

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

In the Matter of
3.7-4.2 GHz Band Transition Clearinghouse
Dispute Referrals and Appeals
WT Docket No. 21-333
File No. 1

MEMORANDUM OPINION AND ORDER

Adopted: September 8, 2023

Released: September 8, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, the Wireless Telecommunications Bureau (WTB or Bureau) denies Mongoose Works, Ltd.'s (Mongoose) appeal of the 3.7-4.2 GHz band (C-band) Relocation Payment Clearinghouse's (RPC) decision which adjusted downward part of Mongoose's reimbursement claim based upon its August 12, 2020 lump sum election. We find that Mongoose failed to meet its burden of proof to demonstrate that the RPC made an incorrect determination in its June 1, 2022 decisional memorandum (RPC Decisional Memorandum) regarding Mongoose's reimbursement claim. Based on the record before the Bureau, we separately and independently find that the RPC both correctly interpreted relevant Commission rules, guidance, and policies and applied them to the reimbursement claim in question. We further find that Mongoose's procedural arguments are unavailing.

II. BACKGROUND

2. 3.7-4.2 GHz Proceeding. In the 3.7 GHz Report and Order, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use 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. The Commission required new 3.7 GHz Service licensees to reimburse the reasonable relocation costs of eligible Fixed Satellite Service (FSS) space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band. The 3.7 GHz Report and Order also specified that incumbent FSS earth

1 Mongoose Appeal of RPC Decision, WT Docket No. 21-333, File No. 1 (filed Aug. 1, 2022) (Mongoose Appeal).

2 Mongoose Works, Ltd. Lump Sum Election for 3.7-4.2 GHz Band Relocation Expenses, IB Docket No. 20-205 (filed Aug. 12, 2020) (Mongoose Lump Sum Election).

3 Response of Relocation Payment Clearinghouse LLC, WT Docket No. 21-333, File No. 1 (filed Aug. 22, 2022) (RPC Response); see also id. at Appx. Tab 5 (RPC Decisional Memorandum).

4 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, 2345, para. 4 (2020) (3.7 GHz Report and Order), appeal and petition for review dismissed sub nom. PSSI Global Services, L.L.C. v. FCC, 983 F.3d 1 (D.C. Cir. 2020).

5 3.7 GHz Report and Order, 35 FCC Rcd at 2391, 2465-66, paras. 111, 326; 47 CFR § 27.4. The 3.7 GHz Band Report and Order defines the incumbents that will be eligible to be reimbursed for their reasonable relocation costs. 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

(continued....)

station operators may accept either: (1) reimbursement for their actual, reasonable relocation costs; or (2) a lump sum reimbursement “based on the average, estimated costs of relocating all of their incumbent earth stations” to the upper 200 megahertz of the C-band.<sup>6</sup>

3. The *3.7 GHz Report and Order* further provided for the creation of an independent clearinghouse to administer, subject to the Commission’s rules and oversight, the cost-related aspects of the transition in a fair and transparent manner, “to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner.”<sup>7</sup> To provide the clearinghouse, incumbents, and new 3.7 GHz Service licensees with a range of reasonable transition costs, the *3.7 GHz Report and Order* directed the Bureau to establish a cost catalog of the types of expenses that incumbents are likely to incur.<sup>8</sup> The Commission directed the clearinghouse to presume as reasonable all actual cost reimbursement submissions that fall within the estimated range of costs in the *Final Cost Catalog Public Notice* produced by the Bureau, which also specified the lump sum amount available per incumbent earth station, as well the process for electing lump sum payments.<sup>9</sup> Incumbents seeking reimbursement for their actual costs are not precluded from including costs that exceed the amounts in the *Final Cost Catalog Public Notice*, so long as those costs are reasonably necessary to the transition, and incumbents provide justification to the clearinghouse.<sup>10</sup> By contrast, incumbent FSS earth station operators opting to receive a lump sum amount were required to make an irrevocable election and accompanying certification with the Commission by September 14, 2020<sup>11</sup> with the proviso that the information contained in such

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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 § 27.1411(b)(3). Incumbent Fixed Service licensees are defined as “[i]ncumbent licensees of point-to-point Fixed Service links that relocate out of the 3.7-4.2 GHz band by December 5, 2023.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2465, para. 326. The process by which costs will be determined to be reimbursable is defined in 47 CFR § 27.1416.

<sup>6</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2427-28, paras. 202-203. The *3.7 GHz Report and Order* directed the Bureau to “announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments,” and to identify lump sum amounts for various classes of earth stations as appropriate. *See id.* at 2428, para. 203.

