

**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
)	
International Bureau Releases Preliminary List of)	IB Docket No. 20-205
Incumbent Earth Stations in the 3.7-4.2 GHz Band)	
In the 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 PSSI Global Services, L.L.C (PSSI) (*PSSI Application for Review*).¹ The *PSSI Application for Review* seeks review of a Wireless Telecommunications Bureau (Bureau or WTB) decision² dismissing a July 2021 letter request from PSSI (*Letter Request*)³ as an untimely petition for reconsideration of the *Final Cost Catalog Public Notice*,⁴ which was issued in July 2020 by the Bureau as part of the ongoing transition of the 3.7-4.2 GHz band (C-band).⁵ In the *Letter Request*, PSSI argued that the *Final Cost Catalog Public Notice* should be adjusted to take into account specific types of equipment relating to the transportable fixed earth stations (TFEs) that PSSI operates.⁶ PSSI filed its *Letter Request* nearly a year after the applicable deadline for the filing of petitions for reconsideration established in Section 405 of the Communications Act and section 1.429(d) of the Commission’s rules,⁷ so the Bureau

¹ See Application for Review, PSSI Global Services, L.L.C., GN Docket No. 18-122, IB Docket No. 20-205 (filed Jan. 3, 2022) (*PSSI Application for Review*).

² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, International Bureau Releases Preliminary List of Incumbent Earth Stations in the 3.7-4.2 GHz Band In the Contiguous United States*, GN Docket No. 18-122, Order, DA 21-1494 (WTB 2022) (*PSSI Request Order*).

³ Letter from Stephen Díaz Gavin, Counsel for PSSI Global Services, L.L.C., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, IB Docket No. 20-205 (filed July 12, 2021) (*Letter Request*).

⁴ *Wireless Telecommunications Bureau Releases Final Cost Category Schedule For 3.7-4.2 GHz Band Relocation Expenses And Announces Process And Deadline For Lump Sum Elections*, 35 FCC Rcd 7967 (2020) (*Final Cost Catalog Public Notice*).

⁵ See generally *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Report and Order*).

⁶ See *Letter Request* at 1.

⁷ 47 U.S.C. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”). See also 47 C.F.R. § 1.429(d).

dismissed the request as untimely.⁸ For the reasons set forth below, we deny the *PSSI Application for Review* and affirm the Bureau's findings in the *PSSI Request Order*.⁹

II. BACKGROUND

2. On July 12, 2021, PSSI filed the *Letter Request*, in which it sought “adjustment of the *Final Cost Catalog Public Notice* to account for four types of equipment” relating to the transition of TFEs that it operates: feed assemblies, compression equipment, low-noise block downconverters, and testing equipment for use at live event sites.¹⁰ PSSI argued that this equipment should be added to the *Final Cost Catalog Public Notice* to “permit PSSI to request reimbursement for such equipment” from the Relocation Payment Clearinghouse (Clearinghouse), which was established in the *3.7 GHz Report and Order* to oversee the cost-related aspects of the C-band transition.¹¹ PSSI also asserted that it would “itself assume the responsibility for the turnkey migration of its earth stations” and directly submit all of its transition cost claims to the Clearinghouse.¹²

3. The Bureau rejected the *Letter Request* as an untimely challenge to the *Final Cost Catalog Public Notice*.¹³ Under Section 405 of the Communications Act of 1934 and section 1.429(d) of the Commission's rules, any interested person may file a petition for reconsideration of a final order in a rulemaking proceeding within 30 days of public notice of the decision.¹⁴ The Bureau found that the issue raised by PSSI's *Letter Request*—the types of transition expenses that incumbents are likely to incur and should be identified as presumptively reasonable—was decided in the *Final Cost Catalog Public Notice*, which published in the Federal Register on August 4, 2020, making the deadline for filing a petition for reconsideration September 3, 2020.¹⁵ The Bureau noted that all earth station operators, including PSSI and other incumbent TFE operators, had an opportunity to comment on and participate in development of the *Final Cost Catalog Public Notice* and to file a timely petition for reconsideration.¹⁶ Because PSSI's

⁸ *PSSI Request Order* at 5.

⁹ *Id.* at 1.

¹⁰ *Letter Request* at 1.

¹¹ *Id.* at 1, 9. The *3.7 GHz Report and Order* provided for the creation of an independent, neutral Clearinghouse to oversee the cost-related aspects of the transition, including collecting relocation payments from overlay licensees and disbursing those payments to incumbents. *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260 (“Parties seeking reimbursement for actual costs must submit to the Clearinghouse a claim for reimbursement, complete with sufficient documentation to justify the amount. The Clearinghouse shall review reimbursement requests to determine whether they are reasonable and to ensure they comply with the requirements adopted in this Report and Order.”). In determining the reasonableness of costs for which incumbents seek reimbursement, the *3.7 GHz Report and Order* provided that the Clearinghouse would presume as reasonable all submissions that fall within the estimated range of costs in the final cost category schedule. *Id.* at 2448, para. 262; 47 CFR § 27.1416(a).

