

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

In the Matter of)	
)	
Expanding Flexible Use of the 3.7-4.2 GHz Band)	GN Docket No. 20-305
)	
International Bureau Releases List of Incumbent)	
Earth Stations in the 3.7-4.2 GHz Band in the)	IB Docket No. 20-205
Contiguous United States)	

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2023

Released: March 13, 2023

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, the Commission denies an application for review filed by Capitol Broadcasting Company, Inc. (Capitol) (*Capitol Application for Review*).¹ The *Capitol Application for Review* seeks Commission review of the determination by the International Bureau (Bureau) that its earth station (call sign E070177) did not qualify as an “incumbent earth station” for purposes of the 3.7-4.2 GHz C-band transition.² For the reasons set forth below, we deny the *Capitol Application for Review* and affirm the Bureau’s finding that this earth station does not qualify as an incumbent earth station under the Commission’s rules.

II. BACKGROUND

2. On July 13, 2018, the Commission released an order and notice of proposed rulemaking which required all earth stations (except those that filed for new or modified licenses or registrations during a 2018 filing window) to submit a certification of the accuracy of their registration or license information on file with the International Bureau Filing System (IBFS).³ The order noted that the certifications may be used for consideration and implementation of the transition options discussed in the Notice, and may also be used “in defining incumbent earth stations to be protected from harmful

¹ See Letter from Jennifer B. Venable, Vice President and General Counsel, Capitol Broadcasting Company, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, IB Docket No. 20-205 (filed Sep. 2, 2020) (*Capitol Application for Review*).

² See *International Bureau Releases List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket No. 20-205, Public Notice, 35 FCC Rcd 16614 (2020) (*August 2020 Incumbent Earth Stations List Public Notice*); see also 47 CFR § 27.1411(b)(3).

³ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, 6923-6924 (paras.18-22) (2018) (*3.7 GHz Order & NPRM*) (discussing in detail the rationale and procedures for the C-band transition and the importance of collecting information on satellite usage of the band). The October 17, 2018, filing deadline identified in the *3.7 GHz Order & NPRM* was later extended to November 7, 2018. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd at 2350 (2020) (*3.7 GHz Report & Order*).

interference consistent with parameters that may be developed in this proceeding.”⁴ The Notice proposed to exclude from the definition of incumbent earth stations entitled to interference protection any earth stations licensed or registered in IBFS that failed to file the certification required in the order.⁵ On April 11, 2019, the Commission issued a public notice that announced Paperwork Reduction Act approval for this information collection. The notice, which was published in the Federal Register, established a submission deadline of May 28, 2019.⁶ Capitol did not submit the required certification. On February 28, 2020, the Commission adopted a Report and Order and Proposed Modification adopting the definition of incumbent earth stations entitled to interference protection, with a few minor changes.⁷

3. On July 6, 2020, the Bureau released a preliminary list of those Fixed Satellite Service (FSS) earth stations in the 3.7-4.2 GHz band in the contiguous United States that it found may satisfy the criteria to be classified as incumbent earth stations for purposes of the C-band band transition.⁸ The Bureau invited stakeholders to review the list for accuracy, and provided that parties “requesting any correction regarding the inclusion or omission of any earth station should do so in writing,” while noting that parties were not able to submit new filings in IBFS to attempt to qualify for incumbent status.⁹ In response to the Preliminary List, the Bureau received approximately 40 requests from registered earth station operators that had failed to certify the accuracy of their information in IBFS by the May 28, 2019 deadline. Among them was a July 16, 2020, letter submitted by Capitol arguing that its inadvertent failure to file a timely certification should be treated as a ministerial error.¹⁰

4. On August 3, 2020, the Bureau released a Public Notice with the list of FSS earth stations in the 3.7-4.2 GHz band it found satisfied the criteria to be classified as incumbent earth stations for purposes of the C-band transition.¹¹ The Public Notice specifically noted that many of the filings the Bureau received were from operators that had failed to certify the accuracy of their information in IBFS by the deadline, who “claim that they were unaware of the certification requirement and request that the Bureau accept their late-filed certifications,”¹² including Capitol.¹³ The Bureau rejected all of the requests, noting that the certification requirement had been clearly communicated to earth station operators and that the Bureau could not grant any requests that could give rise to delay in the C-band

⁴ *Id.* at 6923, para. 17.

⁵ *3.7 GHz Order & NPRM* at 6923-4, 6926, paras 19-20, 27.

⁶ *Deadline for Submission of Information on Earth Station and Satellite Use of the 3.7-4.2 GHz Band*, GN Docket No. 3060-0678, Public Notice, DA 19-278 (2019) (*April 2019 Deadline for Submission Public Notice*); Federal Communications Commission, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 84 Fed. Reg. 22722 (May 20, 2019).

⁷ *3.7 GHz Report & Order* at 2392. For example, the Commission noted that registration renewals filed within the certification window met the certification requirement.

⁸ *See International Bureau Releases Preliminary List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket No. 20-205, Public Notice, 35 FCC Rcd 17018 (Jul. 6, 2020) (*Preliminary Incumbent Earth Station List Public Notice*).

⁹ *Id.* Parties were allowed to submit filings to make minor corrections to existing licensing and registrations (e.g. changes to site address and/or GPS coordinates of an existing earth station location or minor changes in operations).

¹⁰ *See* Letter from Jennifer B. Venable, Vice President and General Counsel, Capitol Broadcasting Company, Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 20-205 (filed July 16, 2020).

¹¹ *August 2020 Incumbent Earth Station List Public Notice*.

¹² *See id.* at n.9-11.

¹³ *Id.* at n.11 (*citing* Letter from Jennifer B. Venable, Vice President and General Counsel, Capitol Broadcasting Company Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (filed Jul. 16, 2020)).

transition.¹⁴

5. On September 2, 2020, Capitol submitted an Application for Review (AFR) of the Bureau's denial of their request for their earth station to be included as incumbent and eligible for reimbursement for C-band displacement. Capitol asserts that its earth station has been continually in service since 2007 and that it did not submit the certification because the *April 11 Deadline for Submission Public Notice* indicated that the information would be used to evaluate future use of the C-band and did not specify that failure to provide the certification would result in ineligibility for reimbursement. Capitol asserts that it was not on actual notice of the impact of failing to submit the certification until the *August 2020 Incumbent Earth Station List Public Notice* was issued, which was after the filing deadline. Capitol contends this is a "fundamentally unfair" outcome, that it has now confirmed the accuracy of its registration in the record and that no party will be harmed by providing it with incumbent status.¹⁵

6. On October 23, 2020, the Bureau issued an Order pursuant to delegated authority that reserved action on Capitol's application for review,¹⁶ but rejected waiver and reconsideration requests related to certification issues from a number of other operators, including several that, like Capitol, had failed to provide required certifications by the Commission's deadline.¹⁷

III. DISCUSSION

7. We deny the *Capitol Application for Review* and affirm the Bureau's findings in the *August 2020 Incumbent Earth Stations List Public Notice*. Specifically, we find that the Bureau did not err in omitting Capitol's earth station (E070177) from the incumbent earth station list.

8. In the *2018 3.7 GHz Order & NPRM*, the Commission found that information in its records that was vital to decide how much spectrum could be made available in the C-band was inaccurate and incomplete; thus, the Commission determined that it was necessary to collect additional information from stakeholders, including existing earth station registrants and licensees, to evaluate future use of spectrum and, in particular, to define incumbent stations to be protected from harmful interference in any transition of the band.¹⁸ The Commission therefore directed earth station operators to certify the

¹⁴ *Id.* at 3 ("The July 2018 Order and NPRM establishing the certification requirement noted that information collected 'may...be used in defining incumbent earth stations to be protected from harmful interference consistent with parameters that may be developed in this proceeding,' providing earth station operators with notice that submitting all required information could affect the protection status of their facilities. The Commission's finding that the certification was not an 'information collection' under the Paperwork Reduction Act only reflects the Commission's determination that such a certification imposed minimal burden on the submitting entity, in that all it requires is the affirmation of information already known to that entity. The Commission announced the certification requirement in an Order published in the Federal Register and followed this up with a Public Notice reminding earth stations of their obligations to file such certifications. Further, the *3.7 GHz Band Report and Order* expressly directed the Bureau to automatically terminate the registrations of earth stations that failed to file timely certifications and the Bureau lacks delegated authority to change that decision...Given the importance of repurposing the 3.7-4.2 GHz band and the Commission's commitment to an expedited timeline for the transition, we cannot grant requests that could give rise to delay.").

