

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
Wireless Telecommunications Bureau Announces)
Procedures for Appeals of Relocation Payment) WT Docket No. 21-333
Clearinghouse Decisions)

ORDER

Adopted: September 8, 2023

Released: September 8, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau (WTB or Bureau) denies AT&T Services Inc.'s petition for reconsideration or clarification (AT&T Petition) of the RPC Appeals Procedures Public Notice, which established procedures for the filing and processing of challenges to decisions made by the 3700-4200 MHz (C-band) Relocation Payment Clearinghouse (Clearinghouse or RPC). Specifically, we deny AT&T's request to change the RPC's 20-day deadline for the filing of notices of objection to Clearinghouse decisions, to reclassify the WT Docket 21-333 as permit-but-disclose, and to change the burden of proof standard for multi-party appeals.

II. BACKGROUND

2. In the RPC Appeals Procedures Public Notice, the Bureau established procedures for the filing and processing of challenges to decisions made by the Clearinghouse to the Bureau. The Bureau clarified that before it will consider any appeal, the eligible party or parties must first timely file a notice of objection with the Clearinghouse, as required by the Commission's rules and pursuant to the process established in the RPC's Dispute Resolution Plan (RPC DRP). The RPC DRP requires initial notices by eligible parties within 20 days of invoice issuance after Clearinghouse review of lump sum or reimbursement claims, and affords an additional 10 days for other eligible parties to file their own notices and become a party to the initial objection. The RPC Appeals Procedures Public Notice also designated

1 Petition of AT&T Services, Inc. for Reconsideration and/or Clarification, WT Docket No. 21-333, at 1-2, 4-5 (filed Apr. 20, 2022 (AT&T Petition)).

2 Wireless Telecommunication Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions, WT Docket No. 21-333, Public Notice, DA 22-300 (Mar. 21, 2022) (RPC Appeals Procedures Public Notice).

3 RPC Appeals Procedures Public Notice at 1-6.

4 Id. at 1-2.

5 Id. at 2; see C-band RPC, Dispute Resolution Plan (version 2.0), https://cbandrpc.com/resources/ (last visited Sept. 8, 2023) (RPC DRP). While version 1.2 of the RPC DRP was the version of the document available at the time of adoption and release of the RPC Appeals Procedures Public Notice, the Bureau clarified that potential appellants

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WT Docket 21-333 and each appeal as a restricted proceeding under the Commission's *ex parte* rules, and established that the burden of proof in a multi-party dispute appeal "is on each party to demonstrate that their view is correct."⁶

3. In April 2022, AT&T filed a petition for reconsideration or clarification of certain portions of the *RPC Appeals Procedures Public Notice*, which it says "unintentionally complicate the dispute resolution process [and/or] undermine parties' due process rights."⁷ AT&T asks the Commission to: (1) clarify that the current 20-day deadline for the filing of an initial notice of objection with the RPC should be tolled until an objecting party knows, or through reasonable diligence should know, of the basis for its objection;⁸ (2) reclassify WT Docket No. 21-333 as permit-but-disclose and specify that each appeal in the docket is a separate and independent restricted proceeding;⁹ and (3) modify the burden of proof in a multi-party dispute appeal to be always with the eligible incumbent seeking reimbursement.¹⁰ On May 23, 2022, the Commission sought comment on the AT&T Petition.¹¹ Intelsat and SES filed oppositions, to which AT&T submitted a reply.¹²

III. DISCUSSION

4. In this order, we deny the AT&T Petition and affirm that the appeal procedures set forth in the *RPC Appeals Procedures Public Notice* will serve the public interest by ensuring that appeals of Clearinghouse decisions are considered both fairly and expeditiously.¹³ Specifically, we find that maintaining the requirement that appellants first file a timely notice of objection with the Clearinghouse is consistent with the Commission's stated goals for this proceeding and serves the public interest.¹⁴ We also find that reclassification of WT Docket No. 21-333 is not necessary as we have already clarified that the instant petition for reconsideration and all related filings are permit but disclose.¹⁵ Finally, we maintain the current burden of proof in multi-party dispute appeals as it is consistent with applicable Commission precedent and furthers the Commission's objectives for the C-band transition.¹⁶

should consult the most recent version of the RPC DRP available at the Clearinghouse's website at the time their dispute arises. *RPC Appeals Procedures Public Notice* at n.7.

⁶ *RPC Appeals Procedures Public Notice* at 4, 6.

⁷ AT&T Petition at 1.

⁸ *Id.* at 3.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7.

¹¹ *Petition for Reconsideration of Action in Proceeding*, WT Docket No. 21-333, Public Notice, Report No. 3187 (2022).

¹² Opposition of Intelsat License, LLC, WT Docket No. 21-333 (rec. June 17, 2022) (Intelsat Opposition); Comments and Partial Opposition of SES Americom, Inc., WT Docket No. 21-333 (rec. June 17, 2022) (SES Opposition); AT&T Services, Inc. Reply, WT Docket No. 21-333, at 3 (rec. Jun. 27, 2022) (AT&T Reply).

¹³ See 47 C.F.R. § 1.429(b); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122, et al., Order on Reconsideration, 27 FCC Rcd 898, 901, para. 8 (2012) (Reconsideration "may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters.")

¹⁴ *RPC Appeals Procedures Public Notice* at 2.

¹⁵ *Id.* at 3-5; *Petition for Reconsideration of Action in Proceeding*, WT Docket No. 21-333, Public Notice, Report No. 3187 (2022); *Pleading Cycle Established for C-Band Relocation Payment Clearinghouse Single Party Appeal*, WT Docket No. 21-333, Public Notice, DA 22-845 (WTB 2022) (*Pleading Cycle Public Notice*).

¹⁶ *RPC Appeals Procedures Public Notice* at 4.

5. *Filing Deadline.* AT&T argues that the Commission should clarify that the current 20-day limit on filing initial notices of objection with the RPC is subject to the “discovery rule” which would toll such deadline until an objecting party knows, or through reasonable diligence should know, of the basis for its objection.¹⁷ AT&T asserts that the Commission’s rules do not mandate a 20-day deadline and that the current deadline in the RPC’s DRP does not provide licensees sufficient time to gather information on a claim.¹⁸ AT&T also contends that the RPC should have the authority to waive the 20-day deadline, upon request, in cases of good cause such as complex or interconnected invoices.¹⁹ Intelsat and SES oppose AT&T’s position and argue that the current 20-day deadline is sufficient to discover objections and promotes expedient dispute resolution.²⁰ However, Intelsat also states that objections should be allowed outside of the 20-day period if the licensee: (1) can show demonstrable, extraordinary circumstances; and (2) files the objection within a year of the invoice.²¹ For the reasons set forth below, we reject AT&T’s argument that the RPC should adjust its DRP and decline to revise the appeal procedures established in the *RPC Appeals Procedures Public Notice*.

6. In the *3.7 GHz Report and Order*, the Commission found that establishing an independent Clearinghouse to oversee the cost-related aspects of the C-band transition in a fair and transparent manner, pursuant to Commission rules and oversight, would best serve the public interest by mitigating financial disputes among stakeholders and collecting and distributing payments in a timely manner.²² In anticipation of potential disputes, the Commission required that parties disputing a cost estimate, cost invoice, or payment or cost-sharing obligation must file an objection with the Clearinghouse and empowered the RPC to, in the first instance, mediate any such disputes or refer them to alternative dispute resolution fora while allowing any decision of the RPC to be ultimately appealed to the Bureau.²³ In implementing its part of this process, the Clearinghouse established in its RPC DRP a 20-day limit on filing initial notices of objection to its claim and other payment decisions to ensure the fair and expeditious processing of disputes and disbursements, in accordance with the Commission’s objectives for the C-band transition.²⁴ The *RPC Appeals Procedures Public Notice* in turn referenced the RPC DRP’s timing requirements as a prerequisite for the subsequent filing of an appeal with the Bureau and specifically noted that interlocutory appeals, before a timely notice of objection is filed with the Clearinghouse, will not be considered by the Bureau.²⁵ This appeal-related requirement ensures that any related appeals to the Bureau will be filed in a timely manner, in furtherance of both the public interest and the Commission’s stated goals for the C-band transition.

¹⁷ AT&T Petition at 3 (citing *MCI Telecomm. Corp. v. FCC*, 59 F.3d 1407 (D.C. Cir. 1995); *Sprint Communications Co. v. FCC*, 76 F.3d 1221 (D.C. Cir. 1996)) (asserting the discovery rule has been used in previous proceedings and is a “well-established” rule and “ubiquitous” civil law); see also AT&T Reply at 3.

¹⁸ AT&T Petition at 3.

¹⁹ *Id.* at 4.

²⁰ Intelsat Opposition at 3-4; SES Opposition at 2-4. SES asserts that the “20-day objection rule is clear, equitable, and advances the Commission’s goal of achieving an expeditious transition of the 3.7 GHz band.” SES Opposition at 3.

²¹ Intelsat Opposition at 2.

²² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2446, para. 255 (2020) (*3.7 GHz Report and Order*); The *3.7 GHz Report and Order* also states that the Commission’s goal in transitioning the C-band is “rapidly introducing mid-band spectrum into the marketplace.” *Id.* at 2454, para. 288.

²³ 47 CFR § 27.1421(a)-(c).

²⁴ RPC DRP at Section 8.1; *3.7 GHz Report and Order*, 35 FCC Rcd at 2446, para. 255.

²⁵ *RPC Appeals Procedures Public Notice* at 2.

7. We are unpersuaded by AT&T's arguments that the RPC's notice timeframe provides inadequate time for an objecting party to decide whether they object to a specific Clearinghouse decision. As SES notes in its opposition, "3.7 GHz Service Licensees have access to the transition plans and quarterly reports filed by each eligible space station operator, as well as the lump sum payment elections filed by incumbent earth station operators," which "identify the necessary transition activities that each operator will undertake and the estimated relocation costs that each operator intends to assert through the claim reimbursement process."²⁶ We agree with SES and find that, given the wealth of public information related to the transition plans and expenses of satellite and earth station operators, including the Bureau's *Final Cost Catalog Public Notice*,²⁷ the 20-day window in the RPC DRP provides licensees with sufficient time to determine whether to object to a specific Clearinghouse decision.²⁸ We also find that broad application of AT&T's "discovery rule"²⁹ and RPC waiver proposals³⁰ would add uncertainty and complexity to the dispute resolution and disbursement processes and potentially delay the completion of the transition without demonstrable benefit. That said, to the extent that an eligible party believes that unique or extraordinary circumstances prevented it from filing a timely notice of objection with the RPC we note that it remains free to seek a waiver directly from the Bureau of our appeal procedures. We caution, however, that any such waiver must demonstrate good cause and will not be granted in the normal course.

8. *Docket Reclassification.* AT&T asks the Commission to reclassify WT Docket No. 21-333 as permit-but-disclose and to treat each appeal with its own file number as a separate restricted proceeding.³¹ In addition, AT&T seeks clarification that appeal-specific pleadings in this docket need only be served on the parties to the appeal, and that the electronic filing of other pleadings constitutes "service" on all parties who also filed pleadings in the overall docket.³² In its opposition, SES supports reclassification of the docket as permit-but-disclose in order to establish the docket as the appropriate forum for stakeholders to file presentations of general applicability, and classifying individual appeals as restricted, thereby limiting service to the appropriate parties to a given appeal.³³

9. We do not believe reclassification of the docket is necessary as we have already clarified that the instant petition for reconsideration and all related filings are permit but disclose.³⁴ All other

²⁶ SES Opposition at 3.

²⁷ 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. See *3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262; 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*, which also specified the lump sum amount available per incumbent earth station, as well the process for electing lump sum payments. See *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, Public Notice, 35 FCC Rcd 7967 (2020). The Clearinghouse shall presume as reasonable all reimbursement submissions that fall within the estimated range of costs in the *Final Cost Catalog Public Notice*. 47 CFR § 27.1416(a).

²⁸ SES Opposition at 3.

²⁹ AT&T Petition at 3; AT&T Reply at 3.

³⁰ AT&T Petition at 4.

³¹ *Id.* at 5-7.

³² *Id.* at 7.

³³ SES Opposition at 2.

³⁴ *Petition for Reconsideration of Action in Proceeding*, WT Docket No. 21-333, Public Notice, Report No. 3187 (2022); *Pleading Cycle Established for C-Band Relocation Payment Clearinghouse Single Party Appeal*, WT

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filings in WT Docket No. 21-333 are meant to be limited to specific appeals, and the *RPC Appeals Procedures Public Notice* clearly stated that only parties to specific appeals need be served with any relevant pleadings.³⁵ We reiterate that the service requirements relating to any enumerated appeal in this docket are restricted to the parties to that specific appeal. To the extent that interested parties wish to make presentations of general applicability to the Commission, they may continue to do so in the primary rulemaking docket for the C-band proceeding, GN Docket No. 18-122.