¹² *Letter Request* at 1, 9. In its request, PSSI noted that it entered into agreements with the incumbent space station operators that otherwise would be responsible for transitioning its TFEs. PSSI stated that it will perform its own transition work as a result of the agreements and intends to file its transition cost claims directly with the Clearinghouse. *Id.* at 1. See Letter from Robert C. Lamb, CEO, PSSI Global Services, LLC, and Hector M. Fortis Sanchez, Director of Regulatory and International Affairs, Satelites Mexicanos, S.A. de C.V. d/b/a Eutelsat Americas, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (June 10, 2021); Letter from Stephen Díaz Ga vin, Counsel to PSSI Global Services, LLC, and Brian D. Weimer, Counsel to SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (June 18, 2021); Letter from Robert C. Lamb, CEO, PSSI Global Services, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 20-173 (June 18, 2021).

¹³ *PSSI Request Order* at 1.

¹⁴ 47 U.S.C. § 405(a). See also 47 C.F.R. § 1.429(d).

¹⁵ *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7969, para 5.

¹⁶ *PSSI Request Order* at 4.

Letter Request asked the Bureau to reconsider its determination in the *Final Cost Catalog Public Notice* nearly a year after the requisite deadline, the Bureau found that PSSI's request amounted to an untimely petition for reconsideration and dismissed it on that basis.¹⁷

4. The Bureau also rejected PSSI's statement that "from a legal perspective . . . the Commission is now estopped from denying PSSI inclusion of compressed equipment in the Cost Catalog and reimbursement for such equipment" because in opposing PSSI's earlier judicial challenge to the *3.7 GHz Report and Order* the Commission "specifically cited to [compression] equipment as preventing harm to PSSI."¹⁸ The Bureau clarified that the Commission had "never represented that PSSI—or any other incumbent—would necessarily require or be reimbursed for any particular equipment or upgrades."¹⁹ PSSI also argued that the D.C. Circuit's decision upholding the *3.7 GHz Report and Order* "explain[ed] why data compression and other technology—which PSSI may install and be reimbursed for—would ensure that the remaining spectrum is adequate for satellite operators and their customers."²⁰ The Bureau responded that, "[c]ontrary to PSSI's assertion, the Court did not find that PSSI is necessarily entitled to be reimbursed for any compression or similar technology it wants, but rather observed that under the Commission's rules PSSI is entitled to reimbursement to the extent necessary 'to ensure that the remaining spectrum is adequate.'"²¹

5. The Bureau noted that PSSI is able to submit claims for its actual transition costs to the Clearinghouse pursuant to the process set out in the *3.7 GHz Report and Order*, and that claimants are not precluded from obtaining reimbursement for their actual costs that either fall outside of or exceed the amounts in the *Final Cost Catalog Public Notice*, so long as those costs are reasonably necessary to the transition and incumbents provide justification to the Clearinghouse.²² In lieu of making its own initial determination, the Bureau found that the fact-intensive issues surrounding reimbursements "require a full and complete record before they are ripe for decision, and therefore are more appropriately addressed through the Clearinghouse review process in the first instance, and any subsequent appeal to the Bureau."²³

6. The *PSSI Application for Review* was filed on January 3, 2022.²⁴ PSSI asserts that its *Letter Request* was not a petition for reconsideration and it: (1) "did not seek to overturn the decision to adopt the Cost Catalog," and instead "expressly invoked Section 27.1416(a) which contemplated Bureau determinations on matters related to reimbursable costs," and (2) "only sought confirmation that equipment contemplated by the Report and Order was eligible for reimbursement."²⁵

¹⁷ 47 CFR § 1.429(l)(5), (l)(9); *PSSI Request Order* at 4.

¹⁸ *Letter Request* at 5-6; *PSSI Request Order* at 5.

¹⁹ *PSSI Request Order* at 5. The Bureau specified that the *3.7 GHz Report and Order* instead said "incumbents would be entitled to reimbursement for 'reasonable,' 'prudent,' and 'efficient' costs that are 'necessitated by the relocation' to 'continue . . . provid[ing] substantially the same or better service' after the transition, while cautioning that incumbents would not be reimbursed for costs that are not necessary to maintain comparable service." *Id.*; see *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-23, paras. 194-5.

²⁰ *Letter Request* at 5-6; *PSSI Global Services, L.L.C. v. Federal Communications Commission*, 983 F.3d 1, 10 (D.C. Cir. 2020).

²¹ *PSSI Request Order* at 5; *PSSI Global Services*, 983 F.3d at 10.

²² *PSSI Request Order* at 2, 4.

²³ *Id.* at 5.

²⁴ See *PSSI Application for Review*.

²⁵ *Id.* at 2.

III. DISCUSSION

7. We deny the *PSSI Application for Review* and affirm the Bureau's findings in the *PSSI Request Order*.²⁶ We find that the Bureau did not err in dismissing the *Letter Request* under Section 405 of the Communications Act as a late filed petition for reconsideration.²⁷ Further, we find that PSSI's arguments for why the *Letter Request* does not amount to an untimely petition for reconsideration—but rather an attempt to compel Bureau action under section 27.1416(a) of the Commission's rules—are unsupported and unpersuasive. Contrary to PSSI's suggestion, section 27.1416(a) does not require the Bureau to either revisit the *Final Cost Catalog Public Notice* or otherwise make a determination on specific reimbursable costs prior to appeal of a Clearinghouse determination. We likewise do not believe that advance Bureau guidance to the Clearinghouse prior to its review of specific transition costs is either necessary or appropriate here given the allocation of responsibilities set forth in the *3.7 GHz Report and Order*. PSSI should in the first instance submit its actual costs to the Clearinghouse for review and potential reimbursement, subject to Bureau review on appeal.

8. We first address PSSI's argument that the *Letter Request* is not a petition for reconsideration because it does not seek to challenge the *Final Cost Catalog Public Notice*.²⁸ PSSI asserts that the Bureau erred in dismissing the *Letter Request* on procedural grounds because “[t]he Bureau's summary dismissal of a request as ‘reconsideration’ when a party invokes a specific Commission regulation is not following the agency's rules.”²⁹ According to PSSI, “[t]he 30-day reconsideration period would only be applicable if PSSI sought to make a challenge to the underlying order establishing the Cost Catalog, which it was not doing.”³⁰ We disagree. The Bureau correctly construed PSSI's *Letter Request* as amounting to an untimely petition for reconsideration because it directly asked the Bureau to modify the *Final Cost Catalog Public Notice*, issued by the Bureau on delegated authority, to include specific types of equipment relating to the TFEs that PSSI operates. To the extent it was not a petition for reconsideration, the Bureau had no basis to consider it—as we explain below. The *Letter Request* specifically asked “that the Wireless Bureau modify the approved Cost Catalog equipment list,”³¹ which would require the Bureau to reconsider and adjust the *Final Cost Catalog Public Notice*.³² As stated in the *PSSI Request Order*, PSSI submitted its *Letter Request* well outside the applicable time limit for petitions for reconsideration of the *Final Cost Catalog Public Notice* and, therefore, the Bureau properly dismissed the *Letter Request* on procedural grounds.³³

9. Next, PSSI argues that section 27.1416(a) of the Commission's rules requires the Bureau to revisit the *Final Cost Catalog Public Notice* or otherwise make a determination on the reimbursement of PSSI's anticipated costs.³⁴ PSSI states that it “cited to Section 27.1416(a) as the basis for making the

²⁶ *PSSI Request Order* at 1.

²⁷ 47 U.S.C. § 405(a). *See also* 47 CFR § 1.429(d).

²⁸ *PSSI Application for Review* at 2.

²⁹ *Id.* at 5-6.

³⁰ *Id.* at 5.

³¹ *Letter Request* at 2.

³² In support of its argument, PSSI states that “‘reconsideration’ is nowhere defined.” *PSSI Application for Review* at 5. It is long standing precedent that parties need not “seek to overturn” an entire decision, but can instead seek partial reconsideration of one aspect or element thereof. *See e.g., In Re Amend. of Parts 2, 15 of Commission's Rules*, ET Docket No. 98-76, Memorandum Opinion and Order, 16 FCC Rcd 11373, 11373 (2001) (granting in part petitions for partial reconsideration).

³³ *PSSI Request Order* at 4. *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d).

³⁴ *PSSI Application for Review* at 2.