¹⁵ *Capitol Application for Review* at 1-2.

¹⁶ *In the Matter of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket 20-205, DA 20-1258, October 23, 2020, at note 64 (*October 2020 Order*).

¹⁷ *See id.* at paras. 25-32.

¹⁸ *3.7 GHz Order & NPRM* at 6923-24, paras. 17-19 ("The various transition options discussed in the following *Notice* may require use of this information both for consideration and implementation of these options. The information may also be used in defining incumbent earth stations to be protected from harmful interference consistent with parameters that may be developed in this proceeding. ... [W]e propose in the *Notice* to protect only

(continued...)

accuracy of all information reflected on their license or registration in IBFS and proposed in the Notice to protect only those earth stations licensed or registered in IBFS for which the licensee/registrant timely filed the required submissions.¹⁹ The Commission noted that “[t]his certification is necessary to inform the Commission’s decisions in this proceeding,” and observed that in the Notice “we propose...to protect only those earth stations licensed or registered in IBFS for which the licensee/registrant timely files the certification required in this *Order*.”²⁰ The Commission in the 2020 *3.7 GHz R&O & Order of Proposed Modification*²¹ concluded, as proposed in the 2018 *3.7 GHz Order & NPRM*, that any receive-only earth stations that failed to meet the certification requirements would not be accorded incumbent earth station status and would be removed from IBFS and thus not allowed to participate in the C-band transition process and protected from harmful interference. The Commission noted that earth station operators had been “provided ample opportunity to register their earth stations with the Commission,” including numerous steps taken by IB such as conducting tutorials and providing step-by-step filing instructions to assist filers unfamiliar with IBFS.²²

9. We find that Capitol, like all comparably-situated earth station operators, had ample notice of the certification requirement, which was first announced in an Order adopted in 2018 and published in the Federal Register and then followed by a Public Notice, also published in the Federal Register, reminding earth stations of their obligations to file such certifications.²³ Industry trade associations, trade press, and the industry ecosystem also disseminated this information.²⁴ The vast majority of earth station operators, including many small operators and companies operating in rural areas, acted in response to these multiple notices the Commission provided and submitted the required certifications. Capitol has not provided an explanation, other than inadvertence, for its failure to satisfy the Commission’s requirement to file a timely certification. Capitol’s argument in its Application for Review that it was unaware of the potential consequences for failing to file its certification is unpersuasive, as it omits all reference to the 2018 *3.7 GHz Order & NPRM* and its proposal, ultimately adopted by the Commission, that a timely certification would be necessary for a previously registered earth station to qualify for incumbent status. Thus, Capitol should have been well aware of the potential consequences of failing to make such filings that the Commission found necessary in order to ensure an efficient C-Band transition.²⁵ We recognize that Capitol may incur financial costs imposed as a result of its failure to certify, but we note that the vast majority of earth station operators successfully complied with the requirements set forth by the Commission to qualify as an incumbent earth station for purposes of the transition. Given the clear notice provided to earth station operators of the need to submit a certification by a date certain and the need to promote certainty in the continuing C-band transition, the public interest would not be served by now entertaining an untimely certification.

those earth stations licensed or registered for which the licensee/registrant timely files the certification required in this *Order* (to the extent they registered before April 19, 2018)”).

¹⁹ *3.7 GHz Order & NPRM* at 6923-25, 6926 (paras. 19-20, 27).

²⁰ *Id.*

²¹ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 at 2394 (2020).

²² *Id.* at 2393, para. 20.

²³ See *Deadline for Information Submission on Earth Station and Satellite Use in the 3.7-4.2 GHz Band*, IB/WTB/OET Public Notice, DA 19-278 (April 11, 2019); Federal Communications Commission, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 84 Fed. Reg. 22722 (May 20, 2019).

²⁴ *October 2020 Order* at para. 35.

²⁵ *3.7 GHz Order & NPRM* at 2350-2352.

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 5, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, 303(r), and 405, as well as Section 1.115 of the Commission's rules, 47 CFR § 1.115, that the application for review filed by Capitol Broadcasting Company, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary