Earth Station list,⁴⁹ remediation work will be promptly performed by the relevant eligible space station operator. Finally, in the absence of comments to the contrary, we adopt our proposal to strictly enforce application of the seven-day notice requirement of any transition delays as part of the Phase II Certification process.

Remedial Condition. In the *Phase II Certification Procedures and Incremental Reduction Comment PN*, we proposed to include in all Phase II Certification validation orders a requirement that the relevant eligible space station operator remains responsible for the remediation of any issues that arise, even after the validation of its Phase II Certification.⁵⁰ We also sought comment on whether to impose any additional documentation or timing requirements to ensure any required work is completed promptly, given that the Phase II Accelerated Relocation Deadline marks the end of the C-band transition.⁵¹ The eligible space station operators agreed that they will remain responsible for any remedial transition work and indicated that they will take “commercially reasonable efforts to promptly complete the work” necessary to resolve any issues and argued that no additional documentation or timing requirement is

⁴⁶ *SIT April 5 Ex Parte*, Attach. A at 1-2.

⁴⁷ *Id.*, Attach. A at 2.

⁴⁸ See *March 21 Inactive IES Public Notice*.

⁴⁹ We reiterate that for purposes of the Phase II Certification process, the relevant version of the Incumbent Earth Station list is the *March 2023 Incumbent Earth Station List Public Notice*. Any future Incumbent Earth Station list issued by the Space Bureau will not affect the transition obligations of the eligible space station operators, except in so far as an incumbent earth station was pending removal from the *March 2023 Incumbent Earth Station List Public Notice* and a provisional claim of that earth station was made by one or more eligible space station operators on their Phase II Certifications.

⁵⁰ See *Phase II Certification Procedures and Incremental Reduction Comment PN* at 5.

⁵¹ See *id.* at 5-6.

necessary.⁵²

We believe the inclusion in all Phase II Certification validation orders of an ongoing requirement to remediate will ensure that any remedial work is promptly completed and accounted for by the responsible eligible space station operator. We therefore find it unnecessary to impose any additional documentation or timing requirements in this regard as part of the Phase II transition.

IV. PHASE II CERTIFICATION PROCEDURES

Based upon the record discussed above, the Bureau hereby establishes the following filing procedures and challenge process for the Phase II Certification of Accelerated Relocation process.

Filing Window. All eligible space station operators may submit their Phase II Certifications commencing June 1, 2023, provided they have first submitted any final Transition Plan amendments, if necessary.⁵³

Filing Procedures. To claim an ARP, eligible space station operators must submit Certifications to the Clearinghouse via any of the communication methods established between those parties. In addition, these eligible space station operators must file their Certifications with WTB, which may be done electronically with a submission to the FCC's Electronic Comment Filing System (ECFS). All Certifications must be filed in and reference **GN Docket No. 18-122 and GN Docket No. 23-97**. Any related challenges from stakeholders must be filed in and reference **GN Docket No. 23-97**. If a stakeholder seeks to challenge multiple eligible space station operator Certifications, each challenge must be filed separately with respect to each Certification in **GN Docket No. 23-97**.

Certification Form. To satisfy the Phase II deadline, the Certification must include an Excel spreadsheet detailing any transition work with respect to incumbent earth station antenna and feeds, utilizing the standardized form and terminology provided by the eligible space station operators as Attachment B to their *SSO April 17 Ex Parte*. That spreadsheet must demonstrate that the eligible space station operator has completed all work required to fully transition all claimed or assigned incumbent earth station antennas and feeds, as reflected in the final list of incumbent earth station claims and assignments filed with the Commission by the Relocation Coordinator no later than June 1, 2023.

Certification Content. The Certification must detail each action that was taken by the eligible space station operator, including the date of completion, matching that operator's Transition Plan as updated. This description should include (but is not limited to):

- The operations that were repacked to satisfy the Phase II deadline;
- The number of new satellites, if any, that the eligible space station operator launched, including the dates of launch, reaching final orbit, and start of operations;
- A description of how services were migrated to the upper portion of the band, including the pre- and post-transition frequencies that each customer occupied and now occupies;
- Any necessary technology upgrades or other solutions, such as video compression or modulation, that the eligible space station operator implemented, described on a per antenna and/or feed basis, as appropriate;
- The number and location of antennas and feeds that were transitioned to satisfy the Phase II deadline in the same format as the Relocation Coordinator's final list of Phase II incumbent earth station claims and assignments. This information should be provided in the format specified above and also include the actions taken (*e.g.*, retuning and repointing, self-installations by the incumbent earth station operator) for each;

⁵² *SIT April 5 Ex Parte*, Attach. A at 4; Embratel Comments at 3 (stating that the condition to remediate worked well during Phase I).

