



# PUBLIC NOTICE

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## INTERNATIONAL BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCE GUIDANCE FOR 3.7-4.2 GHZ INCUMBENT EARTH STATION WAIVER REQUESTS

### GN Docket No. 18-122, IB Docket No. 20-205, GN Docket No. 20-305

In the *3.7 GHz Band Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use, plus a 20 megahertz guard band, throughout the contiguous United States by transitioning existing operations out of the lower portion (3.7-4.0 GHz) and into the upper 200 megahertz (4.0-4.2 GHz) of the band.<sup>1</sup> The *3.7 GHz Band Report and Order* also defined the criteria that Fixed Satellite Service (FSS) earth stations must satisfy to be eligible as incumbent earth stations to receive protection from harmful interference and reimbursement for their reasonable relocation costs.<sup>2</sup> On July 6, 2020, the International Bureau released a preliminary list of those FSS earth stations in the 3.7-4.2 GHz band in the contiguous United States that the Bureau found may satisfy the criteria to be classified as incumbent earth stations for purposes of the 3.7-4.2 GHz band transition and invited comment on the preliminary list to provide minor corrections and updates.<sup>3</sup> On August 3, 2020, the International Bureau released a list of incumbent FSS earth stations in the 3.7-4.2 GHz band that the International Bureau found had satisfied the criteria to be classified as incumbent earth stations.<sup>4</sup>

On September 8, 2020, NCTA – The Internet & Television Association (NCTA) and the National Association of Broadcasters (NAB) requested that the Commission provide incumbent FSS earth station operators with a limited opportunity to correct their filings and register additional existing antennas—co-located with existing registered antennas—for the limited purpose of obtaining interference protection on par with that accorded their registered antennas.<sup>5</sup> NAB and NCTA stated that the opportunity to make corrections “would be consistent with the Commission’s goals in the C-band proceeding and would help preserve content distribution to the public.”<sup>6</sup> While NCTA and NAB “recognize the importance of

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<sup>1</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2345, para. 4 (*3.7 GHz Report and Order*).

<sup>2</sup> See *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, paras. 116-117.

<sup>3</sup> 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, DA 20-703 (IB July 6, 2020) (*Preliminary Incumbent Earth Station List Public Notice*).

<sup>4</sup> 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, DA 20-823 (IB Aug. 3, 2020) (*Incumbent Earth Station List Public Notice*).

<sup>5</sup> See Letter from Patrick McFadden, National Association of Broadcasters, and Jared Sher, Danielle Pineres, and Jacqueline Clary, NCTA – The Internet and Television Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, IB Docket No. 20-205 (filed September 8, 2020) (NCTA and NAB Letter).

<sup>6</sup> *Id.* at 2.

promptly establishing a final list of incumbent earth stations both to provide a list upon which space station operators can rely and to ensure that there are no delays in the transition—as well as to provide certainty to potential auction bidders,” they claim that a limited window would afford continuity of service while not delaying the transition or unduly burdening the Commission.<sup>7</sup> NCTA and NAB suggested that the Commission could limit eligibility to co-located antennas that are located within 150 meters of an incumbent earth station and that the number of additional antennas that could be registered at any given site be limited to 25 or fewer.<sup>8</sup> NAB and NCTA stated that they believe that these limits would “cover the great majority of cases in this class of affected earth station operators and, in combination, would ensure that additional registrations would not result in any unmanageable burdens on the Commission or undue impacts on the auction.”<sup>9</sup>

The International Bureau and Wireless Telecommunications Bureau (collectively, Bureaus) have reviewed the NAB and NCTA Letter and believe that a waiver may serve the public interest in certain limited circumstances. Specifically, the Bureaus believe the NAB and NCTA Letter sets forth criteria that may well justify the extraordinary relief required for grant of a waiver to permit incumbent FSS earth station operators to amend their registrations to include additional, existing co-located antennas for purposes of interference protection in the 4.0-4.2 GHz portion of the band only (i.e., not reimbursement for relocation expenses).<sup>10</sup> Any incumbent earth station operator that wishes to add antennas to any existing registration must request a waiver of the applicable sections of the Commission’s rules.<sup>11</sup> Because of the impact of this process on the upcoming deadlines for participation in the auction scheduled for this band, it is unlikely that we will be in a position to grant any such waiver requests filed after **September 25, 2020**.<sup>12</sup>

To expedite processing, we require applicants to identify on the first page of their waiver request whether their request is consistent with the limits proposed in the NAB and NCTA letter insofar as it would (1) involve only antennas located within 150 meters of an incumbent earth station; (2) would request a waiver for no more than 25 additional antennas per registrant at any given site; and (3) would seek interference protection only and would disavow any claim to reimbursement for the antennas for which a waiver is sought.

While each such waiver will be evaluated in light of the particular facts and circumstances set forth in the waiver request, the Bureaus are providing this guidance to set forth some of the factors that may be considered in evaluating such requests. Such waiver requests must: (1) be pleaded with specificity; (2) provide detailed information regarding the individual circumstances of the applicant and the registration information for each new antenna; and (3) otherwise comport with the Commission’s rules governing waiver requests. In each case, we would expect to take into account the following considerations, among others:

- Whether the antenna would have been eligible for incumbent protection when the filing window closed on November 7, 2018;

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<sup>7</sup> NCTA and NAB Letter at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> For this purpose, incumbent earth stations are those FSS earth stations that the International Bureau has found satisfy the criteria to be classified as incumbent earth stations for purposes of the 3.7-4.2 GHz band (C-band) transition. *See Incumbent Earth Station List Public Notice*; *see also* 47 CFR §§ 25.121, 25.138, 27.1411(b)(3).

<sup>11</sup> *See, e.g.*, 47 CFR §§ 25.138, 27.1411(b)(3).

<sup>12</sup> *See* 47 CFR § 1.3.

- Whether the request involves a site or facility with one or more incumbent earth stations in the 3.7-4.2 GHz band (providing the specific Callsign, SiteID, and AntID of the incumbent earth station(s));
- How far away the additional antennas are from an incumbent earth station (providing the specific Callsign, SiteID, AntID, and GPS coordinates of each antenna);
- How many additional antennas per registrant at any given site; and
- Whether grant of the waiver would require reimbursement of additional relocation expenses to the applicant.

Given the timing of Auction 107 and the clear public interest benefits in ensuring that prospective bidders have complete information about incumbent operations in the band, waiver requests must be submitted in **GN Docket No. 20-305** on or before **September 25, 2020**.<sup>13</sup>

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*Filing Requirements.* **Applicants are required to identify on the first page of their waiver request whether their request is consistent with the criteria set forth in the NAB and NCTA letter insofar as it would (1) involve only antennas located within 150 meters of a registered antenna; (2) would request a waiver for no more than 25 additional antennas per registrant at any given site; and (3) would seek interference protection only, and would disavow any claim to reimbursement for the antennas for which a waiver is sought.** All filings must reference **GN Docket No. 20-305** and may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- **Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>**

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

*Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in

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<sup>13</sup> Applicants should not make new filings in IBFS in conjunction with their waiver requests. Commission staff will later instruct any operators that receive waivers on how to make the filings in IBFS necessary to implement the specific scope of the relief granted.

accordance with the Commission's *ex parte* rules.<sup>14</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).<sup>15</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Additional Information.* For further information regarding this public notice, please email [ESWaiverInfo@fcc.gov](mailto:ESWaiverInfo@fcc.gov).

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<sup>14</sup> See 47 CFR § 1.1200 *et seq.*

<sup>15</sup> *Id.* § 1.1206(b).