

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Expanding Flexible Use of the 3.7 to 4.2 GHz Band) GN Docket No. 18-122; GN Docket No. 23-97
Phase II Certification of Accelerated Relocation of)
Embratel TVSAT Telecomunicações S.A.)

ORDER

Adopted: June 30, 2023

Released: June 30, 2023

By the Chief, Wireless Telecommunications Bureau:

1. With this Order, and subject to the conditions described below, the Wireless Telecommunications Bureau (WTB or Bureau) validates the Phase II Certification of Accelerated Relocation (Phase II Certification) filed by Embratel TVSAT Telecomunicações S.A. (Embratel)1 relating to the ongoing transition of the 3.7 GHz band.2

2. 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 3.7-4.2 GHz band (C-band) and into the upper 200 megahertz of the band (i.e., 4.0-4.2 GHz).3 Specifically, 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, 2023.4 All five eligible space station operators elected accelerated relocation.5

1 See Embratel TVSAT Telecomunicações S.A., Certification of Accelerated Relocation for Phase II, GN Docket Nos. 18-122 and 23-97 (filed June 1, 2023) (Embratel Phase II Certification). In the instant Order, the Bureau is only considering the showing made in, and validating, Embratel’s Phase II Certification. This Order is without prejudice to other issues that are or may come before the Commission or that the Commission considers properly before other fora.

2 See Expanding Flexible Use of the 3.7 to 4.2 GHz Band, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2456-57, paras. 297-300 (2020) (3.7 GHz Report and Order).

3 3.7 GHz Report and Order, 35 FCC Rcd at 2345, para. 4.

4 3.7 GHz Report and Order, 35 FCC Rcd at 2408, para. 155; 47 CFR § 27.1412(b)(1)-(2). By the Phase I deadline of December 5, 2021, eligible space station operators were required to repack any existing services and relocate associated incumbent earth stations throughout the contiguous United States into the upper 380 megahertz of the C-band (3820-4200 MHz), and the operators must provide passband filters to block signals from the 3700-3820 MHz band to associated incumbent earth stations in 46 of the top 50 PEAs. 3.7 GHz Report and Order, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2). By the Phase II deadline of December 5, 2023, eligible space station operators must repack any existing service and relocate associated incumbent earth stations throughout the contiguous United States into the upper 200 megahertz of the C-band (4.0-4.2 GHz), and the operators must provide

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3. By electing accelerated relocation, the eligible space station operators, among other things, voluntarily committed to perform all the tasks necessary to enable any incumbent earth station⁶ that receives or sends C-band signals from or to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band.⁷ The *3.7 GHz Report and Order* stated that “[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines.”⁸ Once the Bureau validates an eligible space station operator’s Certification, the relevant Accelerated Relocation Payment (ARP) is to be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).⁹

4. 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 and any challenges by relevant stakeholders.¹⁰ WTB was also directed to establish the process for how any challenges may impact incremental decreases in the ARP.¹¹ Further, “the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies,” and 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.”¹² Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.¹³ Where challenges or deficiencies are found, the Bureau will render a final decision as to the validity of the Certification no later than 60 days from its filing.¹⁴

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passband filters to block signals from the 3700-4000 MHz band to all associated incumbent earth stations in the contiguous United States. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2).

⁵ *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).

⁶ Incumbent earth stations are defined as those Fixed Satellite Service earth stations that “(1) were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of November 7, 2018; and (3) have timely certified, to the extent required by the *Order* adopted in FCC 18-91 (as we clarify . . . to include certain renewal applications and license and registration applications filed through November 7, 2018), the accuracy of information on file with the Commission.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, para. 116; 47 CFR §§ 25.138(c), 27.1411(b)(3).

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

⁸ *Id.* at 2438, 2456, paras. 232, 297; 47 CFR § 27.1412(b).

⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300. Following validation, the Clearinghouse shall promptly notify the 3.7 GHz Service Licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. *Id.*; 47 CFR § 27.1422(c). The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

¹⁰ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; 47 CFR § 27.1412(g).

