ORAL ARGUMENT SCHEDULED FOR OCTOBER 28, 2020

No. 20-1142 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PSSI GLOBAL SERVICES, L.L.C.,
a State of Nevada limited liability company,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

On Appeals from and Petitions for Review of Orders of
the Federal Communications Commission

BRIEF FOR APPELLEE/RESPONDENTS

Makan Delrahim
Assistant Attorney General

Michael F. Murray
Deputy Assistant Attorney General

Daniel E. Haar
Robert J. Wiggers
Attorneys

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave. NW
Washington, DC 20530

Counsel for Respondent United States of America

Ashley S. Boizelle
Acting General Counsel

Jacob M. Lewis
Associate General Counsel

Scott M. Noveck
Counsel

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street SW
Washington, DC 20554
(202) 418-1740
fcclitigation@fcc.gov

Counsel for Appellee/Respondent Federal Communications Commission

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) **Parties and Amici.** The Appellants/Petitioners are:

- Nos. 20-1142 (appeal) and 20-1143 (petition for review): PSSI Global Services, L.L.C.
- Nos. 20-1146 (appeal) and 20-1147 (petition for review): ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satélites S.A., and Hispasat S.A. (collectively, the "Small Operators")
- Nos. 20-1165 (appeal) and 20-1166 (petition for review): SES Americom, Inc.

The Appellee in the appeals (Nos. 20-1142, 20-1146, and 20-1165) is the Federal Communications Commission. The Respondents in the petitions for review (Nos. 20-1143, 20-1147, and 20-1166) are the Federal Communications Commission and the United States of America.

The following parties have intervened in support of Appellee/Respondents:

- AT&T Services, Inc.
- Cellco Partnership d/b/a Verizon Wireless
- CTIA—The Wireless Association
- SES Americom, Inc.

An *amicus* brief in support of neither party has been filed by the Alliance for Automotive Innovation.

(B) **Rulings Under Review.** Appellants/Petitioners challenge the Federal Communications Commission's Report and Order and Order of Proposed Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 35 FCC Rcd. 2343 (2020) (*Order*), *reprinted at* JA ____–__.

(C) **Related Cases.** The *Order* under review has not previously been before this Court or any other court. The Small Operators filed an administrative "protest" under 47 U.S.C. § 316(a)(1) of the *Order*'s proposed modifications to their spectrum licenses, which the Federal Communications Commission denied on August 26, 2020. *See* Order and Order of Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, FCC 20-118, 35 FCC Rcd. --- (rel. Aug. 26, 2020) (*SSO Protest Denial*), *reprinted at* JA ____–__. If the Small Operators seek review of that order, Appellee/Respondents submit that any challenge should be consolidated with these pending cases.

A subsequent staff decision in the underlying agency proceeding, announcing payment amounts for earth stations that elect to receive a lump-sum payment in lieu of reimbursement for actual relocation costs, is the subject of a recent mandamus petition pending in this Court. *In re ACA Connects*, No. 20-1327 (D.C. Cir. filed Aug. 27, 2020).

Appellee/Respondents are aware of no other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES*

Cases: **Page(s)**

---

* *Authorities upon which we chiefly rely are marked with asterisks.*

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Administrative Decisions:

Statutes And Regulations:

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Other Authorities:

GLOSSARY

Small Operators	Petitioners/Appellants ABS Global Ltd. (**ABS**), Hispamar Satélites S.A., and Hispasat S.A. (**Hispasat**), and Empresa Argentina de Soluciones Satelitales S.A. (**ARSAT** or **Empresa**)
PSSI	Petitioner/Appellant PSSI Global Services, L.L.C.
C-band	The portion of the electromagnetic spectrum ranging from 3.7 to 4.2 gigahertz
Ka-band	The portion of the electromagnetic spectrum ranging from 26.5 to 40 gigahertz
GHz	Gigahertz
MHz	Megahertz
Order	Report and Order and Order of Proposed Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 35 FCC Rcd. 2343 (2020) (JA ____–__)
NPRM	Order and Notice of Proposed Rulemaking, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 33 FCC Rcd. 6915 (2018) (JA ____–__)
SSO Protest Denial	Order and Order of Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, FCC 20-118, 35 FCC Rcd. --- (rel. Aug. 26, 2020) (JA ____–__)

GLOSSARY
(continued)

SSO Stay Denial	Order Denying Stay Petition, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 35 FCC Rcd. 5807 (Wireless Telecomm. Bur. 2020) (JA ____–__)
PSSI Stay Denial	Order Denying Stay Petition, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 35 FCC Rcd. 6771 (Wireless Telecomm. Bur. 2020) (JA ____–__)

No. 20-1142 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PSSI GLOBAL SERVICES, L.L.C.,
a State of Nevada limited liability company,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

On Appeals from and Petitions for Review of Orders of
the Federal Communications Commission

BRIEF FOR APPELLEE/RESPONDENTS

INTRODUCTION

In the *Order* under review, the FCC acted to make nearly 300 MHz of critical mid-band spectrum available for next-generation ("5G") wireless broadband service. Report and Order and Order of Proposed Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 35 FCC Rcd. 2343 (2020) (*Order*). To do so, it reallocated the lower 300 MHz of the 3.7–4.2 GHz band—known as the "C-band"—from satellite to terrestrial wireless use, and directed incumbent satellite operators to

migrate any service in the contiguous United States from the lower 300 MHz to the upper 200 MHz by December 2025.

The incumbent satellite operators represented to the Commission that it is feasible to migrate their business to the upper 200 MHz, without any reduction or interruption in service for their customers, through the use of data and video compression and other readily available technology. The Commission in turn ensured that the satellite operators and their terrestrial customers—known as "earth stations"—will be reimbursed by the licensees of the newly-cleared spectrum for all necessary relocation costs. In addition, responding to evidence that there would be billions of dollars in public benefit to making this spectrum available more quickly but that satellite operators would need to undertake substantial additional effort to do so, the Commission required new licensees to make accelerated relocation payments to eligible satellite operators that agree to clear the lower 300 MHz on an accelerated schedule.

Consistent with this framework, the five satellite operators providing C-band service to U.S. customers have begun the task of clearing 300 MHz of much-needed spectrum on an ambitious timetable. But three self-described "small satellite operators" now challenge the *Order*. These Small Operators primarily serve foreign customers, and

although they have U.S. market access, they do not serve *any* incumbent earth stations in the United States using the C-band. Because the Small Operators have no existing business that must be migrated out of the lower 300 MHz (and will retain their ability to serve future customers using the upper 200 MHz), they need not do anything to relocate, and thus are not expected to receive relocation payments or accelerated relocation payments.

Although the Small Operators supported the reallocation of this spectrum throughout most of the agency proceedings below, they now oppose the *Order* because the Commission preserved their ability to provide service but declined to provide them with compensation to relocate customers and operations they do not have or to pay them for the purported loss of purely speculative and implausible future business opportunities. The Commission's actions fall comfortably within its broad power to modify licenses by moving licensees from one spectrum range to another where they can provide comparable service, and the Small Operators are not entitled to any compensation given record evidence that they will incur no expenses to comply with the *Order*, and their ability to serve customers after the transition will not be impaired.

The Small Operators also challenge the relocation payments and accelerated relocation payments that the Commission made available to satellite operators that *will* need to undertake considerable work to migrate their service, but the Commission amply justified the policy decisions that led to the determination of those payments in its *Order*.

In addition to the Small Operators, PSSI Global Services, which operates a fleet of transportable earth stations used to provide coverage of various live events, seeks to raise several challenges to the *Order*. The Court lacks jurisdiction over PSSI's challenges, however, because PSSI failed to timely file its appeal. In any event, PSSI's contentions that the *Order* will "be a death sentence" or "fundamentally destroy [its] business" are unfounded, and its other arguments are similarly unavailing.

JURISDICTIONAL STATEMENT

The Court lacks jurisdiction over PSSI's notice of appeal because it was not timely filed. Appeals of licensing decisions under 47 U.S.C. § 402(b) must be filed "within thirty days from the date upon which public notice is given of the decision or order complained of." 47 U.S.C. § 402(c). For licensing decisions, "public notice" occurs on the order's "release date." 47 C.F.R. § 1.4(b)(2); *see also id.* § 1.4(b)(1) Note ("Licensing and other adjudicatory decisions with respect to specific parties that may be

associated with or contained in rulemaking documents are governed by the provisions of § 1.4(b)(2).”). The *Order* was released on March 3, 2020, but PSSI did not file its notice of appeal until April 28—more than 30 days after the *Order* was released. Because PSSI’s notice of appeal was untimely, it “‘*must* be dismissed’ for lack of jurisdiction.” *N. Am. Catholic Educ. Prog. Found., Inc. v. FCC*, 437 F.3d 1206, 1208 (D.C. Cir. 2006) (quoting *Waterway Commc’n Sys., Inc. v. FCC*, 851 F.2d 401, 405 (D.C. Cir. 1988)).[1]

The Court likewise lacks jurisdiction over PSSI’s petition for review filed under 47 U.S.C. § 402(a). By its terms, Section 402(a) does not apply to “order[s] * * * appealable under subsection (b).” Because petitions for review under Section 402(a) and appeals under Section 402(b) are

---

[1] PSSI’s notice of appeal incorrectly states that it is timely because it was filed within 30 days of when the *Order* was later published in the Federal Register. Federal Register publication controls the filing window for petitions for review of non-licensing orders under 47 U.S.C. § 402(a), but the 30-day deadline for appeals of licensing orders under 47 U.S.C. § 402(b) runs from the *Order*’s release date. *Compare* 47 C.F.R. § 1.4(b)(1) *with id.* § 1.4(b)(2); *see also id.* § 1.4(b)(1) Note (specifying that licensing appeals are governed by paragraph (b)(2), even when arising from a rulemaking proceeding). And because the same 30-day deadline applies to all licensing orders, including orders not published in the Federal Register or not subject to a post-publication protest period, there is no basis for a different deadline to apply to this particular *Order*.

"'mutually exclusive,'" the former does not confer jurisdiction over any order that a party could have appealed under the latter—"includ[ing] Commission decisions which involve issues 'ancillary' to the grants or denials of licenses * * * as evidenced in part by the fact that the * * * decisions were rendered simultaneously." *N. Am. Catholic*, 437 F.3d at 1208–09. PSSI therefore cannot invoke Section 402(a) to obtain review of an *Order* that it could have challenged under Section 402(b).[2]

The Small Operators' initial notice of appeal (filed on May 1) and petition for review suffer from the same jurisdictional defects. But unlike PSSI, the Small Operators timely filed an administrative "protest" of the modifications to their licenses under 47 U.S.C. § 316(a)(1). *See* JA ____–

---

[2] Because PSSI's licenses were modified by the *Order,* the proper vehicle for its challenges was a Section 402(b) appeal. To be sure, licenses are not required for earth stations that merely receive transmissions, so most earth stations do not have licensed receive rights. *Order* ¶ 147 (JA ____). But PSSI needed licenses because its transportable earth stations are able to transmit in the 5.925–6.426 GHz band, and most of the licenses it obtained also expressly confer rights to receive transmissions in the 3.7–4.2 GHz band. Appellants' Br. Exh. 1 (sample PSSI license); *see Order* ¶ 148 (JA ____) (discussing "transmit–receive" licenses). To reallocate part of that spectrum for terrestrial use, the Commission had to eliminate earth stations' interference protection in the lower 300 MHz. For earth stations with licensed receive rights (which include interference protection) in the C-band, like PSSI, this was accomplished by modifying their licenses. *Order* ¶ 148 (JA ____).

__. As a result, "the proposed license modifications * * * shall not be made final as to [the protesting licensees] until the Commission orders otherwise," *Order* ¶ 409 (JA ____), rendering the *Order* nonfinal as to their licenses. *Cf. Stone v. INS*, 514 U.S. 386, 392 (1995) ("The timely filing of a motion to reconsider renders the underlying order nonfinal for purposes of judicial review," so "a party who has sought rehearing cannot seek judicial review until the rehearing has concluded.").[3] The Commission issued a final order denying the protest on August 26, 2020. Order and Order of Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, FCC 20-118, 35 FCC Rcd. --- (rel. Aug. 26, 2020) (*SSO Protest Denial*), *reprinted at* JA ____–__. If the Small Operators timely file a new appeal following the denial of their protest, the Court may exercise jurisdiction over the Small Operators' arguments through that new appeal.

Finally, we agree with PSSI (Br. 75–78) that the Court lacks jurisdiction over SES Americom's appeal. SES does not contend that it is aggrieved by the Commission's *Order*; on the contrary, SES fully *supports*

---

[3] *See also W. Union Tel. Co. v. FCC*, 773 F.2d 375, 377–78 (D.C. Cir. 1985) (The Communications Act establishes a specific "filing window," not a just a deadline, so "a challenge to now-final agency action that was filed before it became final must be dismissed.").

the *Order* as adopted. Instead, SES contends that its interests could be affected *if a portion of the Order were overturned*. Such arguments may be raised by intervening in support of the *Order*, as SES has separately done here, but they do not give SES standing to seek review of an order that gives it all it seeks. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 333 (1980) ("A party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it."). In addition, SES's notice of appeal is untimely because it was filed on May 26, more than 30 days after the *Order* was released on March 3, so the Court separately lacks jurisdiction over SES's challenges for the same reason it lacks jurisdiction over PSSI's challenges.

STATEMENT OF THE ISSUES

1. Whether the Commission reasonably exercised its authority under Section 316 of the Communications Act, 47 U.S.C. § 316, to modify spectrum licenses upon finding that "such action will promote the public interest, convenience, and necessity."

2. Whether the Commission reasonably explained its decision to provide $9.7 billion to induce the incumbent satellite operators to accelerate their relocation from the lower 300 MHz of the C-band.

3. Whether the Commission reasonably declined to categorically bar reimbursement of costs related to additional satellites needed as a result of the relocation.

4. Whether the Court lacks jurisdiction over PSSI's challenges because PSSI failed to timely file its appeal within 30 days of the release of the *Order*.

5. If the Court determines that it has jurisdiction over PSSI's challenges:

a. Whether the Commission gave notice that it was proposing to clear a portion of the C-band for terrestrial use.

b. Whether the ORBIT Act allows the Commission to award new terrestrial licenses via auction.

c. Whether the Commission reasonably determined that the *Order* is unlikely to seriously imperil PSSI's business.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in the statutory addendum bound with this brief.

STATEMENT OF THE CASE

A. The *Order* Under Review

1. The C-band is a range of "mid-band" spectrum from 3.7 to 4.2 GHz that the Commission found "critical" for the development of next-generation wireless services.[4] *Order* ¶ 3 (JA ____). As the *Order* explains, "[m]id-band spectrum is essential for 5G buildout due to its desirable coverage, capacity, and propagation characteristics." *Ibid.*; *see also id.* ¶ 5 (JA ____–__). In addition, the spectrum immediately below the C-band is presently licensed for terrestrial wireless use, thus generating substantial benefits through the dedication of adjacent spectrum to the same use. *Id.* ¶ 12 (JA ____). The record before the Commission demonstrated that reallocating C-band spectrum for terrestrial wireless use "will lead to substantial economic gains, with some economists estimating billions of dollars in increases on spending, new jobs, and America's economy." *Id.* ¶ 20 (JA ____).

---

[4] The 3.7–4.2 GHz space-to-earth downlink band is paired with the 5.925–6.425 GHz earth-to-space uplink band, and these bands are sometimes referred to together as the "conventional C-band." *Order* ¶ 8 (JA ____). The Commission in this proceeding used the term "C-band" by itself to refer specifically to the 3.7–4.2 GHz downlink band, not the separate uplink band, and this brief does the same unless otherwise noted.

In Section 605(b) of the MOBILE NOW Act, Congress directed the Commission to evaluate "the feasibility of allowing commercial wireless services, licensed or unlicensed, to use or share use of the frequencies between 3700 megahertz and 4200 megahertz." *Id.* ¶ 6 (JA ____) (quoting Pub. L. No. 115-141, Div. P, Tit. VI, Sec. 605(b), 132 Stat. 1097, 1100 (2018)). Eight satellite operators were previously licensed to use this spectrum, primarily for distributing programming to television and radio broadcasters throughout the United States. *Id.* ¶¶ 8, 115, 161 (JA ____, ____–__, ____). Unlike the paradigmatic spectrum license, where the licensee holds exclusive rights to a portion of the spectrum, these satellite operators possess overlapping licenses that give each operator non-exclusive rights to use the entire 500 MHz throughout the United States. *Id.* ¶ 9 (JA ____); *see also id.* ¶¶ 44, 52 (JA ____, ____).

In July 2018, the Commission issued a Notice of Proposed Rulemaking seeking information on how the C-band was being used and soliciting public comment on proposals to make some or all of the C-band available for terrestrial use. Order and Notice of Proposed Rulemaking, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 33 FCC Rcd. 6915 (2018) (*NPRM*), *reprinted at* JA ____–___; *see Order* ¶¶ 15–17 (JA ____–

__); *see also id.* ¶ 11 (JA ____) (discussing additional information collection in May 2019).

2. Following extensive public comment, the Commission adopted an *Order* reallocating 300 MHz of C-band spectrum from satellite to terrestrial wireless use. To implement the transition, the Commission looked to the *Emerging Technologies* framework it has successfully used for past spectrum transitions. Under that framework, the Commission has transitioned spectrum from one use to another by requiring incumbent licensees to relocate to a new spectrum range while requiring the new licensees, as a condition of their licenses, to reimburse the incumbents' relocation costs. *See Order* ¶¶ 111, 154, 181–184 (JA ____, ____, ____–__). In addition, to achieve a faster transition, the Commission has repeatedly arranged for new licensees to make additional incentive payments to incumbent licensees if the incumbents voluntarily agree to clear the spectrum more quickly than would ordinarily be required. *See id.* ¶¶ 184, 187 (JA ____, ____). This Court upheld the Commission's application of the *Emerging Technologies* framework in *Teledesic LLC v. FCC*, 275 F.3d 75 (D.C. Cir. 2001).

a. The Commission first determined that the public interest in rapid 5G deployment and its attendant benefits would be best served by directing satellite operators to migrate their services in the lower 300 MHz of the C-band to the upper 200 MHz of that band and by requiring new terrestrial licensees to reimburse the incumbents' relocation costs. *See Order* ¶¶ 124–146 (JA ____–__). In reaching that determination, the Commission relied on extensive record evidence demonstrating that satellite operators "will be able to maintain the same services in the upper 200 megahertz as they are currently providing across the full 500 megahertz" by making more efficient use of spectrum through data compression and other readily available technology upgrades for which they will be fully reimbursed. *Id.* ¶ 20 (JA ____); *see id.* ¶¶ 32, 130, 135, 139–140, 144, 196 (JA ____–__, ____, ____, ____–__, ____). As the Commission observed, "all incumbent [satellite] operators"—as well as their major customers—"have agreed that the upper 200 megahertz portion of the band provides a sufficient amount of spectrum to support their services." *Id.* ¶ 130 (JA ____).[5]

---

[5] *See* Small Operators 9/13/19 Letter at 1 (JA ___) ("300 megahertz of C-band spectrum could be made available * * * through the use of non-proprietary, readily available compression technology"); C-Band

Based on this record, the Commission found that requiring satellite operators to clear the lower 300 MHz of the C-band by migrating any service to the upper 200 MHz (with their relocation costs to be reimbursed by the new terrestrial licensees) falls comfortably within its authority under Section 316 of the Communications Act to "modif[y]" any license "if, in the judgment of the Commission, such action will promote the public interest, convenience, and necessity." 47 U.S.C. § 316(a)(1); *see Order* ¶¶ 124–131, 134–146 (JA ____–__, ____–__).

The Commission therefore directed that the eight incumbent satellite operators' licenses be modified to require them to clear the lower 300 MHz and migrate any existing service there to the upper 200 MHz by December 2025. *Order* ¶¶ 155, 160 (establishing relocation deadline). In accordance with Section 316(a), the Commission provided licensees the

---

Alliance 10/28/19 Letter (JA ____–__) (committing to "clear 300 MHz of C-band spectrum" through "technologies such as advanced modulation, single format transport, and advanced video compression" while "ensuring that all C-band satellite customers enjoy continued access * * * after the transition"); C-Band Alliance Revised Transition Plan (JA ____–__) (similar); *see also* Small Operators 10/9/19 Ex Parte at 1 (JA ____) ("We expressed support for repurposing 300 megahertz of C-band spectrum, suggesting it could be done quickly through the use of compression technology"); Content Companies 11/19/19 Letter (JA ____–__); Affiliates Ass'ns 11/22/19 Letter (JA ____–__).

opportunity to file a "protest" challenging the proposed license modification within 30 days of publication of the *Order*. *Id.* ¶¶ 402, 409 (JA ____, ____); *see* 47 U.S.C. § 316(a)(1). For licensees that did not file a protest, the modifications automatically took effect by rule 60 days after the *Order* was published. *See Order* ¶ 409. The only licensees to file a protest were the Small Operators. *See* JA ____–__.

b. Although the *Order* requires incumbent satellite operators to clear the lower 300 MHz by December 5, 2025, the Commission recognized that there would be substantial public benefit to clearing the spectrum and allowing new terrestrial licensees to offer service more quickly. *See*, *e.g.*, *Order* ¶¶ 162, 185, 190 (JA ____–__, ____–__, ____–__). At the same time, the Commission observed that there were "disagreements in the record" about whether the transition could be completed sooner, and that accomplishing the transition without any interruption or loss of satellite service would require exceptional efforts by satellite operators not only to transition their own facilities to the upper 200 MHz but also "to take upon themselves responsibility for transitioning all incumbent earth station operators that receive their services." *Id.* ¶¶ 154, 157–159, 186, 192 (JA ____, ____–__, ____, ____–__).

Therefore, in accordance with the *Emerging Technologies* framework, the Commission created an incentive for satellite operators to migrate their service more quickly by a system of "accelerated relocation payments" to be paid by new licensees to eligible satellite operators that clear spectrum on an accelerated timeframe. *Id.* ¶¶ 168–172, 184–192, 211–234 (JA ____–__, ____–__, ____–__). The Commission found that making these accelerated relocation payments available "will promote the rapid introduction" of new spectrum for 5G "by leveraging the technical and operational knowledge of [satellite] operators, aligning their incentives to * * * enabl[e] that transition to begin as quickly as possible." *Id.* ¶ 169 (JA ____); *see also id.* ¶ 154 (JA ____).

The first acceleration deadline requires eligible satellite operators to clear 100 MHz of spectrum, plus a 20 MHz guard band, in parts of the United States by December 5, 2021—allowing terrestrial 5G service to begin as soon as 18 months after the *Order*. *See id.* ¶¶ 170–171 (JA ____–__). The second acceleration deadline requires these operators to clear the full 300 MHz of spectrum throughout the United States by December 5, 2023, *ibid.*, making this much-needed spectrum available two years earlier than it would be without accelerated relocation. All eligible satellite operators have now elected to pursue accelerated relocation.

B. The Small Operators

The Small Operators are three foreign-licensed satellite operators: ABS Global Ltd. ("ABS"), Hispamar Satélites S.A. and Hispasat S.A. ("Hispasat"), and Empresa Argentina de Soluciones Satelitales S.A. ("ARSAT" or "Empresa"). Each of the Small Operators possesses a "grant of market access" authorizing service in the United States, which the Commission treats as a license under the Communications Act. *Order* ¶¶ 115, 131 (JA ____–__, ____). These market-access authorizations were issued without charge; the Small Operators have never paid any fees to obtain authorization to serve the United States. *Id.* ¶ 143 & n.402 (JA ____).

The record reveals that, despite holding grants of U.S. market access, the Small Operators do not actually serve any incumbent earth stations (which must have been registered and timely certified by May 28, 2019) in the contiguous United States. *See id.* ¶¶ 139, 241–249 (JA ____–__, ____–__). Because the Small Operators have no U.S. customers or business that must be migrated out of the lower 300 MHz, and—in the Commission's predictive judgment—the remaining upper 200 MHz will suffice to ensure their ability to serve any reasonably foreseeable future U.S. customers, they need not do anything to relocate—and thus they are

not expected to receive relocation payments or accelerated relocation payments. The Small Operators supported the reallocation of this spectrum throughout most of the agency proceeding below. *See*, *e.g.*, Small Operators 9/13/19 Letter at 1 (JA ___); Small Operators 10/9/19 Ex Parte at 1 (JA ____). Now, however, they oppose the *Order* because the Commission declined to provide them with compensation to relocate service and customers that do not currently exist.

