

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

In the Matter of)	
)	
Major Market Broadcasting of New York Inc.)	ICFS File No. SES-REG-20180606-01285
)	
Request for Waiver of Section 25.138(c) of the Commission's Rules)	IB Docket No. 20-205
)	
for Receive-Only Earth Station)	Call Sign: E180704

MEMORANDUM OPINION AND ORDER

Adopted: August 25, 2023

Released: August 25, 2023

By the Chief, Satellite Policy and Programs Division, Space Bureau:

I. INTRODUCTION

1. With this Order, we deny the request of Major Market Broadcasting of New York Inc. (MMBNY) to waive our rules and allow its fixed-satellite service, receive-only earth station, Call Sign E180704, to remain eligible as an “incumbent earth station” in the 3.7-4.2 GHz frequency band, despite not being operational.¹ For the reasons stated herein, we find that MMBNY has failed to provide sufficient information to determine that this waiver of our rules is in the public interest. Because it is not operational, MMBNY’s authorization for E180704 has automatically terminated by operation of rule and E180704 is removed from the incumbent earth station list.²

II. BACKGROUND

2. MMBNY’s request is made within the broader framework of the Commission’s efforts to reform the use of the 3.7-4.2 GHz frequency band, also known as the “C-Band,” by repacking existing satellite operations and making a significant amount of spectrum available for flexible use throughout the contiguous United States.³ In the *3.7 GHz Report and Order*, the Commission adopted rules to transition

¹ Major Market Broadcasting of New York Inc., *Request for Waiver*, ICFS File No. SES-REG-20180606-01285, filed Oct. 21, 2021 in IB Docket No. 20-205 (Waiver Request). The 3.7-4.2 GHz frequency band was historically the space-to-Earth portion of the “conventional C-band” used for the fixed-satellite service. 47 CFR § 25.103. The fixed-satellite service is “[a] radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas.” *Id.* An “incumbent earth station” is defined as an earth station that is entitled to interference protection pursuant to section 25.138(c) of the Commission’s rules. 47 CFR § 27.1411(b).

² The “incumbent earth station list” is a list of those fixed-satellite service earth stations originally in the 3.7-4.2 GHz band within the contiguous United States that the Bureau found satisfy the criteria to be classified as incumbent earth stations for purposes of the C-band transition. *See, e.g., International Bureau Releases Updated List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 23-176 (rel. Mar. 3, 2023).

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

existing satellite services out of the lower portion of the 3.7-4.2 GHz band and into the upper 200 megahertz of the band (*i.e.*, 4.0-4.2 GHz).⁴ This action made a significant amount of spectrum—280 megahertz or more than half of the band—available for flexible use throughout the contiguous United States.⁵ The *3.7 GHz Report and Order* also established that new flexible use licensees would reimburse the reasonable relocation costs of eligible fixed-satellite service space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees to transition out of the band.⁶

3. As part of this process, the Commission adopted section 25.138 of the rules.⁷ Section 25.138 provides that new, modified, or renewed earth station licenses and registrations⁸ are no longer accepted in the 3.7-4.0 GHz portion of the C-band in the continental United States (CONUS).⁹ It also provides that existing fixed earth stations operating in 3.7-4.0 GHz within CONUS will be protected from interference from new flexible use licensees, or are eligible for transition into the upper 4.0-4.2 GHz portion of the C-band, provided that certain requirements are met.¹⁰ Among these requirements are that the earth stations were: (1) operational as of April 19, 2018, and continue to be operational, and (2) licensed or registered (or had a pending application for license or registration) in the ICFS database on November 7, 2018.¹¹ Failure to meet these requirements results in the loss of the ability to renew the earth station license or registration, as well as the loss of the ability to modify the license or registration to maintain operations in the 4.0-4.2 GHz band.¹²

4. MMBNY states that it acquired earth station E180704 as part of its acquisition of a low-power television station, W41DO-D, in New York, on June 30, 2021.¹³ MMBNY states that, due to a dispute between the station's tower owner and the building owner, it was forced to cease operations of W41DO-D and earth station E180704 on August 30, 2021.¹⁴ As a result of this dispute, MMBNY states that it is unable to resume operations with either W41DO-D or E180704 until the dispute between the

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

⁵ *Id.*

⁶ *Id.*

⁷ 47 CFR § 25.138.

⁸ Receive-only earth stations in the fixed-satellite service may be registered with the Commission in order to protect them from interference from terrestrial microwave stations. *See* 47 CFR § 25.115(b)(1).

⁹ 47 CFR § 25.138(a).

¹⁰ 47 CFR § 25.138(c). The protection from interference applies to both fixed and temporary fixed earth stations.

¹¹ 47 CFR § 25.138(c)(1)-(2). In addition, the earth station licensee or registrant must have timely certified the accuracy of the information on file with the Commission by May 28, 2019. 47 CFR § 25.138(c)(3). The International Bureau Filing System (IBFS) was renamed as the International Communications Filing System (ICFS) as a result of the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, Order, MD Docket No. 23-12, FCC 23-1 (rel. Jan. 9, 2023).

¹² 47 CFR § 25.138(d).

¹³ Waiver Request at 1-2. MMBNY states that, due to an oversight, the E180704 license was not assigned simultaneously with W41DO-D's license to MMBNY, but instead a separate application to assign E180704 to MMBNY was filed on October 15, 2021. *Id.* at 2. This assignment application, ICFS File No. SES-ASG-20211019-01735, was granted, effective Nov. 16, 2021. *See Satellite Communications Services Information re: Actions Taken*, Public Notice, Report No. SES-02417 (Sat. Div. IB rel. Nov. 17, 2021).