¹¹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline. *Id.* at 2456, para. 297; 47 CFR § 27.1422(d).

¹² *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(1)-(2).

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

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

5. As directed, on May 15, 2023, the Bureau issued a Public Notice implementing filing procedures for Phase II Certifications and related challenges.¹⁵ The *Phase II Certification Procedures and Incremental Reduction PN* provided that, to satisfy the Phase II deadline, 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.¹⁶ The *Phase II Certification Procedures and Incremental Reduction PN* further stated that 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 specified format and also include the actions taken (*e.g.*, retuning and repointing, self-installations by the incumbent earth station operator) for each;
- The date of completion of the above items (with the exception of self-installations by incumbent earth station operators);
- 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 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,¹⁷ and antennas and feeds that are otherwise pending removal from the *March 2023 Incumbent Earth Station List PN* list which must be identified as provisional claims,¹⁸ or antennas and feeds subject to a written agreement regarding the transition

¹⁵ See *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 Nos. 18-122 and 23-97, Public Notice, DA 23-408 (WTB May 15, 2023) (*Phase II Certification Procedures and Incremental Reduction PN*). The *Phase II Certification Procedures and Incremental Reduction PN* stated that: "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." *Id.* at 10.

¹⁶ *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

¹⁷ *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294; 47 CFR § 27.1412(b)(3)(i); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

¹⁸ 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*); *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

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between the eligible space station operator and the incumbent earth station operator, other than self-installations by incumbent earth station operators.¹⁹

6. Each eligible space station operator was required to certify that it attests to the truthfulness of the above information included in its Certification and is making the Certification in good faith.²⁰

7. Embratel submitted its Phase II Certification of Accelerated Relocation on June 1, 2023. The Bureau received no Challenges.

8. Embratel asserts that it has met all the elements required in the *Phase II Certification Procedures and Incremental Reduction PN*.²¹ Embratel indicates that it has exited the C-band market in the United States, no longer has any contractual obligations to provide C-band services in the United States, and has ceased all operations from the Star One C1 satellite.²² Embratel states that the Star One C1 satellite was deorbited and that it surrendered its market access authorization on March 16, 2022.²³

9. In its Certification, Embratel addresses each of the eight criteria set forth in the *Phase II Certification Procedures and Incremental Reduction PN*. Specifically, as a result of its discontinuation of C-band services, Embratel states that none of its satellite operations required repacking to satisfy the Phase II deadline.²⁴ Embratel further claims that it reached an agreement with SES to provide adequate capacity to transition the C-band services it was contractually obligated to provide via its Star One C1 satellite.²⁵ Embratel indicates that its sole C-band satellite serving the United States has ceased operations and was deorbited, and it did not need to launch any new satellites to meet its Phase II obligations.²⁶ Further, Embratel contends that none of its services required migration to the upper portion of the

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Docket No. 20-205, Public Notice, DA 23-237 (IB Mar. 21, 2023); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

¹⁹ 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. *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

²⁰ *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; *Phase II Certification Procedures and Incremental Reduction PN* at 9-10. The Bureau will determine that a 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. *In Re Amend. of Section 1.17 of Commission's Rules Concerning Truthful Statements to Comm'n*, 18 FCC Rcd 4016, 4021, para. 12 (2003). 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. See 47 CFR § 27.1412(a). Certifications are subject to section 1.17 of the Commission's rules. 47 CFR § 1.17.

²¹ *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

²² Embratel Phase II Certification at 2-3.

²³ *Id.* at 3.

²⁴ *Id.* at 3-4.

²⁵ *Id.* Embratel indicates it has agreed with SES to provide C-band downlink transmissions using available capacity on its SES-4 satellite. *Id.* at 4.

²⁶ *Id.* at 3-4.