<sup>7</sup> *Id.* at 2446, para. 255; 47 CFR § 27.1414. A search committee appointed by the Commission selected CohnReznick LLP and subcontractors Squire Patton Boggs (US) LLP, and Intellicom Technologies, Inc., to serve as the clearinghouse; the Bureau subsequently determined that the search committee’s selection satisfied the criteria set forth in section 27.1414 of the Commission’s rules and described in the *3.7 GHz Report and Order*. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Order, 35 FCC Rcd 11859 (2020); *see* 47 CFR § 27.1414; *3.7 GHz Report and Order*, 35 FCC Rcd at 2450-52, paras. 273-80.

<sup>8</sup> *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262; 47 CFR § 27.1416(a).

<sup>9</sup> 47 CFR § 27.1416(a). The Commission engaged a third-party contractor, RKF Engineering Solutions, LLC, to assist FCC staff in developing a cost catalog. After soliciting and considering public comments, on July 31, 2020, the Bureau released the *Final Cost Catalog Public Notice*. *Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections*, GN Docket No. 18-122, IB Docket No. 20-205, Public Notice, 35 FCC Rcd 7967, 7972-75, paras. 9-13 (2020) (*Final Cost Catalog Public Notice*).

<sup>10</sup> *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2447-48, paras. 260-62; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7968, para. 2.

<sup>11</sup> The original lump sum election filing deadline of August 31, 2020 was later extended to September 14, 2020. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, IB Docket No. 20-205, Order, 35 FCC Rcd 8856 (2020).

election would be “subject to verification as part of the [c]learinghouse’s role to prevent waste, fraud, and abuse” through its claims review process.<sup>12</sup>

4. All reimbursement claims – whether for actual costs or lump sum amounts – must be submitted to the clearinghouse for review pursuant to section 27.1416 of the Commission’s rules.<sup>13</sup> The clearinghouse “will determine in the first instance whether costs submitted for reimbursement are reasonable” and whether they comply with the requirements adopted in the *3.7 GHz Report and Order*.<sup>14</sup> To the extent a claimant or one or more responsible 3.7 GHz Service licensees wish to dispute the clearinghouse’s determination with respect to a submitted claim, they must file a notice of objection as required by section 27.1421(a) of the Commission’s rules.<sup>15</sup> The clearinghouse may in the first instance mediate any disputes or refer the disputant parties to alternative dispute resolution fora.<sup>16</sup> Subsequent appeals to the Bureau may be submitted pursuant to the procedures set forth in the *RPC Appeals Procedures Public Notice*.<sup>17</sup>

5. *Mongoose’s Lump Sum Election and RPC Claim.* Mongoose filed a lump sum election with the Commission on August 12, 2020<sup>18</sup> for eight incumbent earth station antennas, and on August 16, 2021, filed a claim with the RPC seeking \$356,052 as its lump sum payment.<sup>19</sup> Specifically, Mongoose requested a lump sum payment for six Small Multi-beam (2-4 beams) Earth Station Antennas (SMBEAs) at \$42,062 each and two Large Multi-beam (5+ beams) Earth Station Antennas (LMBEAs) at \$51,840 each.<sup>20</sup> After review of Mongoose’s claim and supplemental information provided by the claimant, the RPC Decisional Memorandum was issued on June 1, 2022, fully approving Mongoose’s claim for six SMBEAs.<sup>21</sup> The RPC classified the two remaining antennas as Receive-Only ES Multi-feed Antennas

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<sup>12</sup> *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7991, para. 40.

<sup>13</sup> 47 CFR § 27.1416. The Commission identified a “need to establish measures to prevent waste, fraud, and abuse with respect to reimbursement disbursements” and as a result specifically allocated to the clearinghouse responsibility for collecting from all incumbents seeking reimbursement “a showing of their relocation costs for the transition as well as a demonstration of the reasonableness of those costs.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260. See also C-band RPC, *RPC C-band Handbook (version 1.5)*, available at <https://cbandrpc.com/resources/> (RPC Handbook).

<sup>14</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260; see also 47 CFR § 27.1416.

<sup>15</sup> 47 CFR § 27.1421(a)-(c). See also C-band RPC, *Dispute Resolution Plan (version 2.0)*, available at <https://cbandrpc.com/resources/> (RPC DRP).

<sup>16</sup> 47 CFR § 27.1421(b).

<sup>17</sup> 47 CFR § 27.1421(c). The Bureau released the *RPC Appeals Procedures Public Notice* on March 21, 2022, which established the procedures for the filing and processing of challenges to decisions made by the clearinghouse. *Wireless Telecommunications Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions*, WT Docket No. 21-333, Public Notice, DA 22-300 (WTB Mar. 21, 2022) (*RPC Appeals Procedures Public Notice*).

<sup>18</sup> Mongoose Lump Sum Election. Mongoose also has two antennas which it identified in that filing but excluded from its lump sum election because they are not used for C-Band reception. *Id.* at 1-3, Appendix A (listing antenna IDs 1.8 and T90 as “not eligible”); Mongoose Appeal at 9 (“Two antennas are exclusively used to receive Ku-band signals and Mongoose disqualified these antennas for lump sum payments.”). Six of the eight antennas which Mongoose did include in its election exclusively receive C-band signals, while the other two are used to receive both C-band and Ku-band signals. See *id.* at 10-12. Because Mongoose acknowledges that two of its antennas are only used for Ku-band reception, the Space Bureau will remove those two antennas not used for C-band reception from its incumbent earth station list when the next update is released.

<sup>19</sup> Mongoose Appeal at 3, 11; RPC Decisional Memorandum at 1.

<sup>20</sup> Mongoose Lump Sum Election at 3, Appx A; RPC Decisional Memorandum at 1.

<sup>21</sup> RPC Decisional Memorandum at 1; see also Mongoose Appeal at 14, Appx. I.

rather than LMBEAs and adjusted Mongoose's claim amount for those antennas from \$103,680 down to \$33,994.<sup>22</sup> Mongoose filed a notice of objection with the RPC for the downward adjusted portion of its claim on June 25, 2022, seeking restoration of the full amount.<sup>23</sup> On July 7, 2022, Mongoose received payment for the undisputed amount of \$286,366.<sup>24</sup>

6. *Mongoose Appeal.* Mongoose filed a single-party appeal on July 31, 2022, asking the Bureau to order the RPC to restore the disallowed amount of \$69,686.<sup>25</sup> Mongoose believes that the two antennas at issue (IDs 2.6A and 2.6B) should be classified as LMBEAs instead of Receive-Only ES Multi-feed Antennas.<sup>26</sup> In support of its claim, Mongoose argues that the *Final Cost Catalog Public Notice* did not specify that only C-band feeds should be counted in assessing whether or not an antenna should be classified as a LMBEA, and contends that only one feed per antenna must receive C-band signals for the antenna to qualify for a particular lump sum category.<sup>27</sup> Mongoose asserts that there are two potential approaches for determining the appropriate lump sum categories for its earth station antennas and, under either approach, it is entitled to the full requested reimbursement amount because the two antennas at issue would be classified as LMBEAs.<sup>28</sup> Under its "Innate Antenna Approach" Mongoose claims that to be classified as a LMBEA an antenna need only have an innate ability to receive five or more feeds, at least one of which is receiving in the C-band, even if the antenna is not configured to have the active capability of receiving more than one C-band signal.<sup>29</sup> Alternatively, under its "Beam Counting Approach," Mongoose asserts that all types of feeds mounted on an antenna must be counted towards the antenna classification regardless of whether those feeds receive C-band signals.<sup>30</sup>

7. To the extent the Bureau finds neither of these approaches valid, Mongoose requests in the alternative a ruling that it is entitled to set its own "benchmark date" as the date on which the status of its antennas should be evaluated.<sup>31</sup> While Mongoose disputes use of this concept in the RPC Decisional Memorandum, and notes that the Commission did not itself establish a benchmark date, Mongoose contends in any event that April 19, 2018 (the date for determining incumbent earth station status for the C-band transition) is the appropriate date, rather than August 12, 2020 (the date of Mongoose's lump sum election as used in the RPC Decisional Memorandum).<sup>32</sup>

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<sup>22</sup> RPC Decisional Memorandum at 1.

<sup>23</sup> Mongoose Appeal at 14; *see also* Mongoose Appeal, Appx. J. No 3.7 GHz Service licensees joined Mongoose's dispute.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 10-12.

<sup>27</sup> *Id.* at 16-17.

<sup>28</sup> *Id.* at 15-25.

<sup>29</sup> *Id.* at 16-21 ("The Cost Catalog . . . makes the important distinction that a multi-beam antenna 'can [emphasis added] receive signals from multiple orbital slots . . . ' vs. a single-feed antenna is one 'receiving a signal . . . ' and a multi-feed antenna 'receives two polarizations.' Thus the multi-beam antenna classification only requires a[n] innate ability, rather than an active capability."). *See id.* at 20 ("The actual frequency bands received are not important, as long as at least one is in the C-band.").

<sup>30</sup> *Id.* at 22-25.

<sup>31</sup> *Id.* at 24, 31-37.

<sup>32</sup> *Id.* at 24, 31-37.

8. *RPC Response.* The RPC filed its response, including a copy of the RPC Decisional Memorandum, on August 22, 2022,<sup>33</sup> stating that there is no factual dispute between the parties that the two relevant antennas each had only one C-band feed, and as such, Mongoose is not eligible for the lump sum payment for LMBEAs.<sup>34</sup> The RPC specifically rebuts Mongoose’s “Innate Antenna Approach,” stating that it is not enough that the antennas *could* be modified to add more C-Band feeds as reimbursing “innate abilities” would have an “indeterminate impact on both the length and costs of the C-band relocation program.”<sup>35</sup> The RPC further rejects Mongoose’s “Beam Counting Approach” by noting that non-C-band feeds “are not directly used to transition incumbent earth stations to the upper 200 MHz of the C-Band,” and the Commission made clear that lump sum payments are limited to C-band equipment and services.<sup>36</sup> The RPC also asserts that it properly selected a “benchmark date” corresponding to the date of Mongoose’s lump sum election.<sup>37</sup> Finally, the RPC notes that when Mongoose chose to file an irrevocable lump sum election, it assumed the risk that the resulting payment might not cover all relocation costs, and it is therefore irrelevant whether Ku-band equipment is reimbursable.<sup>38</sup>

9. *Further Responsive Pleadings.* Mongoose filed its reply on August 29, 2022, reiterating the primary points raised in its appeal and rebutting the RPC’s response.<sup>39</sup> The RPC supplemented its response with an attestation on September 2, 2022.<sup>40</sup>

### III. DISCUSSION

10. At the outset, we reiterate that the Commission designated an independent clearinghouse to manage, pursuant to Commission rules and oversight, the cost-related aspects of the C-band transition and charged it with conducting the initial review and processing of cost reimbursement claims. This remit affords the RPC with flexibility to request information from claimants and to assess the unique facts and circumstances associated with each claim before it, including the verification of any information contained in an underlying lump sum election. The RPC remains subject to both the Commission’s rules and oversight, and eligible parties may dispute the RPC’s decisions and, subject to certain procedural requirements, appeal such decisions to the Bureau.

11. Here, we find that Mongoose satisfied the necessary procedural requirements by timely filing both a notice of objection with the RPC and a single-party dispute appeal with the Bureau.<sup>41</sup> In the *RPC Appeals Procedures Public Notice*, the Bureau established that the burden of proof for a single-party

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<sup>33</sup> RPC Response. The Bureau issued a public notice establishing the pleading cycle for the Mongoose Appeal on August 10, 2022. *Pleading Cycle Established for C-Band Relocation Payment Clearinghouse Single Party Appeal*, WT Docket No. 21-333, Public Notice, DA 22-845 (WTB Aug. 10, 2022).

<sup>34</sup> See RPC Response at 7-11.

<sup>35</sup> See *id.* at 9-10.

<sup>36</sup> See *id.* at 10-11, n.37; see also *id.* at 6, 8 (citing *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, 36 FCC Rcd 13925, 13927 (2021) (*IB Inactive Incumbent Earth Station PN*); *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7975, para. 14, n.57; *3.7 GHz Report and Order*, 35 FCC Rcd at 2423, para. 194).

<sup>37</sup> See RPC Response at 11-13.

<sup>38</sup> See *id.* at 13, n.50 (“As the RPC Decisional Memorandum noted, the FCC expressly cautioned incumbent earth station operators making a lump sum election that they assumed the risk that the lump sum payment might not cover all of their relocation costs.”).

<sup>39</sup> Mongoose Reply to Relocation Payment Clearinghouse, WT Docket No. 21-333, File No. 1 (Aug. 29, 2022) (Mongoose Reply).

<sup>40</sup> Relocation Payment Clearinghouse LLC Supplement, WT Docket No. 21-333, File No. 1 (Sept. 2, 2022) (RPC Supplement).

<sup>41</sup> Mongoose Appeal at 14, Appx. J.

dispute appeal lies with the appealing party to demonstrate that the RPC decision was incorrect.<sup>42</sup> As further discussed below, we deny Mongoose's appeal because it has not met its burden of proof in demonstrating that the RPC erred in its classification of, and reimbursement for, the two antennas at issue. Based on the record before the Bureau, we separately and independently find that the RPC both correctly interpreted the relevant Commission rules, guidance, and policies and applied them to the antennas in question. Thus, Mongoose's appeal is without merit. We further find that Mongoose's procedural arguments are unavailing.

**A. Mongoose Has Failed to Demonstrate that the RPC Decision is in Error**

12. The key question presented in Mongoose's appeal is what is the correct lump sum categorization for the two earth station antennas in question—LMBEAs or Receive-Only ES Multi-feed Antennas. Both Mongoose and the RPC agree that the antennas in question have one C-band feed each and multiple Ku-band feeds.<sup>43</sup> While Mongoose's lump sum election claimed these antennas as LMBEAs,<sup>44</sup> upon review of Mongoose's reimbursement claim, lump sum election, and additional supporting materials provided by the claimant, the RPC determined as part of its claims review and lump sum verification process that the latter category was the correct one.<sup>45</sup> In making this determination, the RPC stated that it "considers C-band feeds receiving signals from C-band orbital slots for the purpose of determining which antenna category from the Cost Catalog applies to a claim" and it "does not consider equipment that is not directly used to transition incumbent earth stations to the upper 200 MHz of the C-band."<sup>46</sup> In support of its view, the RPC cited multiple instances of Commission guidance that reimbursement should only be sought for reasonable costs necessary to effectuate the C-band transition.<sup>47</sup>

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<sup>42</sup> *RPC Appeals Procedures Public Notice* at 3.

<sup>43</sup> Mongoose specified that as of October 15, 2021, these antennas "simultaneously receiv[e] signals from nine orbital slots, one in the C-band and eight in the Ku-band." Mongoose Appeal at 12. The RPC Decisional Memorandum stated that the two antennas at issue each only had "one C-band feed receiving two polarizations from one C-band orbital slot and multiple Ku-band feeds." RPC Decisional Memorandum at 1 (noting that the RPC requested photographs of the antennas on October 6, 2021 and that, as depicted in those photographs, the antennas had only one C-band feed each); *see also* RPC Response at 7-8 (stating that Mongoose acknowledged that "at the time of the lump sum filing the feed configurations of [the antennas] were that each was receiving one C-band orbital location and 8 Ku-band orbital locations").

<sup>44</sup> Mongoose Lump Sum Election at 3; *see also* Mongoose Appeal at 10-12.

<sup>45</sup> *See* RPC Decisional Memorandum at 1, 3-4; *see also* RPC Response at 7-11.

<sup>46</sup> RPC Decisional Memorandum at 4 (*citing* *3.7 GHz Report and Order*, 35 FCC Rcd at 2428; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7976, para. 16).

<sup>47</sup> *See* RPC Response at 5, 8-11; *see also* *3.7 GHz Report and Order*, 35 FCC Rcd at 2423, 2427, 2428, paras. 194, 204, n.547 ("In contrast, we do not anticipate allowing reimbursement for equipment upgrades beyond what is necessary to clear the band. For example, if an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation" and "[w]e stress that lump sum payments will only be calculated for the costs of transitioning to the upper 200 megahertz."); *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7975-76, paras. 14, n.57, 16 ("[W]e would expect that . . . satellite operators [with non-C-band transponders] would 'reasonably allocate the incremental costs of' any functionalities 'that are not needed to facilitate the swift transition of the band' to themselves and 'only seek reimbursement for the costs reasonably allocated to the needed relocation'" and "[c]onsistent with the *3.7 GHz Report and Order*, the lump sum payment amounts are based on the average, estimated costs of transitioning incumbent earth stations to the upper 200 megahertz of the C-band"). The RPC also noted the then International Bureau's statement that "antennas that operate in other bands but do not receive in the 3.7 GHz band would not qualify for incumbent status under the C-band transition rules." *IB Inactive Incumbent Earth Station PN*, 36 FCC Rcd at 13927; RPC Response at 6

13. In its appeal, Mongoose challenges the RPC's determination by suggesting two alternative rationales, neither of which is supported by Commission rules, guidance, or policies. First, Mongoose asserts that pursuant to its "Innate Antenna Approach," the appropriate test for whether the antennas at issue should be classified as LMBEAs is whether they have the ability to receive five feeds or more, at least one of which is in the C-band, even if the antenna was not configured to have the active ability to receive more than one C-band signal.<sup>48</sup> We disagree. Nothing in the Commission's rules or guidance supports the position that the fact that the antennas at issue *could* be modified to add more C-band feeds justifies classification as LMBEAs, and in fact such position would directly conflict with the Commission's stated goal of tailoring reimbursements to those reasonable costs necessary to transition *existing* C-band operations.<sup>49</sup> Mongoose's proposed interpretation of the Commission's rules and guidance would also substantially increase the costs associated with the C-band transition, and runs counter to the Commission's stated intent to avoid gold plating in the reimbursement process.<sup>50</sup> As an alternative, Mongoose argues that the antennas at issue could be categorized as LMBEAs utilizing a "Beam Counting Approach" whereby every type of feed mounted on an antenna would be counted regardless of whether they receive C-band signals.<sup>51</sup> This approach likewise conflicts with the Commission's goals for this transition as it would allow for reimbursement of relocation costs associated *not only* with C-band equipment and services *but also* Ku-band equipment and services—the latter of which are not necessary for the transition of existing operations out of the lower 300 megahertz of the C-band.<sup>52</sup> These alternative rationales leading to Mongoose's preferred outcome—which are unsupported and run counter to the Commission's rules, guidance, and stated policy goals for the C-band transition—represent insufficient grounds to demonstrate error in the RPC Decisional Memorandum.<sup>53</sup>

14. In its Reply, Mongoose further suggests in support of its "Innate Antenna Approach" that the RPC's determination was faulty in misunderstanding the unique configuration of Mongoose's antennas that allows Mongoose to add, move, or remove a feed's orbital slot in a short period of time.<sup>54</sup> Mongoose specifies that it "has configured each [antenna] to simultaneously receive up to seven C-band orbital slots, thirteen Ku-band orbital slots, and a wide variety of combinations of the bands."<sup>55</sup> Based on the record before the Bureau, we find these assertions to be both unsupported and irrelevant as both Mongoose and the RPC are in agreement on the specific configuration of the antennas at the time of

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<sup>48</sup> See Mongoose Appeal at 16-21.

<sup>49</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2428, para. 204 ("We reiterate that compensable relocation costs are only those that are reasonable and needed to transition *existing* operations in the contiguous United States out of the lower 300 megahertz of the C-band.").

<sup>50</sup> See RPC Response at 9-10; *3.7 GHz Report and Order*, 35 FCC Rcd at 2423, para. 195 ("Let us be clear: Incumbents will not receive more reimbursement than necessary, and we require that, to qualify for reimbursement, all relocation costs must be reasonable.").

<sup>51</sup> See Mongoose Appeal at 22-25.

<sup>52</sup> See *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-23, 2426, 2428, paras. 193-4, 200, 204; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7975-7976, paras. 14, n.57, 16; see generally *IB Inactive Incumbent Earth Station PN*, 36 FCC Rcd at 13927.

<sup>53</sup> Contrary to Mongoose's assertion, it is not incumbent on the RPC to show that its rationale is the only valid one, as that would effectively reverse the burden of proof standard established in the *RPC Appeals Procedures Public Notice*. Mongoose Reply at 5-8. In any event, Mongoose's two proposed rationales directly conflict with the Commission's stated goals for the C-band transition reimbursement process, and thus are not valid alternatives to the RPC's rationale as Mongoose suggests. *Id.* at 9-12.

<sup>54</sup> Mongoose Reply at 9.

<sup>55</sup> *Id.* at 9 ("From early 2017 through mid-summer 2020 each was configured with feeds to simultaneously receive from two C-band and six Ku-band orbital slots. Subsequently each was changed to simultaneously receive from one C-band and eight Ku-band orbital slots.").

Mongoose's lump sum election, which only included one C-band feed on each antenna.<sup>56</sup> To the extent that Mongoose believed that unique considerations existed involving its incumbent earth stations antennas that might impact its eventual reimbursement claim, it had the option to pursue reimbursement of its actual costs in lieu of a lump sum amount.<sup>57</sup> The Commission repeatedly cautioned incumbent earth station operators that electing for lump sum payments was an irrevocable choice, and that if chosen, the incumbent "takes on the risk that the lump sum will be insufficient to cover all its relocation costs."<sup>58</sup> The Commission also reminded incumbents that if their transitions are more complex or the "average, estimated costs" are not reflective of their particular transition, the incumbent could choose to seek reimbursement for their actual relocation costs rather than electing the lump sum.<sup>59</sup> Mongoose thus had the choice to determine the best way to seek reimbursement for its C-band transition costs, a point it concedes in its appeal.<sup>60</sup> Mongoose opted to make an irrevocable lump sum election, which is subject to validation by the RPC, and in doing so it assumed the risk that some or all of its potential transition costs may not be covered by the reimbursement claim amount approved by the RPC. In sum, Mongoose has neither demonstrated a rationale nor a factual error in the RPC Decisional Memorandum, and thus failed to meet the applicable burden of proof standard in its appeal.

**B. The RPC Properly Classified Mongoose's Antennas Based on Commission Guidance**

15. We separately and independently find that the RPC acted in accordance with Commission rules, guidance, and policies in the RPC Decisional Memorandum with respect to Mongoose's claim for the two antennas in question. Specifically, the RPC correctly interpreted Commission statements evidencing its intent that reimbursements be limited to those reasonable costs necessary to transition existing C-band operations.<sup>61</sup> In an effort to combat fraud, waste, and abuse, the Commission "defined clearly the migration in this context as the costs of transitioning C-band services to the upper 200 megahertz of the band (e.g., reporting, retuning, and replacing antennas, and installing filters and compression hardware)."<sup>62</sup> Further, the *Final Cost Catalog Public Notice* specified that "lump sum payment amounts are based on the average, estimated costs of transitioning incumbent earth stations to the upper 200 megahertz of the C-band."<sup>63</sup> This rationale necessarily extends to selection and verification of the appropriate lump sum category for specific incumbent earth station equipment, otherwise it would lead to unintended results by effectively allowing reimbursement for non-C-band equipment, such as that used by Mongoose to receive Ku-band services. We therefore find that the RPC correctly interpreted this

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<sup>56</sup> Mongoose Lump Sum Election at 4, Appx. A; Mongoose Appeal at 12, 20; RPC Decisional Memorandum at 1; RPC Response at 7-8.

<sup>57</sup> In an effort to give incumbent earth station operators flexibility in the transition process, the Commission gave operators a choice—incumbents could either "accept reimbursement for the reasonable relocation costs by maintaining satellite reception or they may accept a lump sum reimbursement for all of their incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations." *3.7 GHz Report and Order*, 35 FCC Rcd at 2427, para. 202.

<sup>58</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2427, para. 202; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7990, para. 36.

<sup>59</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2427, para. 202; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7990, para. 36.

<sup>60</sup> Mongoose Appeal at 10, Appx. B, at 92 ("If Mongoose had chosen the actual cost route instead of a lump sum payment, Mongoose, the RPC, and the overlay licensees would have endured a lengthy, complex, and potentially adversarial path of engineering, accounting, and legal filings to ultimately arrive at Mongoose's true transition costs.").

<sup>61</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2428, para. 204.

<sup>62</sup> *Id.* at 2426, n.539.

<sup>63</sup> *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7976, para. 16.



precedent by only considering the active C-band feeds on the two antennas in question for lump sum classification purposes, and categorizing them as Receive-Only ES Multi-feed Antennas.

16. We further find that use of a “benchmark date” in the RPC Decisional Memorandum was an appropriate best practice to prevent waste, fraud, and abuse as part of its claims review and lump sum verification process.<sup>64</sup> Specifically, the RPC utilized as the reference point for its review of Mongoose’s reimbursement claim and lump sum election the date when the lump sum election was submitted to the Commission—August 12, 2020—at which time Mongoose certified that its election was true and accurate.<sup>65</sup> As part of its review of lump sum elections and related reimbursement claims, the RPC was charged with verifying that Mongoose’s certification was true and accurate, that its lump sum election complied with all of the Commission requirements at the time it was submitted to the Commission, and that the corresponding reimbursement claim for such equipment was reasonable and necessary to the C-band transition.<sup>66</sup>

17. Mongoose contends that the RPC made an arbitrary, *ex post facto* decision beyond its authority by establishing a benchmark date, suggesting that the RPC invented this concept because it interpreted the *Final Cost Catalog Public Notice* to require that an incumbent earth station antenna’s lump sum category be determined by its active feed configuration on a particular date.<sup>67</sup> In the alternative, Mongoose proposes that April 19, 2018 (the date the Commission set for determining incumbent earth station status for the C-band transition) is the more appropriate benchmark date.<sup>68</sup> We disagree and find Mongoose’s attempt to point to past configurations of its equipment, which it suggests incorporated multiple C-band feeds, as both unpersuasive and irrelevant, and in no way demonstrates an error in the RPC Decisional Memorandum. The configuration of Mongoose’s equipment on the date of its lump sum election is not in dispute, and Mongoose certified to this point both in terms of the accuracy of its election and the truthfulness of the information contained in its appeal.<sup>69</sup> As such, we find that the RPC’s use of Mongoose’s lump sum election date as a benchmark was a reasonable and appropriate best practice in verifying Mongoose’s lump sum election and processing the related reimbursement claim, as part of the RPC’s designated role and remit to prevent waste, fraud, and abuse in the C-band transition reimbursement process.<sup>70</sup>

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<sup>64</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2451, para. 276.

<sup>65</sup> RPC Decisional Memorandum at 4; *see also* RPC Response at 11. While Mongoose asserts that there was pre-decisional confusion by RPC staff regarding the applicable benchmark date, we do not find this persuasive in showing an error as the RPC Decisional Memorandum was clear in its use of Mongoose’s lump sum election date as the relevant reference point. Mongoose Appeal at 30-36; RPC Decisional Memorandum at 4.

<sup>66</sup> Mongoose Lump Sum Election at 3-4, Appx. A; RPC Response at 2.

<sup>67</sup> Mongoose Appeal at 24-25, 27, 30-36, 72.

<sup>68</sup> Mongoose claims that because the Commission did not “recognize[] or assign[] a Benchmark Date . . . only Mongoose is allowed to designate its Benchmark Date.” Mongoose Appeal at 24. According to Mongoose, on April 19, 2018, the two antennas at issue “each fielded two C-band and six Ku-band feeds” which would allow their classification as “Small Multi-beam ES Antennas,” thereby reducing Mongoose’s original claim from \$356,052 to \$336,496, and entitle Mongoose to an additional \$50,130 above the amount it has already received. *Id.* at 24-25, 27, 30-36, 72.

<sup>69</sup> Indeed, both parties agree that when the lump sum election was filed only one C-band feed was active on each of the antennas at issue. Mongoose Lump Sum Election at 4, Appx. A; Mongoose Appeal at 12, 20; RPC Decisional Memorandum at 1; RPC Response at 7-8.

<sup>70</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260 (“The Clearinghouse shall review reimbursement requests to determine whether they are reasonable and to ensure they comply with the requirements adopted in this Report and Order. The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.”); *id.* at 2448, para. 262 (“If the Clearinghouse determines that the amount sought for reimbursement is unreasonable, it shall notify the party of the amount it deems eligible for

(continued....)

### C. Mongoose's Procedural Issues are Unavailing

18. *Pre-decisional Communications.* Mongoose points to pre-decisional communications between itself and the RPC to suggest confusion and error in the RPC's decision making processes.<sup>71</sup> We find that any pre-decisional communications between the RPC and Mongoose, which are an expected part of the claims review process,<sup>72</sup> are ultimately not dispositive as to the resolution of Mongoose's reimbursement claim. We further find that the RPC Decisional Memorandum reflects the RPC's formal determination in this matter. In any event, for the reasons articulated above, Mongoose has failed to demonstrate that the RPC Decisional Memorandum was in error.

19. *Attestation.* In its reply, Mongoose points out that the RPC failed to adhere to the *RPC Appeals Procedures Public Notice* when the RPC submitted its response without an attestation.<sup>73</sup> We find that the RPC did not act in bad faith and promptly cured what Mongoose itself acknowledges was likely an "unintentional[] omi[ssion]"<sup>74</sup> by filing a supplement to the RPC's response.<sup>75</sup>

### IV. ORDERING CLAUSES

20. 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, 0.331, and the *3.7 GHz Report and Order*, the Appeal submitted by Mongoose Works, Ltd. is DENIED.

21. This Memorandum Opinion and Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt  
Chief, Wireless Telecommunications Bureau

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reimbursement."); *id.* at 2449, paras. 268-9 (the Clearinghouse will serve "in an administrative role and in a function similar to a special master in a judicial proceeding" and "may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora."). See 47 CFR § 27.1416.

<sup>71</sup> Mongoose Appeal at 38-44, Appendices A, B.

<sup>72</sup> Indeed, the Commission directed the clearinghouse to "give parties the opportunity to supplement any reimbursement claims that the Relocation Payment Clearinghouse deems deficient." See 47 CFR § 27.1416(a); *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, paras. 260.

<sup>73</sup> Mongoose Reply at 48; see also RPC Response.

<sup>74</sup> 47 CFR § 1.17; see also *Appeals Procedures Public Notice* at 5-6. Mongoose stated that ordinarily "it would be sensible to assume [the attestation] was unintentionally omitted." Mongoose Reply at 48.

<sup>75</sup> RPC Supplement.