¹⁴ Waiver Request at 2.

tower and building owners has been resolved.¹⁵

5. E180704 was listed as an “inactive” earth station in the International Bureau’s July 23, 2021 incumbent earth station Public Notice, which required, among other things, that E180704’s operator must submit verification no later than October 21, 2021, that the station is operational and eligible for reimbursement of C-band relocation costs.¹⁶ The Public Notice stressed that “failure to submit a filing to the [International Bureau] by [October 21, 2021] affirming the continued operation of the earth station antennas reported to the Bureau as inactive and the intent to participate in the C-band transition will result in a Bureau announcement that those authorizations identified as inactive... have automatically terminated by operation of rule, and that those authorizations will be terminated in IBFS and removed from the incumbent earth station list.”¹⁷

6. MMBNY filed its Waiver Request on October 21, 2021, the day of the deadline for verification established by the Public Notice. In the Waiver Request, MMBNY does not verify that E180704 is operational, but instead confirms that MMBNY has been unable to operate since August 30, 2021.¹⁸ MMBNY states, however, that once the dispute between the tower and building owner is resolved, it intends to resume operations with both W41DO-D and E180704 “promptly.”¹⁹ Accordingly, MMBNY asks for a grant of waiver of section 25.138 to allow it to continue licensed operations and to remain eligible for reimbursement of C-band relocation costs.²⁰ Since filing its Waiver Request, MMBNY has not provided any updated information in the record on the status of W41DO-D or E180704, or on the status of the underlying disputes that allegedly make MMBNY unable to operate E180704.²¹

III. DISCUSSION

7. The Commission may grant a waiver for good cause shown.²² A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.²³ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁴ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁵

8. We find that MMBNY has failed to provide sufficient information to determine that

¹⁵ *Id.*

¹⁶ See *International Bureau Identifies Inactive C-Band Incumbent Earth Station Antennas*, Public Notice, DA 21-893 (rel. July 23, 2021) (Public Notice).

¹⁷ *Id.* at 1. Section 25.161(c) of the Commission’s rules states that an earth station authorization “shall be automatically terminated ... without further notice ... upon [t]he removal or modification of the facilities which renders the station not operational for more than 90 days.” 47 CFR § 25.161(c).

¹⁸ Waiver Request at 4. In addition, MMBNY reports that it has reason to believe that E180704 was non-operational between September 1, 2018 and February 20, 2020, prior to the assignment of the station to MMBNY. *Id.* at 4 n.16.

¹⁹ Waiver Request at 2.

²⁰ *Id.* at 5.

²¹ Between the filing of the Waiver Request and release of this Order, Space Bureau staff made repeated inquiries to MMBNY both through its management and through its counsel about the status of E180704 and invited MMBNY to update the record of its filing to reflect any new information that would support the Waiver Request. MMBNY has not done so.

²² 47 CFR § 1.3.

²³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *Northeast Cellular*, 897 F.2d at 1166.

waiver of section 25.138 is consistent with the public interest. MMBNY premises its request for a waiver of section 25.138 on the alleged temporary status of its inability to operate E180704 and the argument that this non-operational status is a result of circumstances beyond MMBNY's control.²⁶ The record, as it stands, supports neither premise. It has been almost two years since MMBNY filed its waiver request, and, despite repeated FCC inquiries, it has filed no information since then, indicating for instance that E180704 has resumed operations or that any operations are forthcoming. As such, we cannot conclude that the non-operational status of E180704 is temporary in nature.²⁷ In addition, we are unable to conclude that the non-operational status of E180704 has been wholly outside of MMBNY's control. MMBNY has not disclosed whether the commercial dispute between the tower and building owner is still ongoing, or any steps or actions that it has taken, or could have taken, to bring E180704 into operation. For these reasons, we cannot find that "good cause" or "particular facts" have been shown to support grant of a waiver of section 25.138.

9. In addition, a balancing of the public interest in upholding the general rule against the interest in deviation from the rule does not support a grant of a waiver in this instance. The purpose of section 25.138 is to identify the universe of operational earth stations in the C-band that are eligible for financial support to install filters or to transition to the 4.0-4.2 GHz portion of the band in order to make the 3.7-4.0 GHz portion of the C-band available for flexible use spectrum while also preserving existing earth station operations. Here, there are no existing operations to preserve. Although E180704 was operational as of April 19, 2018, it has not been operational for most of the time since then, and there is no indication of when – or even if – it might be operational again. Furthermore, the Commission has previously found that there is a "significant public interest in providing a stable, comprehensive list of incumbent earth stations that meet the criteria [of section 25.138]."²⁸ We find that granting a waiver of section 25.138 for an indefinite amount of time, as requested by MMBNY, would be inconsistent with the Commission's goal of a stable and comprehensive list of incumbent earth stations. Such an indefinite waiver is particularly unjustified because accelerated relocation of incumbent satellite services in the C-band is complete.²⁹

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. § 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, the request for waiver of MMBNY IS DENIED.

11. IT IS FURTHER ORDERED that MMBNY's authorization for E180704 has automatically terminated by operation of rule and is removed from the incumbent earth station list, pursuant to sections 25.138 and 25.161(c) of the Commission's rules, 47 CFR §§ 25.138 and 25.161.

²⁶ Waiver Request at 4.

²⁷ We note that the non-operational status appears to have lasted well beyond the 90 days contemplated in the Commission's rules. *See supra* note 17.

²⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2393, para. 121.

²⁹ As of August 12, 2023, all five of the incumbent space station operators in the C-band have certified completion of accelerated relocation for both Phase I and Phase II of the transition, and those certifications have been validated. *See* 47 CFR § 27.1412(g).

12. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release, in accordance with section 1.102 of the Commission's rules, 47 CFR § 1.102. This action is taken pursuant to the authority delegated by sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51, 0.261.

FEDERAL COMMUNICATIONS COMMISSION

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