The Small Operators claim that although they serve no incumbent earth stations in the United States, they made significant investments in satellites to serve U.S. customers in the future. But the Commission found that claim wholly unsubstantiated: The Small Operators' existing satellites have almost no ability to serve the continental United States via C-band, instead serving exclusively non-U.S. or non-C-band customers. *Order* ¶¶ 241–249 (JA ____–__). Moreover, the Commission found that the 200 MHz of spectrum that will remain after the transition will still allow the Small Operators to serve any U.S. business they could reasonably have expected to attract. *See id.* ¶¶ 32, 135, 139, 196, 241–249 (JA ____, ____–__, ____–__, ____–__, ____–__).

ABS. ABS has only a single C-band satellite purportedly capable of reaching any part of the contiguous United States. That satellite,

known as ABS-3A, "is positioned just south of the Ivory Coast of northwest Africa" and primarily targets "the South Atlantic Ocean, Africa, the Middle East, Europe, and South America." *Id.* ¶ 248 (JA ____). Due to its location, it is capable of providing only limited "edge coverage to portions of the Eastern United States." *Ibid*; *see also SSO Stay Denial* ¶ 25 n.125 (JA ____) (explaining that this satellite's "ability to provide service to the United States * * * is significantly limited in both geography and signal strength"). Even in U.S. locations ostensibly within reach of this satellite, service to most of them would not be viable because "[c]ommunications to earth stations with such low elevation angles are much more susceptible to atmospheric and terrestrial degradation." *SSO Stay Denial* ¶ 25 n.125 (JA ____). This satellite "was operational for a year-and-a-half before [ABS] sought U.S. market access," and even once ABS finally obtained authorization to construct a U.S. earth station in eastern New York, it never proceeded to build the station. *Order* ¶ 248 (JA ____). The Commission thus found that "[t]he notion that ABS * * * launch[ed] this satellite with the specific intent of providing robust services in the United States" is "contradicted * * * by its inaction in the United States in the four-and-a-half years since it launched" the satellite. *Ibid.*

Hispasat. Like ABS, Hispasat points only to a single C-band satellite, Amazonas-3, capable of serving the United States. Yet Hispasat told the Commission "that all of the Hispasat satellite's C-band capacity was contracted for non-United States services through the end of 2019," *id.* ¶ 243 (JA ____–__), and "nothing in [Hispasat's] filing demonstrates provision of [C-band] service to the contiguous United States," *id.* ¶ 243 n.632 (JA ____).[6]

ARSAT. ARSAT (referred to in the *Order* as Empresa) never responded to the Commission's information requests, and the record

---

[6] After the Commission publicly released a draft of the *Order* and scheduled it for a final vote, Hispasat claimed to discover that it provided service to "nine earth stations * * * operated by an evangelical church that did not register its earth stations with the Commission." *Order* ¶ 242 (JA ____). But incumbent earth stations "must have been registered * * * to qualify for relocation," *ibid.*, a requirement the Commission imposed to avoid "th[is] type of last-minute gamesmanship," *id.* ¶ 244 (JA ____). And significantly, the Commission found that Hispasat's belated claim that it was providing C-band service to this previously unknown U.S. customer was not credible for two reasons. First, several of the identified earth stations fall outside the satellite's C-band service footprint, and Hispasat's filing conspicuously did "not * * * claim that it uses the *C-band* spectrum to provide service to all those earth stations." *Id.* ¶ 244 (JA ____). Second, Hispasat was unable or unwilling to provide "any further documentation" beyond the coordinates of these earth stations and the total revenue received from this client in 2017. *Id.* ¶ 243 (JA ____).

contains "no evidence that [it] provides any service to the contiguous United States." *Id.* ¶¶ 11 n.30, 135 n.382, 241 n.625 (JA ____, ____, ____).

The Commission did not rule out the possibility that the Small Operators could potentially attract some U.S. customers in the future, but it observed that they will remain fully able to serve any reasonably foreseeable U.S. customers using the upper 200 MHz of spectrum that remains after the transition. *Id.* ¶¶ 32, 135, 139, 196 (JA ____, ____–__, ____–__, ____–__). Specifically, the Commission found that this "remaining 200 megahertz of spectrum available after the transition period exceeds any reasonable estimate of [the Small Operators'] needs," *id.* ¶ 135 (JA ____–__), particularly in light of evidence that C-band business is "expected to decline in the future, as some users of C-band services are moving to alternative services" like fiber distribution, *id.* ¶ 196 (JA ____); *see id.* ¶ 129 & n.394 (JA ____), and that the Small Operators' satellite coverage and capabilities are "significantly limited" compared to their competitors, *SSO Stay Denial* ¶ 25 & n.125 (JA ____).

While all other satellite operators moved quickly to begin clearing the lower 300 MHz, the Small Operators instead sought to stay the *Order* and filed a protest of their license modifications. The agency denied the Small Operators' stay request on June 10. Order Denying Stay Petition,

Expanding Flexible Use of the 3.7 to 4.2 GHz Band, 35 FCC Rcd. 5807 (Wireless Telecomm. Bur. 2020) (*SSO Stay Denial*), *reprinted at* JA ____–__. This Court likewise denied the Small Operators' motion for a judicial stay on June 23. And the Commission on August 26, 2020, dismissed the Small Operators' protest on procedural grounds and, in the alternative, denied it on the merits. Order and Order of Modification, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, FCC 20-118, 35 FCC Rcd. --- (rel. Aug. 26, 2020) (*SSO Protest Denial*), *reprinted at* JA ____–__.

C. PSSI

PSSI operates a fleet of satellite-equipped trucks—categorized by the FCC as "temporary fixed earth stations," 47 C.F.R. § 25.277, and referred to by PSSI as "transportable" earth stations—used to provide so-called "occasional-use" coverage of live events, including sports and entertainment events. *See* PSSI 2/22/19 Ex Parte attach. 2 (JA ____–__).

PSSI is licensed to uplink programming using the C-band's paired earth-to-satellite uplink band (5.925–6.425 GHz) as well as the Ku-band (14.0–14.5 GHz). *Ibid.* PSSI also transmits programming using "fiber transmission facilities." *Id.* attach. 2 at 1 (JA ____). PSSI's "satellite uplink trucks are being equipped with media-over-IP transport infrastructure" that, through a partnership "utiliz[ing] AT&T's

expansive fiber network," allows it to "send [a] signal directly from [its] trucks to destinations around the globe via AT&T's global video network." *Id.* attach. 1 at 1 (JA ____).

PSSI expressed concerns that reallocating a portion of the C-band for terrestrial use would leave insufficient spectrum available for occasional-use programming and that 5G transmissions in adjacent spectrum could interfere with its transmissions. *See*, *e.g.*, PSSI 2/20/20 Letter at 1–4 (JA ____–__). After the *Order* was adopted, PSSI reiterated its concerns and urged the Commission to stay the *Order*. In response to PSSI's claims of irreparable harm, the two largest satellite operators confirmed that they expect to have ample spectrum available after the transition to meet the needs of occasional-use customers like PSSI.[7] The Commission denied PSSI's stay request on July 8, 2020. Order Denying Stay Petition, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 35 FCC Rcd. 6771 (Wireless Telecomm. Bur. 2020) (*PSSI Stay Denial*), *reprinted at* JA ____–__. PSSI did not seek a judicial stay.

---

[7] *See* SES 6/17/20 Letter, GN Docket No. 18-122, *at* https://go.usa.gov/xGa4y; Intelsat Stay Opposition at 3–4, GN Docket No. 18-122 (filed June 25, 2020), *at* https://go.usa.gov/xGa4e.

STANDARD OF REVIEW

Challenges to the FCC's interpretations of the Communications Act are governed by *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See City of Arlington v. FCC*, 569 U.S. 290, 296, 307 (2013). Under *Chevron*, "if the statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. at 843. If so, the Court must "accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation." *Nat'l Cable & Telecomms. Ass'n v. Brand X*, 545 U.S. 967, 980 (2005).

A court may overturn agency action only if it is arbitrary, capricious, unsupported by substantial evidence, or contrary to law. *See* 5 U.S.C. § 706(2). "The scope of review under the arbitrary and capricious standard is narrow," and a court "is not to ask whether [the challenged] regulatory decision is the best one possible or even whether it is better than the alternatives." *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 782 (2016) (internal quotation marks omitted). Instead, "[u]nder this highly deferential standard of review," the Court must "presume[] the validity of agency action and must affirm unless the

Commission failed to consider relevant factors or made a clear error in judgment." *Cellco P'ship v. FCC*, 357 F.3d 88, 93 (D.C. Cir. 2004) (citations omitted).

When "the Commission is 'fostering innovative methods of exploiting the spectrum,' it 'functions as a policymaker' and is 'accorded the greatest deference by a reviewing court.'" *Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 8 (D.C. Cir. 2006) (quoting *Teledesic LLC v. FCC*, 275 F.3d 75, 84 (D.C. Cir. 2001)). The Commission's "'judgments on the public interest are entitled to substantial judicial deference,'" and courts ordinarily will not "second-guess the Commission's decision." *NTCH, Inc. v. FCC*, 950 F.3d 871, 881 (D.C. Cir. 2020); *see FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981). Similarly, the Commission's "predictive judgments" about "the most efficient and quickest path to enabling flexible terrestrial use" of spectrum "'are entitled to particularly deferential review.'" *NTCH*, 950 F.3d at 880 (quoting *Earthlink, Inc. v. FCC*, 462 F.3d 1, 12 (D.C. Cir. 2006)). The Court has emphasized that "[t]his deferential standard of review" is "a daunting one" to overcome. *Ibid.*

SUMMARY OF THE ARGUMENT

I. The Commission reasonably exercised its power under Section 316 of the Communications Act to modify Appellants' licenses upon finding that doing so would promote the public interest, convenience, and necessity. It is well established that Section 316 allows the Commission to relocate licensees from one spectrum range to another when licensees will be able to continue providing comparable service in the new spectrum range and are reimbursed for their relocation costs. The record here shows that incumbent satellite operators will be able to relocate all of their business to the upper 200 MHz through readily available technology upgrades (such as data and video compression), and they will be fully reimbursed for those costs by the new terrestrial licensees.

The Small Operators, who have no existing business or customers to relocate, will not incur any relocation costs and are not entitled to any financial compensation. The record reflects that the 200 MHz that will remain after the transition exceeds any reasonable estimate of the Small Operators' needs, including the need to serve any new customers they might reasonably expect to attract, and thus any opportunities they might possibly be losing are *de minimis*. The Commission did not find it in the public interest, nor does anything in Section 316 require, that the

Small Operators be paid for a reduction in spectrum access rights when their ability to provide comparable service continues undiminished. That conclusion is consistent with the Commission's past orders and its *Emerging Technologies* framework, in which the Commission has limited payment to costs directly tied to relocation and has not provided compensation for abstract spectrum access rights or for speculative claims of future loss.

II. No party disputes that the Commission has the authority to mandate accelerated relocation payments and that it was appropriate for the Commission to do so here. Instead, the dispute centers on the amount of that payment. But the Commission reasonably explained its decision to offer $9.7 billion in accelerated relocation payments, which were intended to induce the incumbent satellite operators to relocate more swiftly and thereby permit new terrestrial licensees to begin offering 5G service to the public years earlier than might otherwise be possible. To determine the appropriate amount of these payments, the Commission identified an upper bound of the economic value that accelerated relocation would generate for the new licensees (and hence the additional amount they would be willing to pay for acceleration), which it estimated at $10.52 billion. It then selected an amount below that level that in its

judgment was still large enough to provide an effective incentive for accelerated relocation. The Commission's decision was a reasonable attempt to resolve a line-drawing problem that has no precise answer. Given that the Commission had no way to know what amount was needed to ensure that satellite operators would accept it and that the public would receive significant benefits as a result of accelerated relocation, the Commission explained that it selected an accelerated relocation amount that would maximize the likelihood of accelerated relocation rather than gamble with a lower amount that might be insufficient to induce incumbent satellite operators to relocate swiftly. The Small Operators have offered no sound basis for the Court to second-guess the Commission's reasonable line-drawing judgment.

III. The Commission also reasonably determined that if new satellites are needed to comply with the transition, incumbent operators will be permitted to seek reimbursement of the costs of those satellites. To the extent the Small Operators object to reimbursement of *any* satellite-related costs, they identify no basis to treat these costs differently than any other costs reasonably necessitated by the relocation. And to the extent the Small Operators now wish to challenge whether any *particular* satellite should be eligible for reimbursement, their challenge is

premature because the Commission has not yet ruled on whether or to what extent the costs associated with any particular satellite must be reimbursed.

IV. PSSI's independent challenges are jurisdictionally barred because PSSI failed to timely file its notice of appeal. But even if those arguments were properly before the Court, they are unavailing. The Commission provided ample notice that it might reallocate a portion of the C-band for terrestrial use; PSSI's argument that the ORBIT Act prohibits the auction of new licenses is foreclosed by this Court's precedent; and PSSI has not shown that the Commission's actions fundamentally altered its license rights.

ARGUMENT

I. The Commission Reasonably Exercised Its Power Under Section 316 To Modify Appellants' Licenses.

Section 316 of the Communications Act empowers the Commission to "modif[y]" any license "if in the judgment of the Commission, such action will promote the public interest, convenience, and necessity." 47 U.S.C. § 316(a)(1). This Court has recognized that "Section 316 grants the Commission broad power," including the "authority * * * to override" any "interest in administrative repose" if the Commission "find[s] that

the proposed modification serves the public interest." *Cal. Metro Mobile Commc'ns, Inc. v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004); *see also Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) ("To conclude otherwise would hamstring * * * the FCC in its spectrum management"). The Commission reasonably exercised that broad grant of authority to serve the public interest here.

A. The License Modifications At Issue Were A Valid Exercise Of The Commission's Section 316 Authority.

1. It is well established that Section 316 allows the Commission to relocate licensees from one spectrum range to another, particularly when licensees are able to continue providing comparable service in the new spectrum range, and they are reimbursed for their relocation costs. *Order* ¶¶ 129–131, 135–140 (JA ____–__, ____–__); *see*, *e.g.*, *Cmty. Television, Inc. v. FCC*, 216 F.3d 1133, 1139–41 (D.C. Cir. 2000) (upholding migration of television broadcasters from analog channels to digital channels because broadcasters will be able to "provide essentially the same services" after the transition); *Teledesic LLC v. FCC*, 275 F.3d 75, 80–81, 83–88 (D.C. Cir. 2001) (upholding the Commission's *Emerging Technologies* framework).

That is exactly what the Commission did here: The *Order* directs incumbent satellite operators to relocate their operations in the lower 300 MHz of the C-band to the upper 200 MHz, where the record demonstrates that they will be able to continue providing comparable service through the use of more efficient technology, and it ensures they will be reimbursed for all necessary relocation costs.

The Small Operators insist (Br. 29) that because the *Order* "eliminated entirely their right to transmit in 60% of the C-band," their licenses must have been "fundamentally change[d]," not just modified. But as the Commission explained, a license has not been fundamentally changed if "the licensee can still provide the same basic service under the modified license that it could prior to the modification." *Order* ¶ 138 (JA ____); *see also id.* ¶ 135 (JA ____) ("the primary consideration * * * is whether the licensee will be able to provide substantially the same service after the modification"). And nothing in Section 316 or its use of the word "modif[y]" requires that licensees must receive "new rights" (Br. 32, 37) when their licenses are modified, rather than retaining their ability to continue providing comparable service.[8]

---

[8] Appellants seek to rely (Br. 29–30, 59–60) on *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218 (1994),

Contrary to Appellants' claims (Br. 4–5, 31, 32), the Commission has previously exercised its authority under Section 316 to reduce the amount of spectrum allocated to incumbent licensees, and has done so without offering "compensation" or "new rights." In the 2002 *Motient Modification Order*, the Commission reduced a satellite operator's spectrum rights from 28 MHz to 20 MHz based in part on technological advancements that made it possible to provide the same service using less spectrum than when the license was initially awarded. *Establishing Rules & Policies for the Use of Spectrum for Mobile Satellite Serv. in the Upper & Lower L-Band*, 17 FCC Rcd. 2704, 2712–13 ¶¶ 19–22 (2002) (*Motient Modification Order*); *see Order* ¶ 126 (JA ____–__). Like the Small Operators here, the satellite operator in *Motient* did not receive financial compensation for the reduction in spectrum.

---

for their view that the *Order* effects a "fundamental change." But *MCI* has no direct bearing on the facts here. *MCI* held that a separate provision of the Communications Act, authorizing the Commission to "modify" the requirements governing telecommunications carriers' filing of tariffs specifying their rates and practices, did not allow the Commission to eliminate the statutory tariff-filing requirement for nondominant carriers altogether (and to thereby end all *ex ante* rate regulation of nondominant carriers). *Ibid.*; *see Order* ¶ 136–138 (JA ____–__). Here, however, the Commission did not alter or eliminate any of the Act's requirements. The *Order* simply revised the terms of certain licenses, a situation that *MCI* did not address.

2. Here, the Commission reasonably found that the Small Operators "will be able not only to maintain their current level of service * * * but to potentially serve new clients" using only the upper 200 MHz of the C-band. *Order* ¶ 196 (JA ____); *accord id.* ¶ 32 (JA ____) ("As ABS [and] Hispasat * * * acknowledge, because of compression and filtering technologies, incumbent space station operators will be able to deliver the equivalent quality of service and even expand that service in the remaining 200 megahertz"); *id.* ¶ 135 (JA ____) ("For the Small Satellite Operators, the record clearly demonstrates that * * * the remaining 200 megahertz of spectrum available after the transition period exceeds any reasonable estimate of their needs."); *id.* ¶ 139 (JA ____) (the Small Operators will be able "to continue to serve existing customers and to obtain new customers" using the upper 200 megahertz of spectrum).

As the Commission observed, "all incumbent [satellite] operators"—as well as their major customers—"have agreed that the upper 200 megahertz portion of the band provides a sufficient amount of spectrum to support their services." *Id.* ¶ 130 (JA ____). Indeed, the participating Small Operators themselves represented that all satellite operators will be able to fully migrate their services and clear the lower 300 MHz "through the use of non-proprietary, readily available compression

technology" at receiving earth stations. Small Operators 9/13/19 Letter at 1 (JA ____); *see supra* note 5. Because satellite operators will remain able to "provide essentially the same services" after the transition, the *Order* is not "a fundamental change to the terms of" their licenses, and instead "can reasonably be considered [a] modification[] of existing licenses." *Cmty. Television*, 216 F.3d at 1141.[9]

The record confirms that the Small Operators' C-band business will not be impaired by the transition to the upper 200 MHz of the C-band. The Small Operators have *no* eligible C-band business in the contiguous United States, instead generating all or nearly all of their revenue from non-U.S. or non-C-band service. *See Order* ¶¶ 241–249 (JA____–__); *SSO Stay Denial* ¶¶ 13, 25 (JA ____, ____). The Small Operators' attempt to blame their failure to develop U.S. business on the April 2018 freeze on new earth station applications (Br. 10–11) is not borne out by the record. As the Commission observed, "ABS's satellite was operational for a year-and-a-half before it sought U.S. market access * * * and nearly three

---

[9] The Small Operators are therefore incorrect to suggest (Br. 30, 36) that the Commission's actions here are somehow tantamount to a license revocation under 47 U.S.C. § 312. Unlike when a license is revoked, the Small Operators will remain able to provide comparable service under their modified licenses. *See Order* ¶ 129 (JA ___–__).

years prior to the freeze on new C-band earth station registrations and the subsequent *NPRM*." *Order* ¶ 248 (JA ____).[10] Hispasat obtained its U.S. license in 2012 and launched its satellite in 2013, but did not develop any base of U.S. business because it leased all of its capacity to non-U.S. customers. *Id.* ¶ 243 (JA ____). And ARSAT's satellite reached orbit in 2015, yet it has identified no effort whatsoever to develop U.S. business at any time, having refused to respond to the Commission's information requests and declined to participate in the administrative proceedings leading up to the *Order*.

The Commission further found that the Small Operators had no reasonable expectation that their satellites would ever attract more U.S. business than they will remain able to serve in the remaining 200 MHz. *See Order* ¶¶ 139, 241–249 (JA ____–__, ____–__); *SSO Stay Denial* ¶¶ 13, 25 (JA ____, ____). Indeed, the record shows that the Small Operators' satellites have only very limited ability to reach the United

[10] ABS launched its satellite in March 2015, but did not apply for its U.S. license until November 2016. It received that license in April 2017, but still did not apply to construct a single U.S. earth station until February 2018. *Order* ¶ 248 (JA ____). And although it received permission to build that earth station in March 2018, before the freeze on new applications, it never proceeded to build the station. *Ibid.*

States via C-band, *Order* ¶ 248 (JA ____–__); *SSO Stay Denial* ¶ 25 n.125 (JA ____), and that the C-band market as a whole has been declining as customers move to alternative services like fiber-based video and data distribution, *Order* ¶¶ 139, 196 (JA ____, ____–__).

The Small Operators "provided no evidence to rebut these claims." *Order* ¶ 196 (JA ____). They instead insist that the available evidence is irrelevant because they are not following a "traditional * * * business model" (Br. 39)—a claim that might ordinarily engender skepticism about the Small Operators' business prospects, not bolster them. The Small Operators offer no reason to believe that any new and untested business strategy would achieve significantly more success in the C-band market than tried-and-tested business methods, especially when the Small Operators' satellite coverage and capabilities remain "significantly limited" compared to their competitors, *SSO Stay Denial* ¶ 25 n.125 (JA ____); *Order* ¶ 248 (JA ____). The Small Operators posit that their satellites can "help U.S. companies and multinationals take content and information *into and out of* the United States" via C-band (Br. 39), but they made no showing that significant demand for such a service exists: they offered no evidence of the existence or size of that market, they did not identify what customers would purchase that service or why they

would need it, and they failed to show why 200 MHz would be insufficient to serve any prospective customers that might exist. The Small Operators thus failed to meaningfully "demonstrate how they plan to expand their businesses in a market that is declining," *Order* ¶ 196 (JA ____–__), let alone that the 200 MHz of spectrum that remains after the transition will be insufficient to serve any U.S. business they could credibly generate. Simply put, the Small Operators have no basis to object to their license modifications or to demand compensation therefor "on an assumption of future use of currently unused capacity that far exceeds reasonably foreseeable demand—the loss of capacity that has not been used, is not used, and [is] not likely to ever be used given the significant unused capacity that remains available." *Id.* ¶ 249 (JA ____).

Appellants' contention (Br. 35–41) that the Commission unreasonably applied a rigid "existing customer" standard thus badly mischaracterizes the *Order*. Instead, the Commission explained that the touchstone of its analysis is whether licensees will be able to continue providing comparable service after the transition. *See Order* ¶ 32 (JA ____) ("maintain comparable service"); *id.* ¶ 129, 135 (JA ____, ____) ("provide substantially the same service"); *id.* ¶ 140 (JA ____) ("essentially the same services"); *see also Cmty. Television*, 216 F.3d at

1141 ("essentially the same services"). For longstanding licensees, this generally amounts to whether licensees can continue serving their established customer base; the Commission accordingly gave weight to evidence that, through readily available technology upgrades, the major satellite operators will remain able to serve all existing customers. But the Commission did not rule out that, particularly for newer entrants, comparable service may also include some "flexibility to expand their business" and "opportunities * * * to obtain new customers." *Order* ¶ 139 (JA ____–__); *accord id.* ¶ 32 (JA ____) (considering ability "to obtain future customers" and to "expand the[ir] service"); *id.* ¶ 196 (JA ____) (considering ability "to potentially serve new clients").

But "[f]or the Small Satellite Operators, the record clearly demonstrates that * * * the remaining 200 megahertz of spectrum available after the transition period exceeds *any* reasonable estimate of their needs," *Order* ¶ 135 (JA ____–__) (emphasis added), including the need to serve any new customers they might reasonably expect to attract. Given "the failure of the Small Satellite Operators to demonstrate any significant past, present, or future base of earth station customers" for their C-band service in the United States, the Commission reasonably

found that "any opportunities they might be losing * * * are, on a practical level, *de minimis*." *Id.* ¶ 139 (JA ____).[11]

3. There is likewise no basis for the Small Operators' argument (Br. 31–35) that they must be financially compensated for the supposed value of their lost spectrum itself, independent of any demonstrable effect on their ability to provide service.

By its terms, Section 316 allows the Commission to modify licenses whenever it determines that "such action will promote the public interest, convenience, and necessity," without imposing any compensation requirement. 47 U.S.C. § 316(a)(1); *see Cal. Metro*, 365 F.3d at 45 ("the Commission need only find that the proposed modification serves the public interest"). Though the Commission found

---

[11] The Small Operators are incorrect that the Commission "limit[ed] deployments by new entrants" (Br. 13) by supposedly withholding interference protection from future earth stations. In the provision they cite, the Commission granted new interference protections to incumbent earth stations by rule, 47 C.F.R. § 27.1423(a)–(b) (JA ____), because the existing licenses and registrations did not contemplate nearby terrestrial use. That does not mean future earth stations will be ineligible for protection. Applications to construct new earth stations can be submitted once the transition is complete, *see Order* ¶ 151 (JA ____), and the Commission can provide appropriate interference protection when granting any such applications.

it in the public interest here to provide for relocation payments and accelerated relocation payments, these expenditures are meant to reimburse licensees for actions they must take to continue providing comparable service or to provide an incentive to licensees to expedite those actions—not to compensate them for a reduction in spectrum itself. *Order* ¶¶ 196 n.526, 214, 241, 246 (JA ____, ____, ____, ____). The Commission did not find it in the public interest, nor does anything in Section 316 require, that licensees be paid for loss of spectrum access rights alone when their ability to provide comparable service continues undiminished. *Id.* ¶ 196 & n.526 (JA ____).

Nor does the theoretical and unsubstantiated possibility that the Small Operators might one day develop a use for additional spectrum entitle them to compensation. Contrary to the Small Operators' contention that they are entitled to compensation based on "rights held" irrespective of whether those rights are "exercised" (Br. 35, 39), a spectrum license has never conferred a vested right to potential use of spectrum that the licensee has not developed. *See*, *e.g.*, *Mobile Relay*, 457 F.3d at 10–12 (rejecting argument by a licensee that it was entitled to compensation when changes to the 800 MHz band deprived it of the right to later convert its high-site dispatch system to a more lucrative cellular

system); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001) (rejecting a similar vested-rights argument). Nor would such an approach be consistent with the Commission's longstanding disfavor for fallow spectrum or the public interest, which is served by the *use* of licensed spectrum, not the mere holding or ownership thereof. *See* 47 U.S.C. § 301 (licenses cover "the use of such channels, but not ownership thereof"); *id.* § 309(j)(4)(B) (directing the Commission "to prevent stockpiling or warehousing of spectrum by licensees"). Indeed, this Court has warned that "[t]o conclude otherwise would hamstring" the FCC's "spectrum management." *Mobile Relay*, 457 F.3d at 11.

4. PSSI also raises (Br. 59–61) a Section 316 challenge to the *Order* based on PSSI's rights to receive transmissions in the lower C-band. That challenge is jurisdictionally barred by PSSI's failure to timely file its appeal, *see supra* pp. 4–6, and is meritless in any event. The *Order* directed that PSSI's earth stations' interference protection in the lower 300 MHz be eliminated once cleared of satellite operations. *Order* ¶ 148 (JA ____). That action will not have any independent practical effect on PSSI, because once all satellite operators have ceased using this portion of the C-band, there will be no satellite transmissions for PSSI to receive and hence no use for its interference protection with respect to those

transmissions. Eliminating vestigial interference protection once there are no longer transmissions to be received and at risk of interference does not "fundamentally change" PSSI's licenses.

B. The Commission's Actions Comport With Principles Of Fair Notice And Prior Commission Orders.

The Small Operators also contend (Br. 41–43) that they lacked fair notice that the Commission might modify their spectrum usage rights without compensation. That contention does not withstand scrutiny.

At the outset, the Small Operators are incorrect that any particularized notice was required in the first place. The cases on which they rely (Br. 41) are clear that this heightened notice requirement applies only when the government seeks to "*punish*[]" or "sanction" a party for violating a requirement. *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021, 1039, 1043 (D.C. Cir. 2017). The Commission has not sought to punish any licensee here, nor is it seeking to enforce any requirement. On the contrary, the Commission has endeavored to *accommodate* incumbent licensees by preserving sufficient spectrum for them to continue providing comparable service and ensuring they will be reimbursed for all necessary relocation costs (including a number of technology upgrades). The Small Operators can hardly claim to be

adversely affected by the loss of additional spectrum for which they have demonstrated no foreseeable need. *See Order* ¶ 196 (JA ____–__). The *Order* is a forward-looking effort to achieve public interest benefits while accommodating all demonstrated needs of incumbent licensees, not a backward-looking attempt to sanction past conduct.

In any event, the Commission's ruling in the 2002 *Motient Modification Order* put licensees on notice that Section 316 authorizes the Commission to reduce the amount of spectrum allocated, without compensation, when technological advancements make it possible for the licensee to provide the same service using less spectrum than when the license was originally awarded. 17 FCC Rcd. at 2712–13 ¶¶ 19–22 (reducing licensee's spectrum rights from 28 MHz to 20 MHz); *see Order* ¶ 126 (JA ____–__) (citing the *Motient Modification Order*). That was long before ABS launched its ABS-3A satellite in 2015 or when it applied for its U.S. license in 2016. It was also long before Hispasat applied for its U.S. license for Amazonas-3 in 2012 and launched that satellite in 2013. And the sole satellite ARSAT relies on here likewise did not reach orbit until 2015.

Furthermore, the Small Operators *could not* reasonably have expected financial compensation for loss of raw spectrum-access rights because the Communications Act does not allow the Commission to provide such payments. Under 47 U.S.C. § 309(j)(8)(A), the Commission is required to deposit all auction proceeds in the Treasury. *See Order* ¶ 52 (JA ____). The Commission therefore lacks authority to use any funds generated by the auction to pay the previous incumbents for their relinquished spectrum, and thus could not give the Small Operators the relief they seek. Congress has created an exception allowing certain auction proceeds to be paid to incumbents that relinquish spectrum in a reverse auction, *see id.* § 309(j)(8)(G), but the Commission was unable to use a reverse auction here—and hence that exception does not apply—because of the non-exclusive nature of the C-band incumbents' licenses, *see Order* ¶¶ 44, 52 (JA ____, ____). A reverse auction relies on exclusive holders of complementary licenses competing against each other, whereas the incumbent satellite operators here instead hold non-exclusive licenses for shared spectrum. *Ibid.*[12]

[12] There is no basis for the Small Operators' effort (Br. 30–31, 33–34) to draw a negative inference that, by authorizing the Commission to reclaim spectrum through a reverse auction, Congress somehow

The prohibition on paying incumbents to relinquish spectrum rights is consistent with the principle that spectrum licenses "provide for the use of such channels, but not the ownership thereof." 47 U.S.C. § 301. Licensees have no property rights in licenses granted by the Commission, and no valid expectation or right to continued use of spectrum (much less any right to be paid to cease using spectrum) except as expressly provided by statute, rule, or order. *Order* ¶ 145 (JA ____–__); *see*, *e.g.*, *Mobile Relay*, 457 F.3d at 12.

To be sure, under the Commission's *Emerging Technologies* framework, the Commission has required new licensees to reimburse incumbents for the cost of moving to new spectrum, and it has authorized new licensees to make acceleration payments in exchange for the incumbents' agreement to make the spectrum available more quickly. That is because those payments are not "proceeds" generated by the auction, but instead are the cost of removing encumbrances to make the

---

precluded the Commission from reallocating spectrum in other ways that do not pay incumbents for lost spectrum-usage rights. On the contrary, Congress specifically instructed in 47 U.S.C. § 309(j)(6)(C) that "[n]othing in [Subsection 309(j)]," which includes the reverse-auction provisions, "shall diminish the authority under the other provisions of [the Communications Act] to regulate or reclaim spectrum licenses."

spectrum available for auction in the first place.[13] *See* C-Band Alliance 1/16/20 Letter at 9–11 (JA ____–__). By contrast, requiring those bidding for new spectrum rights to make a side payment to the former incumbents *for the same rights they are bidding on* would be indistinguishable from paying incumbents a share of the auction proceeds. Outside of a reverse auction, that "would be an unlawful exercise of" the Commission's authority. *Order* ¶ 52 (JA ____).

The past orders that Appellants cite (Br. 32, 42–43) are not to the contrary. Any benefit that incumbent licensees received from those orders was incidental to the Commission's pursuit of important public benefits, and did not constitute the sort of wholly private compensation that the Small Operators seek here:

- In the 18 GHz band, in the order this Court upheld in *Teledesic*, the Commission allowed incumbents to recover their relocation costs and to receive incentive payments to relocate more quickly—just as the Commission did here. The

[13] In fact, the accelerated relocation payments here will likely result in an increase in auction proceeds, rather than constitute an impermissible *use* of auction proceeds, because the resulting increase in auction value from making the spectrum available more quickly ($10.52 billion) exceeds the winning bidders' payment obligations ($9.7 billion). *See Order* ¶¶ 211–19, 226 (JA ____–__).

Commission did *not* provide any separate or additional compensation for lost spectrum access rights.

- In the 2 GHz and 28 GHz bands, the Commission granted expanded rights to incumbents as the most expeditious means to attain the *public* benefit of enabling new or expanded service, not as a private benefit.[14] *Cf. Order* ¶ 40 (JA ____–__) (explaining that the Commission has expanded incumbents' rights to enable new or expanded services, but not solely to provide them a financial benefit). The Commission recognized that its actions might benefit incumbent licensees, but it proceeded *despite* that acknowledged private benefit, not *because* it sought to benefit incumbents.[15] This Court upheld

---

[14] *Serv. Rules for Advanced Wireless Servs. in the 2000–2020 MHz & 2180–2200 MHz Bands*, 27 FCC Rcd. 16102, 16169–171 ¶¶ 176–180 (2012) (*AWS-4 Order*); *Use of Spectrum Bands Above 24 GHz for Mobile Radio Servs.*, 31 FCC Rcd. 8014, 8031 ¶¶ 41–42, 8048 ¶¶ 86–87, 8091–92 ¶¶ 219–220 (2016) (*Above 24 GHz Order*).

[15] *See, e.g.*, *AWS-4 Order*, 27 FCC Rcd. at 16170 ¶ 178 ("We emphasize that, although our determination * * * will undoubtedly result in an increase in value [for incumbents], such increase in value is not a basis for our decision today; rather, it is a consequence of our decision"); *Above 24 GHz Order*, 31 FCC Rcd. at 8031 ¶ 42 (Although expanding incumbents' rights "could be viewed as a windfall to those licensees * * * the benefits of expediting service outweigh" those concerns); *see also NTCH*, 950 F.3d at 881.

the Commission's actions in the 2 GHz band on that basis earlier this year. *NTCH*, 950 F.3d at 874–76, 879–81.

- The 39 GHz incentive auction and the broadcast-spectrum incentive auction both reclaimed spectrum through reverse auctions, in which Congress has made certain auction proceeds available to incumbents because the public benefit is maximized by using market-based mechanisms to identify the least efficiently used spectrum and reallocate it for more productive uses. There is no comparable public benefit to, and the Commission has no comparable legal authority to provide, the compensation the Small Operators demand here. *Cf. Order* ¶ 196 (JA ____) ("Compensating licensees for such speculative claims of future loss would be inconsistent with established Commission precedent and would not serve the public interest.").[16]

---

[16] The Small Operators insist (Br. 43–44) that the reallocation of 39 GHz spectrum was designed to facilitate private benefits, rather than public benefits, because two licensees later sold their licenses to other entities. But Commission staff approved each of those transfers upon an explicit finding that "public interest benefits are likely to be realized from the transfer." *In re Verizon Commc'ns Inc. & Straight Path Commc'ns, Inc.*, 33 FCC Rcd. 188, 188 ¶ 1, 198 ¶ 29 (Wireless Telecomm. Bur. 2018); *In re AT&T Mobility Spectrum LLC &*

Thus, contrary to the Small Operators' claims, when modifying licenses "the Commission has consistently limited reimbursement to those costs directly tied to relocation," and has not provided compensation for abstract spectrum access rights or for "lost revenues" or "opportunity costs." *Order* ¶¶ 196 & n.526, 207 & n.560, 240 & n.622 (JA ____, ____, ____).

II. The Commission Reasonably Explained Its Decision To Authorize $9.7 Billion In Accelerated Relocation Payments.

The Commission also reasonably explained its decisions concerning the purpose and amount of the accelerated relocation payments. Numerous commenters agreed that the Commission could and should offer accelerated relocation payments, *Order* ¶¶ 189–190 (JA ____–__)—including the Small Operators themselves, *see id.* ¶ 190 & n.511 (JA ____–__). Likewise, there is no dispute here that the Commission has statutory authority to mandate accelerated relocation payments or that it was appropriate to do so in this case. Instead, the Small Operators object only to the amount of those payments. But the *Order* amply explains the Commission's reasoning, and the Small Operators offer no sound basis to second-guess the Commission's determinations.

FiberTower Corp., 33 FCC Rcd. 1251, 1251–52 ¶ 2, 1260–61 ¶ 26 (Wireless Telecomm. Bur. 2018).

1. Under the *Emerging Technologies* framework, the Commission has long provided for new licensees "to make accelerated relocation payments—payments designed to expedite a relocation of incumbents from a band." *Id.* ¶ 184 (JA ____). These payments "promote the rapid introduction" of new spectrum "by leveraging the technical and operational knowledge of [satellite] operators, aligning their incentives to achieve a timely transition, and enabling that transition to begin as quickly as possible." *Id.* ¶ 169 (JA ____).

The Commission proceeded to identify an "upper bound" of the direct economic value of the spectrum to the new licensees, as measured by their expected increase in profits, which it estimated as roughly $10.52 billion. *Id.* ¶¶ 217–218 (JA ____–__). The Commission elsewhere recognized that the total public benefit of accelerated relocation throughout the economy may be much higher; indeed, studies in the record estimate that "'for every year of delay' in making the C-band spectrum available, 'consumer welfare is reduced by $15 billion"—which would put the public benefit of accelerated relocation at over $30 billion. *Id.* ¶ 185 (JA ____–__); *see also id.* ¶ 190 (JA ____). But it nonetheless determined that the economic value to the new licensees (which is just one part of the total public benefit) was the appropriate upper bound,

since the new licensees who will be responsible for these payments could not be expected to pay more for accelerated relocation than the amount that they themselves stand to gain. *Id.* ¶¶ 222–223 (JA ____).

Beneath that upper bound, however, the Commission acknowledged that selecting an amount "large enough to provide an effective incentive" is "[u]ltimately * * * a line-drawing exercise." *Id.* ¶ 219 (JA ____). Recognizing "the complex policy considerations at issue" and that "[t]here is no precise science" that can point to a right answer, the Commission found that "$9.7 billion threads the needle through all of the considerations raised * * * as well as our own predictive judgment." *Id.* ¶¶ 219–220, 226 (JA ____–__). It explained that choosing this amount near the upper end of the range "maximizes the possibility that such a payment will be sufficient to incent early clearing," while still providing close to a "'billion-dollar bump'" in additional proceeds to the U.S. Treasury if eligible satellite operators agree to accelerated relocation (as they have all now done). *Id.* ¶¶ 219 n.580, 226 (JA ___–__).

Commenters challenged this amount from both sides. *See id.* ¶¶ 220–226 (JA ____–__). Intelsat, for example, argued that the Commission's figures were overly conservative and the $9.7 billion value unlawfully low. Intelsat 2/21/20 Letter at 4–6 (JA ____–__); *see Order*

¶¶ 223, 225 (JA ____–__). The Small Operators, by contrast, argued for accelerated relocation payments of $2.2 billion. Small Operators 2/18/20 Letter at 14–16 (JA ____–__); *see Order* ¶¶ 224–225 (JA ____–__).

2. The Small Operators now renew their arguments (Br. 45–51) that the Commission should have paid less to induce accelerated relocation. But the Commission reasonably explained that doing so would have created greater "risk that such a payment w[ould] be insufficient to incent earlier clearing," and the Commission reasonably chose to "minimize[] that risk" rather than take such a "gamble." *Order* ¶ 226 (JA ____). Faced with "a line-drawing exercise" where the Commission was tasked with selecting "an amount that is less than the incremental value * * * of accelerating the clearing deadline but large enough to provide an effective incentive," the Commission found that $9.7 billion "strikes the appropriate balance between these considerations and the amounts advocated in the record." *Id.* ¶ 219 (JA ____). The Small Operators have offered no sound basis for the Court to second-guess the Commission's judgment about where to draw that line.

The Small Operators contend (Br. 46, 48) that accelerated relocation payments were unnecessary because the eligible satellite operators had already proposed to clear the lower 300 MHz in under 36

months. But they neglect to mention that this proposal assumed compensation of *$21.5 to $38.5 billion*. *See Order* ¶ 213 & n.574 (JA ____). Even if the Commission could simply command satellite operators to clear their own operations on such a short timeframe, there is no basis to assume that they would also agree "to take upon themselves responsibility for transitioning all incumbent earth station operators that receive their services," *id.* ¶ 192 (JA ____–__), without incentive payments. Indeed, the Small Operators concede that incentive payments are necessary and appropriate when they themselves propose (Br. 53–54) accelerated relocation payments of $2.2 billion. At that point the dispute is not over the reasonableness of providing accelerated relocation payments, but simply the specific amount.

The Small Operators argue (Br. 54) that a lesser amount would have sufficed because "no rational actor" would have turned down their proposed alternative of $2.2 billion. That is by no means clear. While the C-Band Alliance had proposed to clear 300 MHz on a similar accelerated timeframe, that proposal was based on the Commission authorizing a private sale of the spectrum to the tune of between $43 billion and $77 billion. *Order* ¶ 213 & n.574 (JA ____–__). (The C-Band Alliance proposed to share 50% of the proceeds with the government, but

its members still would have received between $21.5 billion and $38.5 billion. *Ibid.*) The largest satellite operator, Intelsat, likewise argued in a lengthy filing that $9.7 billion was too low and threatened a lawsuit to challenge the Commission's legal authority to reduce its spectrum. *See* Intelsat 2/21/20 Letter (JA ____–__). Although the Commission is confident that it would have prevailed against any such suit, a lawsuit by one of the large satellite incumbents with existing U.S. customers would have resulted in a rejection of accelerated relocation and thus would have deprived the public of billions of dollars of forgone value even if the Commission ultimately prevailed. And these companies might have had reason to roll the dice on a lawsuit on the theory that even a low probability of success might increase their leverage to demand more money or force the Commission to allow a private sale that would enrich them an amount between $21.5 and $77 billion. *See Order* ¶ 213 & n.574 (JA ____).[17] Moreover, getting the incentives right here was important

[17] The Small Operators invoke Intelsat's recent bankruptcy filing (Br. 6), but the fact that Intelsat subsequently filed for bankruptcy does not make its threat to forgo accelerated relocation and file suit any less credible. If anything, it appears to make that threat more credible, since it shows that Intelsat could have declined accelerated relocation and sought to reduce or restructure its debts through other means.

because five satellite operators each currently use the full C-band spectrum, so achieving accelerated relocation required agreement and coordination by multiple operators, any one of which could have refused if the Commission selected an amount that was too low.

Under these circumstances, the Commission could not ascertain precisely the level of relocation payments needed to ensure the benefits of accelerated relocation, and satellite operators "had every incentive not to disclose precisely how high an accelerated relocation payment must be for them to accept it." *Id.* ¶ 226 (JA ____). It was therefore reasonable for the Commission to decide that it best served the public interest to choose an amount "that most minimizes th[e] risk" that the incumbent satellite operators would decline to accelerate their relocation. *Id.* ¶ 226 (JA ____)

The Small Operators contend that it was improper to "g[i]ve the incumbents 92% * * * of the entire national benefit created" (Br. 48), but their math is incorrect. The $10.52 billion they use as the denominator estimates only the direct economic benefit to new terrestrial licensees from acceleration, not the far larger total benefits to consumers and the economy. *Order* ¶¶ 222–223 (JA ____–__); *see also* Intelsat 2/21/20 Letter at 4–5 (JA ____–__). Studies in the record estimate that the public benefit

of making this C-band spectrum available faster may be $15 billion per year, which would put the total public benefit here at over $30 billion. *Order* ¶¶ 185, 190 (JA ____, ____). And even focusing on the economic value to new licensees, the Commission acknowledged that the $10.52 billion figure is "a relatively conservative estimate of the value of the underlying spectrum." *Id.* ¶ 226 (JA ____–__); *accord id.* ¶ 219 (JA ____) ("conservative[] estimate"); *id.* ¶ 225 (JA ____) ("conservativeness of the estimated value"); *see also Order* at 244 (JA ____) (Statement of Chairman Pai) ("[O]ur conservative approach here means the costs of accelerated relocation are easily outweighed by the benefits to the Treasury (not to mention the public at large)."). The full public benefit of accelerated relocation far exceeds the figure the Small Operators proposed.

3. Finally, the Small Operators' ill-defined proposal that accelerated relocation payments must be "proportionate" to actual costs (Br. 55–56) misunderstands the facts in *Teledesic* and is otherwise unsound. In the underlying Commission order discussed in *Teledesic*, the Commission required new licensees and incumbents to attempt to privately negotiate their own transition plan, and only if an agreement could not be reached after a substantial period of good-faith negotiation

could the new licensee then involuntarily displace the incumbent. *See* 275 F.3d at 81. The Commission could step in if parties were alleged not to be negotiating in good faith, including if incumbents demanded extortionate amounts for accelerated clearing in an "attempt[] to gouge [new licensees] that are required to negotiate with them." *Id.* at 87–88. Under that framework, the Commission looked to proportionality "as a check against holdout problems created by mandatory good-faith negotiations." *Order* ¶ 224 (JA ____).

Here, unlike in *Teledesic*, there is no holdout problem with respect to negotiations because the Commission itself has set the amount of accelerated relocation payments. *Cf. Order* ¶ 186 (JA ____–__) (explaining why a negotiation-based approach would be ineffective). Because the C-band relocation does not entail the same holdout problem, the Commission reasoned that it was free to "choose a different approach." *Id.* ¶ 224 (JA ____); *see also Teledesic*, 275 F.3d at 84 (deferring to the Commission's determinations on "how best to strike [a] balance [on matters] involv[ing] both technology and economics"). There is no basis for the Court to import a proportionality requirement that was designed to address a problem that is not presented here.

The Small Operators' proposed proportionality requirement is also inadministrable. In *Teledesic*, proportionality was assessed by the agency, applying its expert technical and policy judgment. The Small Operators now want proportionality to be assessed by the Court, but they do not explain how this standard would be judicially manageable. A proportionality test simply begs the question of how large or small a proportion to allow. That question is properly left to the Commission, exercising its subject-matter expertise and congressionally delegated authority, and the record here offers no basis to second-guess the Commission's judgment.

III. The Commission Reasonably Declined To Categorically Bar Reimbursement Of Satellite-Related Costs.

Consistent with this Court's decisions and longstanding FCC precedent, *see Order* ¶¶ 181–183 (JA ____–__), the Commission determined that new licensees must "reimburse eligible [satellite] operators for their actual relocation costs, as long as they are not unreasonable." *Id.* ¶ 199 (JA ___). To that end, the Commission acknowledged the possibility that "procuring and launching new satellites may be reasonably necessary" if they are needed to "support more intensive use of the [remaining 200 MHz] after the transition."

Ibid. Although some commenters represented that "as many as 10 new satellites may be needed," the Commission "express[ed] no opinion regarding the number of such new satellites that may be reasonably necessary." *Id.* ¶ 199 n.534 (JA ____).[18]

To the extent the Small Operators now wish to challenge whether any *particular* satellite should be eligible for reimbursement (Br. 51–52), their challenge is premature, because the Commission has not yet ruled on whether or to what extent any particular satellite's costs must be reimbursed. *See ibid.* Instead, the *Order* establishes a Relocation Payment Clearinghouse that, upon receiving "a claim for reimbursement" that is "complete with sufficient documentation to justify the amount," will "determine in the first instance whether costs

---

[18] To the extent that any new satellites needed to support the transition might be more valuable than the older satellites they would be replacing, this Court has upheld "such a result as the legitimate byproduct of a process whereby [incumbents] are uprooted against their will to accommodate newer technologies." *Teledesic*, 275 F.3d at 86; *see also id.* at 85 (holding that the "policy goals" of providing full reimbursement for comparable replacement facilities "are reasonable and do not, on their face, result in windfalls"). Nevertheless, the Commission cautioned that reimbursement will cover only "reasonable," "prudent," and "efficient" costs that are "necessitated by the relocation" to "continue * * * provid[ing] substantially the same service," and will not cover "gold-plat[ing]" or "additional functionalities * * * that are not needed to facilitate the swift transition." *Order* ¶¶ 194–195 (JA ____–__)

submitted for reimbursement are reasonable." *Id.* ¶ 260 (JA ____). The Clearinghouse will serve a "function similar to a special master in a judicial proceeding," *id.* ¶ 268 (JA ____), and any disputes may then be appealed to the Commission, *id.* ¶ 269 (JA ____–__). No such dispute has yet been decided here.