C-band,²⁷ and it did not need to implement any technology upgrades, video compression, or modulation to complete its Phase II transition.²⁸

10. Embratel also states that no antennas or feeds required transitioning to satisfy the Phase II deadline.²⁹ Embratel notes that it initially expected that it would need to transition one antenna, but explains that it could not reach this customer despite its outreach efforts and the relevant earth station license lapsed on December 2, 2020.³⁰ Embratel asserts that it made a final, albeit unsuccessful, attempt to reach the unresponsive customer on September 24, 2021, and has not since received any communications from the customer.³¹ In terms of broader transition outreach, Embratel details the various steps it undertook to identify all associated earth stations, antennas, and feeds.³² Apart from the one earth station that Embratel indicates was unresponsive, Embratel's Phase II Certification identifies no other variances from its Transition Plan.³³

11. Based on the record and the absence of credible challenges, and as discussed in the *Phase II Certification Procedures and Incremental Reduction PN*, the Phase II Certification of Accelerated Relocation filed by Embratel on June 1, 2023 is hereby validated,³⁴ with the following condition: if after the disbursement of the ARP, the Bureau subsequently finds that Embratel should have transitioned additional earth stations, antennas, or feeds regardless of whether or not they were accounted for in its Transition Plan and Phase II Certification, Embratel will be required to complete all Phase II transition work relating to such earth stations, antennas, or feeds in a prompt and effective manner to ensure that the earth stations, antennas or feeds continue to receive substantially the same service that they were able to receive before the transition.³⁵

12. ACCORDINGLY, IT IS ORDERED, that, pursuant to sections 1, 4(i), 4(j), 5, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 303(r), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131,

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 5.

²⁹ *Id.*

³⁰ *Id.* at 4. Embratel specifies that the referenced earth station customer is Gulfstream Park Racing Association, Call Sign E050364; File No. SES-REG-20051202-01676. *Id.*

³¹ *Id.* at 6. Embratel also notes that it previously filed a transition delay notice pursuant to 47 CFR 27.1412(b)(3)(i). *Id.* at 3; see Letter from Matthew R. Friedman, Counsel to Embratel TVSAT Telecomunicações S.A., to Joel Taubenblatt, Acting Bureau Chief, Wireless Telecommunications Bureau, FCC, GN Docket No. 21-320, at 2-4 (Sep. 29, 2021).

³² Embratel Phase II Certification at 7.

³³ *Id.* at 8-9. As noted below, if after the disbursement of the ARP, the Bureau subsequently finds that Embratel should have transitioned this earth station, Embratel will be required to complete all transition work relating to this earth station.

³⁴ Although the Bureau validates Embratel's Certification in the absence of Challenges or other contrary evidence, we make no specific findings as to its Phase II transition performance.

³⁵ *Phase II Certification Procedures and Incremental Reduction PN* at 7-8, 10; see 47 CFR § 27.1412(a) ("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. *Phase II Certification Procedures and Incremental Reduction PN* at 10.

0.331, this Order IS HEREBY ADOPTED, and the above-captioned Phase II Certification of Accelerated Relocation is HEREBY VALIDATED.

13. IT IS FURTHER ORDERED that the Relocation Payment Clearinghouse shall promptly notify the 3.7 GHz Service Licensees that the Bureau has validated the above-captioned Phase II Certification of Accelerated Relocation.

14. IT IS FURTHER ORDERED that the 3.7 GHz Service Licensees shall pay their portion of the relevant Phase II Accelerated Relocation Payment to the Clearinghouse within sixty days of receiving notice from the Clearinghouse, and the Clearinghouse shall disburse the relevant Phase II Accelerated Relocation Payment as set forth in the *3.7 GHz Report and Order* within seven days of receiving the payment from the 3.7 GHz Service Licensees.

15. IT IS FURTHER ORDERED that Embratel must complete all Phase II transition work for any earth stations, antennas, or feeds later determined to be associated with Embratel, regardless of whether they were accounted for in its Transition Plan and Phase II Certification, in a prompt and effective manner.

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331, and the *3.7 GHz Report and Order*, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau