

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

In the Matter of)
)
Expanding Flexible Use of the 3.7 to 4.2 GHz Band) GN Docket No. 18-122

ORDER AND ORDER OF MODIFICATION

Adopted: August 25, 2020

Released: August 26, 2020

By the Commission: Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement; Commissioner Starks approving in part and dissenting in part.

I. INTRODUCTION

1. In the *3.7 GHz R&O*, the Commission proposed to modify, pursuant to section 316(a) of the Communication Act,¹ the existing Fixed Satellite Service (FSS) licenses and market access authorizations held by space station operators in the 3.7-4.2 GHz band to require licensees to cease operations in the lower 300 megahertz (3.7-4.0 GHz) by December 8, 2025, and to migrate their operations to the upper 200 megahertz (4.0-4.2 GHz).² On May 22, 2020, the ABS Global Ltd. (ABS), Empresa Argentina de Soluciones Satelitales S.A. (ARSAT), Hispamar Satélites S.A., and Hispasat S.A. (Hispasat) (collectively Small Satellite Operators or SSOs) filed a protest of that Order of Proposed Modification.³ As relevant here, the SSOs' protest argues that "section 316 does not authorize such a fundamental change to their licenses."⁴

2. By this Order, we deny the protest and hereby adopt the proposed modifications to the SSOs' licenses set forth in the *3.7 GHz R&O*. We dismiss the protest on procedural grounds because it does not comply with the requirements for a protest under the Commission's rules. In the alternative, because the protest fails to raise any new arguments and instead purports only to incorporate arguments made and addressed earlier in this proceeding, we deny the protest on the merits for the reasons previously set forth in the *3.7 GHz R&O* and the *SSO Stay Denial Order*.⁵

II. BACKGROUND

3. In the *3.7 GHz R&O*, the Commission proposed to modify the authorizations of

¹ 47 U.S.C. § 316(a).

² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2394-405, 2488-89, paras. 124-146, 409 (2020) (*3.7 GHz R&O*).

³ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz R&O*); Letter from Scott Blake Harris et al., Counsel for ABS Global Ltd., Empresa Argentina de Soluciones S.A., Hispamar Satélites S.A., and Hispasat S.A., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed May 22, 2020) (SSO Protest). The Small Satellite Operators filing this protest differ slightly from those who participated in the underlying 3.7-4.2 GHz rulemaking proceeding. In that proceeding, the group filing as "SSOs" consisted of ABS, Hispasat, and Claro S.A. (Star One); ARSAT did not submit any filings or otherwise participate in the rulemaking. Note also that in the *3.7-4.2 Report and Order*, the Commission referred to ARSAT as "Empresa."

⁴ SSO Protest at 1.

⁵ *Order Denying Stay Petition*, Order, DA 20-609, GN Docket No. 18-122 (June 10, 2020) (*SSO Stay Denial Order*) (denying the SSOs' request for a stay pending appeal).

incumbent space station operators in the 3.7-4.2 GHz band to require them to migrate their operations to the upper 200 megahertz, and thereby clear the lower 300 megahertz, by December 8, 2025.⁶ For licensees that did not elect to file a protest under section 316(a), the modifications took effect automatically by operation of law 60 days after publication of the *3.7 GHz R&O*.⁷ Because the SSOs timely filed a protest, the modification did not take effect as to their authorizations, pending resolution of their protest.⁸

4. Section 316 gives the Commission broad authority to “modif[y]” any license “if, in the judgment of the Commission, such action will promote the public interest, convenience, and necessity.”⁹ Although the Commission may not use section 316 to effect a “fundamental change” to their licenses, courts have held that section 316 allows the Commission to migrate licensees from one spectrum range to another if the licensees will be able to continue providing comparable service in the new spectrum range.¹⁰ Based on the record in this proceeding, the Commission found in the *3.7 GHz R&O* 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.¹¹ And as to the SSOs specifically, the Commission found that the record shows the SSOs “will be able not only to maintain their current level of service after the transition, but to potentially serve new clients” using the upper 200 megahertz of spectrum.¹² The Commission therefore concluded that it has authority to order the proposed license modifications under section 316.¹³

5. On May 15, 2020, the SSOs filed a petition for stay pending judicial review of the *3.7 GHz R&O*.¹⁴ As relevant here, the SSO Stay Petition argued that the Commission exceeded its authority to modify licenses under section 316 by fundamentally changing the SSOs’ licenses.¹⁵ The Wireless

⁶ *3.7 GHz R&O*, 35 FCC Rcd at 2394-405, para. 125-146; *see also id.* at 2408, para. 155 (establishing relocation deadline of December 8, 2025).

⁷ *See id.* at 2488-89, para. 409. A summary of the *3.7 GHz R&O* was published in the Federal Register on April 23, 2020, so protests were due by May 26, 2020; for licensees that did not file a protest, the modifications took effect on June 22, 2020.

⁸ *Id.*; *see* 47 U.S.C. § 316(a)(1) (“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.”).

⁹ 47 U.S.C. § 316(a)(1); *Cal. Metro. Mobile Commc’ns, Inc. v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004) (“the Commission need only find that the proposed modification serves the public interest”).

¹⁰ *3.7 GHz R&O*, 35 FCC Rcd. at 2396-97, 2399-402, paras. 129-131, 135-140; *see, e.g., Cmty. Television, Inc. v. FCC*, 216 F.3d 1133, 1139-41 (D.C. Cir. 2000).

¹¹ *3.7 GHz R&O*, 35 FCC Rcd. 2353, para. 20; *see id.* at 2397, 2399-401, 2423-24, paras. 130, 135, 139-140, 196.

¹² *Id.* at 2423, para. 196; *accord id.* at 2359, para. 32 (“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.* at 2399-400, para. 135 (“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.* at 2401-02, para. 139 (the SSOs will be able “to continue to serve existing customers and to obtain new customers” using the upper 200 megahertz of spectrum).

¹³ *Id.* at 2396-97, 2399-402, paras. 129-131, 135-140.

¹⁴ Joint Petition for Stay of Report and Order and Order of Proposed Modification Pending Judicial Review of ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satélites S.A., and Hispasat S.A., GN Docket No. 18-122 (filed May 15, 2020) (SSO Stay Petition).

¹⁵ *Id.* at 10-12.

Telecommunications Bureau (Bureau) denied the SSO Stay Petition on June 10, 2020.¹⁶ The SSOs then moved for a judicial stay in the U.S. Court of Appeals for the D.C. Circuit, which likewise denied their stay request on June 23, 2020.¹⁷

6. The SSOs filed the protest at issue here on May 22, 2020.¹⁸ Their two-page protest does not raise any new arguments, but instead cites arguments made in their stay petition and in earlier filings presented to and considered by the Commission prior to the *3.7 GHz R&O*.¹⁹

III. DISCUSSION

7. We dismiss the SSOs' protest in this Order on procedural grounds because it fails to contain specific allegations of fact or an affidavit as required by statute and the Commission's rules. In the alternative, because the SSOs do not raise any new arguments in their protest but instead merely cite to arguments made and addressed earlier in this proceeding, we deny the protests on the merits for the reasons previously set forth in the *3.7 GHz R&O* and in the *SSO Stay Denial Order*.

8. We first dismiss the SSOs' protest as procedurally deficient. Section 316 provides that "[a] protest filed pursuant to this subsection shall be subject to the requirements of section 309 of [the Act] for petitions to deny."²⁰ Section 309 in turn requires that any such filing must "contain specific allegations of fact" and must "be supported by affidavit."²¹ The SSOs' two-page protest does not contain these required elements. Rather than set forth any specific facts in their protest, attest to the accuracy of such facts with an affidavit, or attempt to demonstrate why those facts entitle them to relief, the SSOs merely refer back to earlier filings.²² Because the SSOs' protest does not comply with the applicable requirements, we hereby dismiss it.

9. In the alternative, we deny the SSOs' protest on the merits. The protest does not raise any new arguments, but instead merely cites back arguments made in earlier filings.²³ Those arguments were already considered and addressed in the *3.7 GHz R&O* and the *SSO Stay Denial Order*.²⁴ We therefore deny the SSOs' protest for the same reasons that their identical arguments were previously denied in the *3.7 GHz R&O* and the *SSO Stay Denial Order*.

IV. ORDERING CLAUSES

10. Accordingly, IT IS HEREBY ORDERED that the protest of ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satélites S.A., and Hispasat S.A. in GN Docket No. 18-122 is hereby DISMISSED, or alternatively, DENIED.

11. IT IS FURTHER ORDERED that the proposed modifications to the SSOs' licenses set forth in the *3.7 GHz R&O* are ADOPTED AND MADE FINAL, and the licenses ARE HEREBY

¹⁶ *SSO Stay Denial Order*, *supra* note 6.

¹⁷ Order, *PSSI Glob. Servs., L.L.C. v. FCC*, Nos. 20-1142 et al. (D.C. Cir. June 23, 2020).

¹⁸ SSO Protest, *supra* note 3.

¹⁹ *Id.* at 1 & n.5.

²⁰ 47 U.S.C. § 316(a)(3); *see also* 47 CFR § 1.87(d) (same).

²¹ 47 U.S.C. § 309(d)(1); *see also* 47 CFR § 1.939 (Commission rules governing content, filing, and processing of petitions to deny).

²² SSO Protest at 1 & n.5.

²³ *Id.* (citing to arguments made in the SSO Stay Petition and to earlier filings presented to and considered by the Commission prior to the *3.7 GHz R&O*).

²⁴ *See, e.g., 3.7 GHz R&O*, 35 FCC Rcd. at 2396-97, 2399-402, paras. 129-131, 135-140; *SSO Stay Denial Order*, DA 20-609, at 8-10, paras. 17-20.

MODIFIED accordingly.

12. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b) and 1.103 of the Commission's rules, 47 CFR §§ 1.4(b), 1.103, this Order SHALL BE EFFECTIVE upon release.

13. IT IS FURTHER ORDERED that the Wireless Telecommunications Bureau SHALL SEND this Order of Modification by certified mail, return receipt requested to ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satélites S.A., and Hispasat S.A.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
APPROVING IN PART, DISSENTING IN PART**

Re: *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Order of Modification,
GN Docket No. 18-122

In this decision, the Federal Communications Commission denies, largely on procedural grounds, an administrative protest regarding its earlier decision that required small satellite operators to cease operations in the lower 300 megahertz of the 3.7-4.2 GHz band and migrate their operations to the upper 200 megahertz of the same band. In doing so, the agency clears the way for a court to consider the merits of the FCC's decision-making in the underlying proceeding. I support today's order because I believe we should speed the way for this resolution. However, I continue to have reservations about the process that led the agency to this point and believe that we missed a golden opportunity to work with Congress to incentivize the repurposing of these airwaves in a manner that would yield a smoother long-term path for spectrum policy and support for much-needed infrastructure projects. Accordingly, I approve in part and dissent in part.