⁵³ See Final Transition Plan Amendment PN.

- The date of completion of the above items (with the exception of self-installations by incumbent earth station operators);⁵⁴
- A description of the steps that the eligible space station operator has taken to identify all associated earth stations, antennas, and feeds, and to ensure that they are all are transitioned as of the date of Certification, including where the incumbent earth station operator has elected to perform a self-installation;
- Any variances from the eligible space station operator's Transition Plan, such as antennas and feeds involving circumstances beyond the control of the eligible space station operator and therefore subject to a transition delay notice,⁵⁵ and antennas and feeds that are otherwise pending removal from the *March 2023 Incumbent Earth Station List Public Notice* list which must be identified as provisional claims,⁵⁶ or antennas and feeds subject to a written agreement regarding the transition between the eligible space station operator and the incumbent earth station operator, other than self-installations by incumbent earth station operators.⁵⁷

The eligible space station operator must certify that it attests to the truthfulness of the above information and is making the Certification in good faith.⁵⁸ Eligible space stations operators are reminded that Certifications are subject to section 1.17 of the Commission's rules and violators will be subject to potential enforcement action, including monetary penalties or actions affecting the eligible space station operator's market access authorization or status as a licensee.⁵⁹ The Bureau will determine that a

⁵⁴ For example, completion dates for incumbent earth station transition work other than self-installations should be reported by including a note in the Excel spreadsheet accompanying the relevant eligible space station operator's Certification.

⁵⁵ 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. However, to partake of this exception, we require that any eligible space station operator submit a notice of any incumbent earth station transition delays to the Wireless Telecommunications Bureau within seven days of discovering an inability to accomplish the assigned earth station transition task. Such a request must include supporting documentation to allow for resolution as soon as practicable and must be submitted before the Accelerated Relocation Deadlines." *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294. The filing of such notice in circumstances that the eligible space station operator believes are likely to jeopardize its ability to meet the Phase II deadline does not, in and of itself, remove an earth station, antenna, or feed from said operator's Transition Plan. Further, the eligible space station operator remains responsible for transitioning the earth station, antenna, or feed at issue until the Certification process is complete. Any such notices and supporting information should be publicly filed in GN Docket No. 23-97 and be simultaneously provided to the affected earth station operator. The Bureau will take such notices, and the weight, if any, they should be accorded, into account when determining whether the eligible space station operator has met its transition obligations for ARP purposes.

⁵⁶ See *March 2023 IES List*; see also *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).

⁵⁷ Such written agreements may, for example, reflect that the earth station operator, whose station is associated with the eligible space station operator and included on its Transition Plan, has relieved said eligible space station operator of any obligation to effectuate the transition (in whole or in part, as per the agreement) of the subject earth station.

⁵⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298.

⁵⁹ *Id.* No entity may "in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." 47 CFR § 1.17(a)(2). This rule provides that "[i]n 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)

(continued....)

Certification has been made in bad faith if, for example, the certifying party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted.⁶⁰ In cases where it is found that the ARP was disbursed based on a Certification that the eligible space station operator had filed in bad faith, the operator may be subject to the additional consequence of having to return some or all of the ARP, depending on the circumstances.⁶¹

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

Requirement to remediate. If, after the resolution of any credible challenges and the disbursement of the ARP, it is subsequently found, by the Relocation Coordinator, Clearinghouse, or WTB, that the eligible space station operator should have transitioned additional earth stations, antennas, or feeds that it did not account for in its Transition Plan and Certification(s), the eligible space station operator will be required to remediate such earth stations, antennas, or feeds in a prompt and effective manner.⁶²

Challenges. Challenges to a Certification must be filed in **GN Docket No. 23-97** within ten (10) days after the Certification is published in ECFS and the eligible space station operators' replies must be filed in that docket within five (5) days.⁶³ Pursuant to the *3.7 GHz Report and Order*, WTB will announce by Public Notice whether credible challenges have been made within 30 days of the Certification's filing.⁶⁴ After reviewing a Certification and any relevant challenges, WTB will issue one of two Public Notices. If there are no credible challenges, WTB will issue a Public Notice that lists the submitted challenges (if any), states that none constitutes a "credible challenge" to the validity of the Certification, and provides a brief explanation for the finding that said challenges are non-credible. If there is at least one credible challenge, WTB will issue a Public Notice announcing that one or more credible challenges have been made and instructing the Clearinghouse not to issue the ARP until WTB has made a final determination as to the validity of the challenge. WTB will issue a final determination

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).