Cost Catalog Request,”³⁵ and the Commission “established a procedure under Section 27.1416(a) for consultation about the rules.”³⁶ This interpretation is unsupported by section 27.1416 and the *3.7 GHz Report and Order*, which direct the Bureau to make further determinations related to reimbursable costs “as necessary.”³⁷ The Bureau, pursuant to its delegated authority in the *3.7 GHz Report and Order*, is responsible for deciding what qualifies as a “necessary” further determination related to reimbursable costs, not outside parties.³⁸ Further, contrary to PSSI’s view, a consultation process is not mentioned anywhere in the relevant rule section or in the *3.7 GHz Report and Order*. Section 27.1416(a) does not establish a separate process requiring Bureau consideration of reimbursable costs, as that would directly conflict with the *3.7 GHz Report and Order*’s establishment of an independent Clearinghouse for such purposes.³⁹ We thus reject PSSI’s argument that section 27.1416(a) requires the Bureau to revisit the *Final Cost Catalog Public Notice* or otherwise make an initial determination relating to specific reimbursable costs, and reiterate that parties seeking reimbursement must in the first instance submit a claim to the Clearinghouse.⁴⁰

10. Finally, PSSI argues that the Bureau should not have dismissed the *Letter Request* because PSSI only sought the Bureau’s guidance to avoid unnecessary delay in receiving reimbursement from the Clearinghouse given the TFE equipment at issue is not in the *Final Cost Catalog Public Notice*.⁴¹ The *3.7 GHz Report and Order* found that it is in the public interest for an independent Clearinghouse “to oversee the cost-related aspects of the transition in a fair, transparent manner” and assigned the role of determining reimbursable costs in the first instance to the Clearinghouse, not the Bureau.⁴² The Bureau is instead charged with resolving appeals of Clearinghouse decisions.⁴³ The *Final Cost Catalog Public Notice* provides the Clearinghouse with general guidance on reimbursable costs and establishes ranges of transition costs that will be considered “presumptively reasonable,”⁴⁴ but parties may

³⁵ *Id.* at 5.

³⁶ *Id.* at 6.

³⁷ 47 CFR § 27.1416(a) (“The Wireless Telecommunications Bureau shall make further determinations related to reimbursable costs, as necessary, throughout the transition process.”); *3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262.

³⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262.

³⁹ *Id.* at 2447, para. 259.

⁴⁰ *Id.* at 2447, para. 260; 47 CFR § 27.1416(a)

⁴¹ *PSSI Application for Review* at 4.

⁴² *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 259-62.

⁴³ 47 CFR § 27.1421; *3.7 GHz Report and Order*, 35 FCC Rcd at 2449-50, para. 269.

⁴⁴ *3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262; 47 CFR § 27.1416(a). To the extent that PSSI thought it important for its planned expenses to be included in the *Final Cost Catalog Public Notice*, it had several opportunities to timely raise those points, which it did not do. The Bureau sought comment on the elements of the *Final Cost Catalog Public Notice* on multiple occasions. See *Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 4440, 4441 (WTB 2020) (*Cost Catalog Comment Public Notice*); *Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7-4.2 GHz Band Incumbent Earth Station Relocation*, Public Notice, 35 FCC Rcd 5628 (WTB June 4, 2020) (*Lump Sum Comment Public Notice*). PSSI availed itself of that comment process regarding lump sum issues, and Bureau addressed PSSI’s comments in the *Final Cost Catalog Public Notice*. See *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7990-91, paras. 37-38. PSSI’s comments did not, however, request inclusion of the expenses detailed in the *PSSI Letter Request* as presumptively reasonable for a actual cost reimbursement. PSSI Global Services, L.L.C., Comments, GN Docket No. 18-122 (filed June 15, 2020). As PSSI did not raise these arguments during the comment cycle preceding issuance of the *Final Cost Catalog Public Notice*, under section 1.429(b) of the Commission’s rules the

(continued...)

still seek reimbursement from the Clearinghouse for other expenses that either fall outside of or exceed the amounts in the *Final Cost Catalog Public Notice*.⁴⁵ We do not agree with PSSI that advance Bureau guidance on the reimbursement of specific transition costs prior to the Clearinghouse review process is either necessary or appropriate here as it would upend the allocation of responsibilities set forth in the *3.7 GHz Report and Order* and add potential delay to the reimbursement process. As noted in the *PSSI Request Order*, PSSI voluntarily assumed responsibility for its transition, and in doing so it became responsible for submitting its actual costs to the Clearinghouse for review and potential reimbursement in accordance with the rules and procedures governing the C-band transition.⁴⁶ PSSI remains free to present and justify all its reimbursement claims, including any that fall outside the scope of the *Final Cost Catalog Public Notice*, to the Clearinghouse. Once the Clearinghouse process is complete, should PSSI wish to appeal any decision by the Clearinghouse, it may do so pursuant to the procedures previously announced by the Bureau.⁴⁷

11. 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 PSSI Global Services, L.L.C. on January 3, 2022 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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Bureau could not have considered these arguments, even if the *Letter Request* had been timely filed. 47 CFR § 1.429(b)(1)-(3).

⁴⁵ See *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7973, para. 11.

⁴⁶ *PSSI Request Order* at 4, n.26.

⁴⁷ *Wireless Telecommunications Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions*, WT Docket No. 21-333, Public Notice, DA 22-300 (WTB 2022) (*Appeals Procedures Public Notice*).