10. *Burden of Proof.* Finally, AT&T argues that only an incumbent seeking reimbursement can produce the receipts and work orders that prove whether reimbursement is valid, and thus, the burden of proof in multi-party dispute appeals should always rest with the incumbent.³⁶ AT&T further believes that the Bureau should not give deference to the RPC's decision by placing the burden of proof on both parties.³⁷ SES and Intelsat oppose AT&T's proposal and argue that any burden of proof should lie with the party that challenges the RPC's assessment.³⁸

11. We maintain the burden of proof standard established in the *RPC Appeals Procedures Public Notice* such that each party to a multi-party dispute appeal must demonstrate that its view is correct.³⁹ This standard is consistent with past Commission precedent in similar transitions where incumbent costs were reimbursed. Notably, in the 800 MHz transition proceeding,⁴⁰ the Bureau required each party to prove that its proposed facilities were either "comparable" to existing facilities or that the claimed cost of relocation was "the minimum necessary" for comparable facilities, respectively.⁴¹ Similarly, in the instant context, each party to a multi-party dispute appeal must prove that its cost assertions are correct—either that the claimed expenses were reasonable or that they were excessive or unnecessary. We also note the potential for multi-party appeals relating to payment or cost sharing

Docket No. 21-333, Public Notice, DA 22-845 (WTB 2022) (*Pleading Cycle Public Notice*) ("In particular, all information submitted through the Commission's Electronic Comment Filing System will become publicly available.").

³⁵ *RPC Appeals Procedures Public Notice* at 3-5.

³⁶ AT&T Petition at 7-8.

³⁷ AT&T Reply at 7-8 (*citing* 47 CFR § 27.1421(c)(2)) ("Upon receipt of such record and advice, the Bureau will decide the disputed issues based on the record submitted. The Bureau is directed to resolve such disputed issues or designate them for an evidentiary hearing before an Administrative Law Judge. If the Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.").

³⁸ SES Opposition at 5-7 ("Where the eligible incumbent seeking reimbursement is the one to challenge the assessment of the Clearinghouse, the eligible incumbent should bear the burden of proof to demonstrate where the Clearinghouse has erred" while "where multiple parties raise challenges to a decision by the Clearinghouse on different grounds, the burden of proof should fall on each respective 'plaintiff' to demonstrate that their view is correct"); Intelsat Opposition at 2, 7 ("[T]he Commission should clarify that the burden of proof in all proceedings before the Bureau rests with the party or parties seeking to overturn Clearinghouse decisions.").

³⁹ *RPC Appeals Procedures Public Notice* at 4.

⁴⁰ *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969, 15706-07 (2004).

⁴¹ "Sprint Nextel shall bear the burden of demonstrating that proposed facilities are 'comparable' within the meaning of the 800 MHz Report and Order. The licensee shall bear the burden of demonstrating that the cost of relocation is 'the minimum necessary to provide facilities comparable to those presently in use' within the meaning of the 800 MHz Report and Order. Any party alleging bad faith on the part of another party shall bear the burden of proceeding and the burden of proof. The burden of proceeding and proof on any other issues shall be specified by order of the Chief, PSCID." *Wireless Telecommunications Bureau Announces Procedures for De Novo Review in the 800 MHz Public Safety Proceeding*, WT Docket No. 02-55, Public Notice, 21 FCC Rcd 758 (WTB 2006).

obligations among 3.7 GHz Service Licensees that do not directly involve claimants, to which AT&T's proposed burden of proof standard would be inapplicable.

12. The burden of proof standard established in the *RPC Appeals Procedures Public Notice* also furthers the public interest and the Commission's goal of preventing waste, fraud and abuse as part of the C-band transition reimbursement process.⁴² Indeed, SES contends that allowing an eligible party to challenge a Clearinghouse decision without a commensurate burden of proof would create the potential for abuse and baseless disputes.⁴³ We agree with SES that allowing such challenges would undermine confidence in the overall reimbursement and dispute resolution process and lead to delays in the processing of disbursements and the completion of the C-band transition. We therefore affirm the burden of proof standard adopted in the *RPC Appeals Procedures Public Notice* as consistent with past practice and in furtherance of both the public interest and the Commission's goals for the C-band transition.

13. ACCORDINGLY, IT IS ORDERED pursuant to Sections 4(i), 4(j), 5, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, 303(r), and 405, as well as delegated authority in Sections 0.131 and 0.331 of the Commission's rules, 47 CFR § 0.131, 0.331, that Petition for Reconsideration or Clarification filed by AT&T Services, Inc. on April 20, 2022 IS DENIED.

14. IT IS FURTHER ORDERED that this ORDER SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

⁴² *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 259.

⁴³ SES Opposition at 7.