⁶⁰ *In Re Amend. of Section 1.17 of Commission's Rules Concerning Truthful Statements to Comm'n*, Report and Order, 18 FCC Rcd 4016, 4021 at para. 12 (2003).

⁶¹ See 47 CFR § 27.1412(a).

⁶² *Id.* ("Eligible space station operators are responsible for all necessary actions...to migrate the existing services of incumbent earth stations in CONUS to the 4000-4200 MHz band (unless the incumbent earth station opts out of the formal relocation process, per paragraph (e) of this section), as of December 5, 2025. Eligible space station operators that fail to do so will be in violation of the conditions of their license authorization and potentially subject to forfeitures and other sanctions"). The obligation to remediate is independent from, and without prejudice to, any determination that the Certification (or any subsequent remediation effort) was made in bad faith. This may include any previously unidentified incumbent earth stations subsequently added to future versions of the Incumbent Earth Station list by the Space Bureau.

⁶³ 47 CFR § 1.45(b)-(c). This requirement applies to all challenges filed by stakeholders as well as the Clearinghouse.

⁶⁴ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299.

on any challenges no later than sixty (60) days after the eligible space station operator files its Certification.⁶⁵ If WTB ultimately finds the Certification was valid, disbursement of the Phase II ARP to the eligible space station operator will proceed as outlined above and in the *3.7 GHz Report and Order*.⁶⁶

V. PHASE II ARP INCREMENTAL REDUCTION PLAN

The Bureau hereby adopts for Phase II the same procedures relating to specific timing scenarios involving credible challenges filed by relevant stakeholders in connection with the ARP certification process as we did in Phase I.⁶⁷ In doing so we note the *3.7 GHz Report & Order* directive that “[f]ollowing validation, the Clearinghouse shall *promptly* notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice.”⁶⁸

Certification and Incremental Reduction Scenarios. At its outset, the *Phase I Incremental Reduction Plan PN* recognized the two most straightforward Certification and incremental reduction scenarios, and we adopt those scenarios for Phase II. 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 II deadline and is ultimately validated.⁶⁹ Second, any Certifications filed for the first time after the Phase II deadline and later validated without amendment or refiling 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 “Date of Completion” for determining the applicable percentage by which the ARP will be reduced.⁷⁰ In both situations, the challenge process laid out in in this Public Notice would remain unaffected.⁷¹

Amending or Refiling a Certification by the Phase II 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.”⁷² In furtherance of this goal, we concluded in the *Phase I Incremental Reduction Plan PN*, and affirm here for the Phase II process, that eligible space station operators may amend or refile an incomplete or invalid Certification without any incremental reduction in the ARP if, before the Phase II deadline,⁷³ 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,⁷⁴ in response to a challenge, or in response to the

⁶⁵ *Id.*; 47 CFR § 27.1412(g)(2).

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

⁶⁷ *Phase II Certification Procedures and Incremental Reduction Comment PN* at 6; see also *Phase I Incremental Reduction Plan PN*.

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

⁶⁹ See *Phase I Incremental Reduction Plan PN* at 4-5. This includes situations where: (1) the Bureau’s determination of validity falls after the Phase II deadline, so long as the Certification was filed before such deadline; and (2) a Certification filed before the Phase II deadline is credibly challenged and the Bureau nonetheless finds that such Certification—without amendment or refiling—is valid.

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

⁷¹ See *supra* Section IV (Challenges).

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

⁷³ *Id.*; 47 CFR § 27.1422(d); *Phase I Incremental Reduction Plan PN* at 5-7.

⁷⁴ The *3.7 GHz Report and Order* directed WTB to decide if a challenge is credible, to issue a public notice identifying such challenges, and issue a final decision on the validity of the Certification. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2). It remains within the discretion of an eligible space station operator as to whether it wishes to amend or refile its Certification in response to a challenge. To the

(continued....)

Bureau's determination that the original Certification was invalid.⁷⁵ If WTB ultimately determines (before or after the Phase II deadline) that all the underlying problems have been resolved, the certifying space station operator will, in fact, have come into compliance with all the requirements for claiming the ARP by the Phase II deadline, provided the operator had resolved those problems before said deadline and such resolutions were reflected by the filing—also before this deadline—of an amendment or refiled Certification.

We also affirm for Phase II the approach related to challenges as outlined in the *Phase I Incremental Reduction Plan PN*.⁷⁶ New challenges to an amended or refiled Certification will be permitted but must 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).⁷⁷ We reiterate our earlier conclusion that if the Bureau has not already ruled on the original Certification, we may 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 also reiterate that where an eligible space station operator either amends or refiles its Certification, the filing date of the amendment or refiled Certification will open a new 30-day window for the identification of any deficiencies by the Bureau in the entire Certification, as amended or refiled. Further, it also triggers a new 60-day window for a final Bureau determination on the validity of the entire Certification, as amended or refiled, where the Bureau identifies any deficiencies in the entire Certification within the new 30-day window.⁷⁸ In other words, the amending or refiled of a Certification restarts the clock for Bureau review of that Certification. This clarification conforms with the *3.7 GHz Report and Order's* directive to the Bureau to “render a final decision as to the validity of the certification no later than 60 days from its filing,” because an amendment or refiled will necessarily alter or replace the underlying Certification and otherwise make it impossible to ascertain whether the eligible space station operator had fulfilled its transition responsibilities absent a full review. Indeed, we would risk frustrating the Commission's objective of making an accurate determination on a Certification if we were to conclude that corrections to a Certification or remedial actions made during the 60-day review period would not affect the date by which a final determination must be made. For instance, if an eligible space station operator were to substantially or entirely replace its Certification fifty-nine (59) days after its original filing and the Bureau took the position that this action had no effect on the timing of a final

extent the eligible space station operator opts to address a challenge in reply comments without submitting an amendment or refiled, it remains free to do so but assumes the risk that the Bureau may ultimately conclude that its Certification was invalid when filed. Eligible space station operators should also take into account that, as detailed above, WTB will 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).

⁷⁵ See *supra* Section IV (Challenges).

⁷⁶ *Phase I Incremental Reduction Plan PN* at 6-7; *Phase I Incremental Reduction Comment PN* at 4. 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.

⁷⁷ We 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. SES stated in its comments in response to the *Phase I Incremental Reduction Comment PN* that “[t]o the extent this additional challenge process is valid, the Commission should clarify that it applies equally to relevant stakeholders as well as the Clearinghouse.” SES Phase I Comments at n.9. We continue to agree.

⁷⁸ *Phase I Incremental Reduction Plan PN* at 7. As discussed above, the filing of an amended Certification also opens a 10-day filing window for challenges related to any new or revised information not included in the original Certification.

determination, then both outside parties and the Bureau would be deprived of the ability to assess the Certification's validity before the Bureau issued a final determination, which we believe would be inconsistent with the Commission's directive in the *3.7 GHz Report and Order*. Eligible space station operators are strongly encouraged to ensure their original filings are complete and conform to the requirements specified in this Public Notice to avoid the need for any amendments or refiling.

We affirm that, as in the *Phase I Incremental Reduction Plan PN*, if WTB decides in Phase II that the amended or refiled Certification is valid, the eligible space station operator's ARP will be based on the filing date of the amended or refiled Certification.⁷⁹ As noted above, where the amended or refiled Certification is submitted before the Phase II deadline and that Certification is found to be valid, there will be no reduction in the ARP.⁸⁰

Amending or Refiling a Certification After the Phase II Deadline. We adopt our approach from the *Phase I Incremental Reduction Plan PN* whereby, if WTB rejects a Certification filed before the Phase II deadline (whether the original or an amended or refiled Certification), then the eligible space station operator will have to finish any incomplete aspects of the transition and file a new Certification that the Bureau will have to find to be valid before its entitlement to an ARP could be determined.⁸¹ If the filing date of this new, valid Certification falls after the Phase II deadline, then the ARP will be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order*, as applicable, based on that Certification's filing date.⁸² We establish the same treatment in cases where the Bureau has not yet ruled on a Certification and, after the Phase II deadline, the eligible space station operator either submits an amended or refiled Certification on its own motion, or in response to a challenge.

Where a Certification is amended or refiled after the Phase II deadline, we establish the same challenge process as where an amended or refiled Certification is filed before the Phase II deadline. Thus, new challenges to the amended or refiled Certification will be permitted but must be filed within 10 days of the filing of the Certification and 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).⁸³ If the Bureau has not already ruled on the original Certification, we may nevertheless consider all timely filed points raised during the original challenge cycle (even if that cycle ends after the filing of an amended or refiled Certification) to the extent those points may still be relevant to the amended or refiled Certification.

Accounting for Remedial Action by Eligible Space Station Operators. Subject to the provision on agreements below, we also affirm that WTB will consider remedial action taken by an eligible space station operator only if said operator has memorialized that action in a Certification (whether amended or refiled).⁸⁴ Thus, if WTB issues a final determination rejecting a Certification, the fact that the eligible space station operator has 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 will not, in

⁷⁹ *Phase I Incremental Reduction Plan PN* at 7.

⁸⁰ This includes situations where: (1) the Bureau's determination of validity falls after the Phase II deadline, so long as the amended or refiled Certification was filed before such deadline; and (2) an amended or refiled Certification filed before the Phase II deadline is credibly challenged and the Bureau nonetheless finds such Certification is valid without subsequent additional amendment or refiling.

⁸¹ *Phase I Incremental Reduction Plan PN* at 8.

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

⁸³ As discussed above, we also decline to distinguish between different types of substantive amendments or revisions.

⁸⁴ As discussed above, challenges to an amended or refiled certification are limited to matters involving changes made to the original.

and of itself, invalidate or otherwise affect WTB's determination. Rather, for such remedial action to be considered, the eligible space station operator will need to submit an amended or refiled Certification reflecting that remedial action. The amended or refiled Certification will initiate a new challenge process as to those aspects that had not yet been subject to the initial challenge process, will be subject to 60 day review by the Bureau, and will, if accepted as valid, establish a new date by which the eligible space station operator's ARP will be calculated.

Agreements. We likewise retain our procedures from the *Phase I Incremental Reduction Plan PN* which permitted 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 without refiled or amending that Certification.⁸⁵ For instance, if an eligible space station operator submits a Certification (either before or after the Phase II 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(s) to resolve all outstanding issues between those parties and submit this agreement(s) to WTB. If, after review, WTB accepts this agreement(s) as a good faith resolution of issues in the eligible space station operator's Certification, the Bureau will find that the original Certification is valid and dismiss the related outstanding challenges. If such an agreement resolved all outstanding challenges, the Bureau would calculate the ARP as of the date the original Certification was filed. If the agreement, or agreements, entered into by the eligible space station operator and the relevant challenger(s) does not resolve all outstanding issues in an eligible space station operator's Certification, then the Bureau will proceed to make a determination on any outstanding issues not addressed by the agreement or agreements. To the extent the eligible space station operator files an amended Certification before such determination is made, attesting that it has completed the necessary remedial steps on any outstanding issues, then we will calculate the ARP as of the date of the amended Certification (assuming this amended Certification is found valid). Parties to an agreement may request confidential treatment under section 0.459 of the Commission's rules.⁸⁶ We direct parties to review the Commission's previous guidance on the submission of confidential information, which was released in March 2020.⁸⁷

Although we 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 continue to bar the use of greenmail to reach agreements designed to avoid incremental reductions.⁸⁸ When a challenge against a Certification is withdrawn as the result of an agreement with an eligible space station operator, we will require that the written withdrawal agreement be accompanied by an affidavit from all parties certifying that no parties involved have received or will receive any money or other consideration, or pay any money or other consideration, in excess of legitimate and prudent expenses in exchange for the agreement or withdrawal of the challenge.⁸⁹ We will address specific applications of this policy on a

⁸⁵ The *3.7 GHz Report and Order* only mandates that relevant stakeholders have the opportunity to review Certifications, not agreements between parties. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

⁸⁶ See 47 CFR § 0.459 (detailing procedures to request withholding materials from public inspection).

⁸⁷ See *FCC Provides Instructions Regarding Submission of Confidential Materials*, Public Notice, 35 FCC Rcd 2973 (2020).

⁸⁸ 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"); see also *Phase I Incremental Reduction Plan PN* at 9-10.

⁸⁹ See, e.g., 47 CFR § 73.3588. We note that the record in response to the *Phase I Incremental Reduction Comment PN* generally supported the Bureau's proposal to bar greenmail. See *Intelsat Phase I Comments* at 8; *Verizon Phase I*

(continued....)

case-by-case basis, and reject any agreement where we have reason to believe greenmail has changed hands.

Finally, if the eligible space station operator takes remedial action to address any challenges to a filed Certification 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, as applicable).

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 104-13.⁹⁰ 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).

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA),⁹¹ 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.⁹² If an agency files a certification with a rulemaking, the certification must 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.⁹³ Accordingly, the Commission has prepared a Final Regulatory Flexibility Certification (FRFC) certifying that any rules subject to the RFA that may be contained in this *Public Notice* will not have a significant economic impact on a substantial number of small entities. The FRFC is set forth in Appendix A below.

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).

I Comments at 6. Eutelsat and NCTA, however, sought clarification that: (1) “the parties are permitted to determine any payment under such an agreement based on a reasonable, good faith estimate of ‘legitimate and prudent relocation expenses, rather than retrospectively based on actual documented costs;” (2) “the agreement may include compensation for reasonable internal project management or other costs that the relevant stakeholder, in good faith, expects to incur;” and (3) “the greenmail rule would not bar a challenger that enters into an agreement with a space station operator to resolve concerns from accepting the reasonable consideration necessary to resolve those concerns.” Eutelsat Phase I Comments at 8-9; NCTA Phase I Comments at 2. We declined in the *Phase I Incremental Reduction Plan PN* to adopt these clarifications and noted that our greenmail policy does not specifically require any documentation be submitted to the Commission other than the affidavit described above. We reach the same result here with respect to the Phase II incremental reduction plan. The greenmail policy was constructed to allow the parties to submit an affidavit as to the nature of the expenses covered, rather than submitting documentation of those expenses to us. Parties must submit their affidavit based on legitimate, prudent, and reasonable expenses.

⁹⁰ SES Americom, Inc., Intelsat License LLC, Telesat Spectrum Corporation, Eutelsat Americas, and Embratel TVSAT Telecomunicações S.A. are the five SSOs that will file certifications in this final stage of the C-band transition, which is fewer than the 10 entity threshold of the PRA. 5 CFR § 1320.3(c).

⁹¹ 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).

⁹² *Id.* § 605(b).

⁹³ *Id.*

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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APPENDIX A

Final 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. As required by the RFA, the Wireless Telecommunications Bureau (WTB or Bureau) incorporated an Initial Regulatory Flexibility Certification (IRFC) in the *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 Certification Procedures and Incremental Reduction Comment PN)*, certifying that the rules and policy changes proposed in the *Phase II Certification Procedures and Incremental Reduction Comment PN* would not have a significant economic impact on a substantial number of small entities. The Bureau sought written public comment on the proposals in the *Phase II Certification Procedures and Incremental Reduction Comment PN* including comment on the IRFC. No comments were filed addressing the IRFC.

3. 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 RFA that may be contained in the *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 Procedures and Incremental Reduction Plan Public Notice)* will not have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared this Final Regulatory Flexibility Certification (FRFC).

4. 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

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*).

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 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

5. In the *Phase II Certification Procedures and Incremental Reduction Comment PN*, we proposed 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 proposed to modify those procedures by requiring information be provided in a standardized format, and sought comment on how eligible space station operators should describe variances from their transition plans. In addition, we sought comment on a potential threshold trigger before Phase II Certifications may be submitted for validation. The Bureau stated that these proposals will create more transparency and efficiency in the Phase II Certification review process. We also proposed 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 stated that 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 that have been validated by the Bureau are not small entities.¹¹

6. The entities subject to the procedures adopted here are wireless telecommunications carriers and satellite telecommunications service providers that must provide Certifications as part of the Phase II transition and are specific to those entities and their transition obligations. The processes do not

⁷ 47 CFR § 27.1412(g).

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*).

impose increased reporting burdens on telecommunications carriers or satellite telecommunications service providers generally, nor do we expect the processes to result in increased costs for such businesses. Moreover, the procedures 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.

7. Accordingly, based on our application of the two statutorily-mandated criteria, we conclude that any rules subject to the RFA that may be contained in the *Phase II ARP Certification Procedures 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 Procedures and Incremental Reduction Plan Public Notice* will not have a significant economic impact on a substantial number of small entities.

8. The Bureau will send a copy of the *Phase II ARP Certification Procedures and Incremental Reduction Plan Public Notice*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. The *Phase II ARP Certification Procedures and Incremental Reduction Plan Public Notice* and this Final 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).