There is no basis for the Small Operators' assumption that the Commission will allow reimbursement of new satellites that are not necessitated by the transition. On the contrary, the *Order* states that the Commission will not "allow[] reimbursement for equipment upgrades beyond what is necessary to clear the band." *Id.* ¶ 194 (JA ____); *accord id.* (JA ____) ("'Reasonable' relocation costs are those necessitated by the relocation").[19] After the *Order* was released, all satellite operators with service that must be migrated filed documents with the Commission outlining their transition plans. Only two satellite operators plan to seek reimbursement for any new satellites, and their transition plans set forth why they believe those new satellites will qualify for

[19] The Small Operators instead focus (Br. 51–52) on the Commission's observation that new satellites will "support more intensive use of" the reduced spectrum available after the transition. *Order* ¶ 199 (JA ____). But that observation "is not the standard." *SSO Stay Denial* n.115 (JA ____).

reimbursement.[20] The Commission has not determined whether or to what extent those costs are in fact eligible for reimbursement, and will consider any relevant arguments at an appropriate time if and when they are fully presented for its consideration.

IV. PSSI's Independent Challenges Are Jurisdictionally Barred And Unavailing.

PSSI seeks to raise several independent challenges to the *Order*. Those challenges are jurisdictionally barred, however, due to PSSI's failure to timely file its appeal. *See supra* pp. 4–6. The Court should therefore dismiss PSSI's appeal and petition for review without reaching the merits. But if the Court does reach the merits, it should reject PSSI's various challenges to the *Order*.

A. The Commission Provided Ample Notice Of Its Proposal.

In the Notice of Proposed Rulemaking (NPRM), the Commission proposed to reallocate a portion of the C-band for terrestrial use and

---

[20] *See* Intelsat Transition Plan §§ 3.2, 3.6, GN Docket 18-122 (filed Aug. 14, 2020), *at* https://go.usa.gov/xGa4t; SES Transition Plan § I(B), GN Docket No. 18-122 (filed Aug. 14, 2020), *at* https://go.usa.gov/xGa4J; *see also* SES 7/29/20 Ex Parte, GN Docket No. 18-122, *at* https://go.usa.gov/xGa23; Intelsat 7/31/20 Ex Parte, GN Docket No. 18-122, *at* https://go.usa.gov/xGa4z; SES 8/3/20 Ex Parte, GN Docket No. 18-122, *at* https://go.usa.gov/xGa2c.

sought "comment on various proposals for transitioning all or part of the band * * * with clearing for [terrestrial] use beginning at 3.7 GHz and moving higher up in the band as more spectrum is cleared." *NPRM* ¶¶ 1–2 (JA ____); *see id.* ¶¶ 26–188 (JA ____–__). PSSI had notice of that proposal and reasonably understood how the proposal might affect its rights, as evidenced by its extensive participation in this proceeding. *See PSSI Stay Denial* ¶ 13 (JA ____–__). And the Commission's resulting decision to reallocate the lower 300 MHz of the C-band from satellite to terrestrial wireless use, just as the *NPRM* contemplated, was by any measure a logical outgrown of the *NPRM*. *See Agape Church, Inc. v. FCC*, 738 F.3d 397, 411–13 (D.C. Cir. 2013).

PSSI nevertheless insists (Br. 69–71) that the Commission provided inadequate notice because the *NPRM* advised that the agency "will evaluate the 3.7–4.2 GHz band individually," and that it "may address * * * the 5.925–6.425 [GHz]" uplink band "in subsequent item(s)." *NPRM* ¶ 12 (JA ____). Far from giving rise to any notice problem, however, that statement is entirely accurate: The *Order* evaluated the 3.7–4.2 GHz downlink band individually, reallocated the lower portion of that band for terrestrial wireless use, and did not separately address the uplink band. And to the extent PSSI believes that

any modification to the downlink band *necessarily* modifies the paired uplink band, then by PSSI's own logic, it was necessarily on notice that its interests in the uplink band might be affected.

B. The Planned Auction Of New Terrestrial Licenses Does Not Violate The ORBIT Act.

Section 647 of the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act), Pub. L. No. 106-180, 114 Stat. 48, 57 (2000), provides that the Commission "shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services." 47 U.S.C. § 765f. The Commission explained that its plan to award new terrestrial licenses via auction complies with this provision because the new licenses will authorize only *terrestrial use* of the reallocated spectrum, not any satellite communications. *Order* ¶¶ 62–63 (JA ____); *PSSI Stay Denial* ¶ 11 (JA ____).

Consistent with this Court's decision in *Northpoint Technology, Ltd. v. FCC*, 414 F.3d 61, 72–73 (D.C. Cir. 2005) (*Northpoint II*), the Commission concluded that Section 647 of the ORBIT Act "does not bar auctions of licenses for non-satellite use of the [cleared] spectrum, such as terrestrial flexible use." *Order* ¶¶ 62–63 & n.189 (JA ____). PSSI

would instead read the statute to focus on whether the spectrum is "currently" used or "presently" used for satellite communications (Br. 62–69), rather than on how the spectrum is to be used under the new licenses that the Commission plans to auction. This Court rejected that position in *Northpoint II*, and deferred to the agency's reasonable interpretation that the statute forbids the agency "from auctioning 'orbital locations or spectrum' only when that spectrum is to be 'used for the provision of international or global satellite communications services,'" and "not [when it] is to be used for provision of domestic, non-satellite-based communications services." 414 F.3d at 73. Because the Commission adhered to the same reasonable interpretation here that the Court upheld in *Northpoint II*, PSSI's ORBIT Act challenge must fail.[21]

C. PSSI Has Not Shown That The Reduction In Spectrum For Satellite Operations Has Fundamentally Changed Its Licenses.

1. PSSI argued before the Commission that reallocating 300 MHz of C-band spectrum would reduce the number of satellite transponders in service to the point at which the total number available for "occasional-

[21] PSSI does not address *Northpoint II*, instead discussing (Br. 65–66) a different decision involving the same parties and bearing the same name.

use" programming might fall short of its needs. *See*, *e.g.*, PSSI 2/20/20 Letter at 2 (JA ____) (arguing that "[w]ithout sufficient [occasional-use] spectrum available" after the transition, satellite operators would "eliminate the availability of any requisite [occasional-use] bandwidth"). But PSSI's premise that the transition entails a drastic reduction in transponders in service is unsound. For one thing, the use of data and video compression and other technologies means that many customers will require fewer transponders after the transition than before, freeing up additional transponders for occasional-use programming. *PSSI Stay Denial* ¶ 8 (JA ____–__) ("the reduction [in transponders] is likely to be offset by increased spectral efficiency and other factors"); *see, e.g.*, *Order* ¶ 32 (JA ____) ("[B]ecause of compression and filtering technologies, incumbent space station operators will be able to deliver the equivalent quality of service and even expand that service in the remaining 200 megahertz of C-band spectrum."). For another, although the transition will reduce the number of transponders *per satellite*, satellite operators can "'launch additional satellites to add more transponders.'" *PSSI Stay Denial* ¶ 8 (JA ____).

The transition plans that the incumbent satellite operators have since submitted confirm these findings. For example, Intelsat reports

that "compression upgrades" planned for eleven of its customers will reduce these customers' combined transponder usage from 56 transponders to just 31. *See* Intelsat Transition Plan § 3.3, *supra* note 20. SES likewise expects transponder demand to decrease due to compression. *See* SES Transition Plan § I(D), *supra* note 20 (reporting that, through "compression/modulation technology upgrades," one customer that currently uses 11 transponders will need only five to six). Intelsat's transition plan also promises to maintain "an adequate pool of [occasional-use] service capacity" by "allocat[ing] dedicated capacity * * * equal to the forecasted peak [occasional-use] demand" in order to "ensure[] continuity for its satellite customers, including [occasional-use] customers such as PSSI." Intelsat Stay Opp. at 3–4, *supra* note 7. And SES proposes to maintain its transponder count through additional satellites: Before the transition, it planned to operate two 500 MHz satellites that support 24 transponders each, for a total of 48 transponders; after the transition, it proposes to operate five 200 MHz satellites that support 10 transponders each, for a total of 50 transponders. *See* SES Transition Plan § I(B), *supra* note 20. Perhaps in light of these developments, PSSI does not renew its original capacity-based argument in its brief.

2. On appeal, PSSI now makes a different argument: Instead of arguing that it needs a certain number of *total* transponders, it now argues (Br. 19, 60) that its licenses were fundamentally changed because the *Order* prevents it from using *particular* transponders to distribute its video programming. It relies for this argument on a single "sample study for Hard Rock Stadium in Miami." Br. 19 & Exh. 3. Although PSSI's brief and "study" do not provide sufficient information for the FCC to evaluate this claim, its premise appears to be that interference from fixed point-to-point microwave communications in the 6 GHz band leaves only three C-band *uplink* transponder frequencies available at that location, and the particular *downlink* transponder frequencies paired with those uplink transponders would not be available after the transition.

Because this new argument is different from the argument that PSSI presented to the Commission before the *Order*, PSSI is procedurally barred from raising this argument on appeal. 47 U.S.C. § 405(a) (prohibiting judicial review of "questions of fact or law upon which the Commission * * * has been afforded no opportunity to pass"); *see*, *e.g.*, *FiberTower Spectrum Holdings, LLC v. FCC*, 782 F.3d 692, 696–97 (D.C. Cir. 2015). Even if this new argument were not procedurally barred, however, PSSI has failed to substantiate it in multiple respects.

At the outset, PSSI has not shown that its asserted inability to serve a few specific locations from particular transponders is likely to interfere significantly with its business operations, or to undermine the Commission's determination that relocating satellite operations to the upper portion of the C-band will permit the incumbents to provide "*comparable* service for existing customers." *Order* ¶ 32 (JA ____) (emphasis added). And even if it had, the purported inability to service a handful of specific locations would not fundamentally change PSSI's licenses (Br. 59-60), nor render them "ultimately worthless and destroy the company's business" (Br. 62).

In any event, insofar as the problem PSSI alleges arises not from a lack of available downlink transponders alone, but also from the unavailability of paired uplink transponders due to interference from point-to-point communications in the separate 6 GHz band, the problem stems from limitations in PSSI's transmission rights in the *uplink* band—not from the *Order*'s modifications to the downlink band. Satellite uplink and point-to-point microwave communications share the 6 GHz band on a "co-primary" basis, meaning that PSSI has no right to be free from interference that may result from point-to-point communications. *See* 47 C.F.R. § 2.106 (Table of Frequency Allocations recording that

"Satellite Communications" and "Fixed Microwave" are co-primary in the 5.925–6.425 GHz range); *id.* § 25.277(c) (requiring transportable earth stations to coordinate with any co-primary licensees). Thus, the terms of PSSI's licenses already require it to *accept* any limitations or consequences that result from uplink transponders being unavailable due to conflicting point-to-point use, and the fact that PSSI *lacks* the right to any particular uplink transponders is no basis for it to now claim an inviolable right to access any particular downlink transponder it might need as a result.

Moreover, PSSI has not shown that it actually needs access to on-site C-band *downlink*, in addition to *uplink*, to provide coverage of these events. In fact, PSSI's own filings suggest otherwise: PSSI reports that "multiple times" when covering Iowa State football games its "C-band return was completely unusable on multiple frequencies" because its "return reception on location in Ames was completely interfered with and unusable"—yet "PSSI's transmission to our broadcast customer was not affected." PSSI 1/7/20 Letter at 2 (JA ____). And of PSSI's 32 C-band earth stations, seven possess *transmit-only* licenses that are limited to the C-band uplink, and are not licensed to receive transmissions or use

C-band downlink.[22] PSSI states that it finds on-site downlink useful to provide "instantaneous, speed-of-light confirmation of signal continuity and quality" (Br. 7), but it nowhere shows that it is *necessary* to always have access to on-site downlink or why monitoring functions cannot be performed by offsite personnel communicating with those on-site or through other means.[23]

PSSI also fails to address its ability to provide coverage of these events through other means, such as by using its licenses in the Ku-band or fiber distribution. Indeed, a sports stadium—which is a fixed venue hosting frequent televised events—would ordinarily be a paradigmatic use case for fiber transmission of video programming. Even if PSSI might

---

[22] *See* FCC License File Nos. SES-LIC-20110507-00563, SES-RWL-20080111-00039, SES-LIC-20130404-00309, SES-LIC-20080304-00220, SES-LIC-20080304-00221, SES-LIC-20091006-01286, and SES-MFS-20081009-01308. The licenses can be viewed on the FCC's IBFS database by visiting https://licensing.fcc.gov/myibfs/, selecting "File Number" in the "Quick Search" drop-down field in the sidebar, and searching for the relevant file number.

[23] Indeed, PSSI's press release discussing the work it performed for the recent *American Idol* finale during the COVID-19 pandemic, in which PSSI provided on-site coverage from the contestants' and judges' homes, describes how a "production team in Burbank" was able to "control each camera remotely by tunneling into the cameras via public internet." Press Release, *PSSI Successfully Engineers Complex Transmission of American Idol Finale* (May 19, 2020), *at* https://bit.ly/33LnWQ7.

sometimes have business reasons to prefer using C-band distribution, or might prefer to have multiple distribution methods available for redundancy, PSSI has failed to show that it is essential to be able to use C-band transmission at every site or that there are no available alternatives.

PSSI also has not shown that the ostensible constraints on its access to other uplink transponders cannot be overcome. Satellite uplink and fixed point-to-point communications both use highly directional antennas, which can coexist in close proximity without interference if the antennas are oriented properly (which is why the FCC has assigned them to share the same spectrum). Interference problems can potentially be eliminated or mitigated simply by repositioning PSSI's antenna.[24]

Finally, PSSI has not shown that it will necessarily continue to face the same constraints after the transition. New satellites that SES and Intelsat are planning to deploy in new orbital paths may well give PSSI access to additional transponders from locations where they previously might not have been available.

---

[24] PSSI briefly asserts in a footnote (Br. 75 n.14) that it has "little choice where to park" its satellite trucks, but it offers little support for that claim, nor does it show that any supposed constraints are inherent and unavoidable technical necessities rather than business decisions.

D. PSSI Has Not Shown That Interference From New Terrestrial Operations Will Imperil Its Programming.

1. PSSI contends (Br. 71–75) that the Commission "completely ignored" its comments regarding the interference problems that will face its transportable earth stations after the C-band proceeding is completed. That is incorrect. PSSI's "transportables" are a type of earth station, and the *Order* discusses at length the protections for earth stations. *See*, *e.g.*, *Order* ¶¶ 171, 201 (JA ____–__) (filters); *id.* ¶¶ 359–371 (JA ____–__) (interference protection).

Nor has PSSI substantiated its concerns about possible interference to its operations in the 4.0–4.2 GHz band from new terrestrial operations in the nearby 3.7–3.98 GHz band in light of the protections the Commission afforded all earth stations. Indeed, the Commission took multiple steps that provide ample protection from adjacent-band interference:

- ***20 MHz Guard Band.*** The Commission reserved 20 MHz of spectrum (3.98–4.0 GHz) to "function as a guard band to protect earth station registrants from harmful interference both during and after the transition." *Id.* ¶ 58 (JA ____–__).

- ***Filters.*** The Commission required satellite operators "to provide passband filters [to incumbent earth stations] to block signals from the 3700–4000 MHz band to all associated incumbent earth stations" to filter out any 5G transmissions in the lower 300 MHz. *Id.* ¶ 171 (JA ____); *see* 47 C.F.R. § 27.1411(b)(5) (JA ____) ("A passband filter must be installed at the site of each incumbent earth station * * * to block signals from adjacent channels and to prevent harmful interference from licensees in the 3.7 GHz Service."); *Order* ¶ 201 (JA ____) (similar). The record reflects that "blocking effects can be mitigated with filters" and that "filters have been used in earth stations around the world to mitigate interference for many decades." *Order* ¶¶ 367–369 (JA ____–__).
- ***Out-of-Band Emission Limits.*** The Commission required terrestrial wireless base stations "to suppress their emissions beyond the edge of their authorization to a conducted power level of -13 dBm/MHz." *Id.* ¶¶ 343–344 (JA ____–__).

- ***Power Limits.*** While the Commission "f[ound] that the[se] protection mechanisms * * * will ensure that the potential for harmful interference * * * is minimized regardless of the base station power levels" used for terrestrial wireless service, *id.* ¶ 337 (JA ____–__), it also limited the power level of wireless transmissions both at the base station, *id.* ¶ 335 (JA ____); 47 C.F.R. § 27.50(j)(2) (JA ____), and at the location of any known earth station antenna, *Order* ¶¶ 359–361, 366–367, 370–371 (JA ____–__, ____–__, ____–__); 47 C.F.R. §§ 27.55(d), 27.1423(a)–(b) (JA ____, ____).

PSSI offers no sound basis to doubt the reasonableness of the Commission's determination that these measures will be sufficient to protect earth stations, including PSSI's transportable earth stations, from undue interference.

PSSI instead seeks to justify its interference concerns by pointing (Br. 20, 72) to problems it assertedly experienced when covering Iowa State football games in 2019, which it attributes to adjacent-band terrestrial transmissions by Verizon. But that example did not involve operation under the protections the Commission adopted and relied on here. Verizon was operating under an experimental license authorizing

transmissions in the 3.65–3.70 GHz band, within 5 MHz of the C-band; a 20 MHz guard band was not in place. And PSSI does not claim that its truck was equipped with a passband filter (as adjacent-band terrestrial use was not generally authorized or anticipated at that time). PSSI's Iowa State example thus fails to show that the protections adopted by the Commission here are inadequate.

2. Because the *Order* provided substantial protection from any interference from post-transition terrestrial wireless operations in an adjacent band, there was no need to consider PSSI's proposal (Br. 73–75) that new terrestrial licensees be required to "register the identity, geographic coordinates, and power levels" of every new wireless base station. An agency "need not consider every alternative proposed nor respond to every comment made," but instead "must consider only 'significant and viable' and 'obvious' alternatives." *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013). Even if the substantial protections provided by the *Order* were not sufficient, PSSI did not show that its alternative proposal—calling for a drastic departure from the FCC's traditional approach to mobile phone service, which has not generally required licensees to register each of their thousands of base stations—would be significant and viable.

For starters, the sheer administrative burden of requiring mobile carriers to maintain a constantly updated registry of each of the tens of thousands of wireless base stations nationwide—and the unspecified enforcement measures that would be needed to ensure that registry is complete and accurate—would be enormous. PSSI made no meaningful effort to measure or to grapple with those burdens, which would be grossly disproportionate to any limited benefit it would confer on the small number of transportable earth stations in use. *Cf.* PSSI 1/7/20 Letter at 3 (JA___) (estimating that the total number of transportable earth stations currently licensed "is approximately one hundred," and "not all of these are actively providing services"). Moreover, the public registry that PSSI asked the Commission to establish would threaten the security of U.S. communications networks by revealing sensitive data about critical network infrastructure, and it would require terrestrial wireless companies to disclose highly sensitive business information to their competitors. Again, PSSI's comments made no serious effort to grapple with these significant and obvious problems apparent on the face of its proposal.

By contrast, there are effective and far less onerous measures that PSSI can take on its own if it remains concerned about operating in

proximity to adjacent-band 5G base stations. At fixed venues (like sports stadiums), the site owner is likely to possess and to be able to supply to PSSI information on nearby wireless operations and contact information for the operators. If the site owner is unable to provide this information, PSSI can use the Commission's Universal Licensing System to identify the relevant geographic licenseholders in that area and can contact those licenseholders to obtain information or conduct any necessary coordination. *See PSSI Stay Denial* ¶ 9 (JA ____). In fact, in any location where PSSI wishes to transmit in the uplink band, it *already* must identify, notify, and coordinate with any terrestrial licensees in the area under 47 C.F.R. § 25.277(d). Simpler still, in most cases this coordination can be accomplished through a third-party coordinator such as Comsearch. *See* Comsearch, Frequency Coordination & FCC Licensing, https://www.comsearch.com/services/frequency-coordination-fcc-licensing/. And failing all that, PSSI can "us[e] radiofrequency scanners to identify nearby 5G operations" and use this information to avoid "parking its vehicles too close to base stations (which generally are not hard to locate)." *PSSI Stay Denial* ¶ 9 (JA ____). There was no basis for the FCC to consider PSSI's onerous proposal when more reasonable precautions were available.

CONCLUSION

The pending appeals and petitions for review should be dismissed for lack of jurisdiction or else denied on the merits. If the Small Operators timely file an appeal following the denial of their protest, it should be denied, and the Commission's *Order* should be affirmed.

Dated: August 28, 2020

Respectfully submitted,

/s/ *Scott M. Noveck*

Ashley S. Boizelle
Acting General Counsel
Jacob M. Lewis
Associate General Counsel
Scott M. Noveck
Counsel
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street SW
Washington, DC 20554
(202) 418-1740
fcclitigation@fcc.gov
Counsel for Appellee/Respondent Federal Communications Commission

Makan Delrahim
Assistant Attorney General
Michael F. Murray
Deputy Assistant Attorney General
Daniel E. Haar
Robert J. Wiggers
Attorneys
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave. NW
Washington, DC 20530
*Counsel for Respondent United States of America**

* Filed with consent pursuant to D.C. Circuit Rule 32(a)(2).

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Certificate of Compliance With Type-Volume Limitation,
Typeface Requirements and Type Style Requirements

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) and this Court's order of July 2, 2020, because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and D.C. Circuit Rule 32(e)(1):

   ☒ this document contains 16,439 words, *or*

   ☐ this document uses a monospaced typeface and contains ____ lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

   ☒ this document has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Century Schoolbook, *or*

   ☐ this document has been prepared in a monospaced spaced typeface using _____ with _____.

/s/ *Scott M. Noveck*
Scott M. Noveck
Counsel for Appellee/Respondents

STATUTORY ADDENDUM

STATUTORY ADDENDUM CONTENTS

Page

47 U.S.C. § 301 provides in pertinent part:

> **§ 301. License for radio communication or transmission of energy**
>
> It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. * * *

47 U.S.C. § 316 provides in pertinent part:

> **§ 316. Modification by Commission of station licenses or construction permits; burden of proof**
>
> (a)(1) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.
>
> (2) Any other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.
>
> (3) A protest filed pursuant to this subsection shall be subject to the requirements of section 309 of this title for petitions to deny.
>
> * * *

47 U.S.C. § 402 provides in pertinent part:

> **§ 402. Judicial review of Commission's orders and decisions**
>
> **(a) Procedure**
>
> Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of title 28.
>
> **(b) Right to appeal**
>
> Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases: * * *
>
> (5) By the holder of any construction permit or station license which has been modified or revoked by the Commission. * * *
>
> **(c) Filing notice of appeal; contents; jurisdiction; temporary orders**
>
> Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. * * *
>
> * * *

Section 647 of the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act), Pub. L. No. 106-180, 114 Stat. 48, 57 (2000), *codified at* 47 U.S.C. § 765f, provides:

> **§ 765f. Satellite auctions**
>
> Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral fora any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services.

47 C.F.R. § 1.4 provides in pertinent part:

§ 1.4 Computation of time.

(a) *Purpose.* The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. In addition, this rule section prescribes the method for computing the amount of time within which the Commission must act in response to deadlines established by statute, a Commission rule, or Commission order.

(b) *General Rule—Computation of Beginning Date When Action is Initiated by Commission or Staff.* Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the day after the day on which public notice of that action is given. *See* §1.4(b)(1)–(5) of this section. * * * For purposes of this section, the term *public notice* means the date of any of the following events: * * *

(1) For all documents in notice and comment and non-notice and comment rulemaking proceedings required by the Administrative Procedure Act, 5 U.S.C. 552, 553, to be published in the FEDERAL REGISTER, including summaries thereof, the date of publication in the FEDERAL REGISTER.

NOTE TO PARAGRAPH (B)(1): Licensing and other adjudicatory decisions with respect to specific parties that may be associated with or contained in rulemaking documents are governed by the provisions of §1.4(b)(2).

* * *

(2) For non-rulemaking documents released by the Commission or staff, including the Commission's section 271 determinations, 47 U.S.C. 271, the release date.

* * *