

April 30, 2018

*THROUGH ECFS*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**Re: Public Notice, Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band, 90-Day Window to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band, GN Docket Nos. 17-183, 18-122, DA 18-398 (Apr. 19, 2018)**

Dear Ms. Dortch:

The American Cable Association (“ACA”)<sup>1</sup> supports the Commission’s efforts to provide incentives that allow the Commission to obtain the “best information possible on existing earth stations”<sup>2</sup> in the 3.7-4.2 GHz band.<sup>3</sup> For that reason, ACA has issued a news release expressing its appreciation for the International, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus’ sensitivity to the cost of a coordination report, which ACA understands is typically around \$700. ACA has thus applauded the three Bureaus’ decision to

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<sup>1</sup> ACA represents over 700 small and medium-sized cable, phone and fiber-to-the-home independent operators providing services across the United States in small and rural markets and in competition to larger providers in urban markets. These operators deliver services to about 7 million households and businesses. All ACA members offer multichannel video programming distributor (“MVPD”) service to their customers.

<sup>2</sup> Public Notice, Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band, 90-Day Window to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band, GN Docket Nos. 17-183, 18-122, DA 18-398 (Apr. 19, 2018) (“Public Notice”).

<sup>3</sup> See Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz, *Notice of Inquiry*, 32 FCC Rcd. 6373, 6378 ¶ 14 (2017) (“NOP”).

afford earth station operators a window in which to register their earth stations without filing a coordination report, which is not only cumbersome but also unnecessary for receive-only earth stations.<sup>4</sup> At the same time, ACA wants to ensure that the incentives provided are meaningful enough to *strongly* motivate all operators of unregistered receive-only earth stations to take advantage of the 90-day window for filing applications to register their earth stations in the 3.7-4.2 GHz frequency band without submitting a coordination report.

To achieve that, three statements in the Public Notice need to be clarified to avert a misconception that the registration would be of no practical benefit. The statements and the needed clarifications are shown immediately below. ACA then explains why the clarifications are necessary, and why there is no offsetting downside to their adoption.

The requested clarifications are as follows:

1. “Registrations or licenses granted for applications filed without the coordination report will include a condition noting that the license ~~or registration~~ does not afford interference protection from FS transmissions, **and that the registration does not afford interference protection from FS transmissions by existing FS licensees.**” (Additions and deletions emphasized.)
2. “All potential applicants are advised that the Commission may, for purposes of further action following the NOI, choose to take into consideration only those earth stations that are licensed, registered, or have pending applications for license or registration on file in IBFS as of July 18, 2018. **Receive-only earth stations registered during the 90-day window will receive the same treatment as those registered prior to April 19, 2018, regardless of whether their registration is accompanied by a frequency coordination report.**” (Additions emphasized.)
3. “Upon announcing the termination of the freeze, the International Bureau may modify or terminate the waiver by requiring or permitting ~~registrants or~~ licensees who filed applications within the 90-day window without a coordination report to file such a report as required by the Commission’s rules, and to take any appropriate action in light of such filing.” (Deletions emphasized.)

First, the Public Notice states that both licensees and registrants taking advantage of the 90-day window and the coordination report waiver would not be afforded “interference protection from FS transmissions.”<sup>5</sup> This statement could be interpreted to mean that registration without an accompanying coordination report would provide no practical benefit to new registrants, which

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<sup>4</sup> *ACA Applauds FCC On Significantly Lowering The Cost And Complexity For Cable Systems To Register Their C-Band Earth Stations*, American Cable Association (Apr. 19, 201), <http://www.americancable.org/aca-applauds-fcc-on-significantly-lowering-the-cost-and-complexity-for-cable-systems-to-register-their-c-band-earth-stations/>.

<sup>5</sup> Public Notice at 4.

would undermine Bureau's stated purpose in implementing the waiver. A simple clarification would cure this problem: the International Bureau should specify that receive-only earth station registrants that do not file a coordination report will not be afforded interference protection from FS transmissions by existing licensees.

The purpose of submitting a frequency coordination report is to "coordinate the proposed frequency usage with existing terrestrial users and with applicants for terrestrial station authorizations with previously filed applications . . . ." <sup>6</sup> But since receive-only earth stations do not cause any interference, a receive-only station registrant does not need to coordinate in order to avoid interference into other users. Rather, the registrant simply has to provide information so that other users are put on notice of the earth station's existence and location and do not cause interference *into* that station. This in turn means that, at least for future fixed service ("FS") licensees, the information on Form 312 and Schedule B is enough: all such future licensees need to know are the location and type of antenna information provided on that form. The absence of a coordination report would therefore not disadvantage such future FS licensees, and receive-only earth station registrants who do not file a report should be protected from any such future licensees. In contrast with the case of transmit/receive earth stations, the coordination report is of no use at all for the future FS licensees in their effort to protect receive-only earth station registrations.

Moreover, there is no downside to the Commission from making this clarification: ACA knows of no Commission plan to license FS transmissions in the future (nor would it matter, since, as stated above, future licensees do not need a coordination report to be on notice of the existence of a receive-only station)—indeed, the Public Notice has frozen such licensing.

Second, the Public Notice states that "[a]ll potential applicants are advised that the Commission may, for purposes of further action following the *NOI*, choose to take into consideration only those earth stations that are licensed, registered, or have pending applications for license or registration on file in IBFS as of" the end of the 90-day window (July 18, 2018). <sup>7</sup>

This formulation would likely be viewed by operators as too vague to amount to a benefit worth registering their stations for. If the Commission "may" "choose" to take into consideration these new registrants, the inference can readily be made that the Commission equally may choose not to do so. An operator may thus believe that, with or without registration, the Public Notice leaves the Commission's options equally open. ACA does not believe that the Commission intends to ignore those who have registered by July 18, 2018, but can point to nothing in the text of the Public Notice to support its belief. ACA understands that the Commission may consider future uses of the band, including by point-to-multipoint systems or even mobile services, in a future rulemaking. Neither the Bureau nor indeed the Commission can appropriately prejudge that rulemaking. But no prejudgment would be involved if the Commission simply assures the operators of receive-only earth stations that registration within the window and subject to the

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<sup>6</sup> 47 C.F.R. § 25.203(c).

<sup>7</sup> Public Notice at 4.

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waiver would put them on the same footing as prior registrants. ACA understands that all registrants' rights may be affected in the future (and reserves the right to object if they are). But entities considering whether to register will legitimately want to know whether their rights will be affected the same as those of prior registrants.

A simple change to the Public Notice would achieve that: the International Bureau should amend the sentence to clarify that the Commission would apply the same treatment to all registrants as of July 18, 2018, regardless of whether they registered before the 90-day window or within that window pursuant to the waiver of the coordination report.

Third, another statement in the Public Notice will likely give receive-only operators pause in considering whether to register: “[u]pon announcing the termination of the freeze, the International Bureau may modify or terminate the waiver by requiring or permitting registrants or licensees who filed applications within the 90-day window without a coordination report to file such a report as required by the Commission’s rules, and to take any appropriate action in light of such filing.”<sup>8</sup> The power of the coordination report waiver to motivate registrations is undermined if the Commission may require reports later after all. ACA understands that the Bureaus may not bind the Commission. But the waiver falls within the International Bureau’s delegated authority.<sup>9</sup> Accordingly, since a reinstatement of the coordination report requirement would serve no purpose for receive-only earth station registrants, ACA requests that the Bureaus modify this statement to make clear it does not extend to registrants.

Clarification of the Public Notice would permit ACA to initiate meaningful grass roots efforts to educate its members of the benefits of registering within the 90-day window. Time is of the essence in light of the 90-day window. ACA would therefore appreciate clarification on the above issues by May 11, 2018.

Respectfully submitted,

/s/

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

<sup>9</sup> 47 C.F.R. §§ 0.261(a)(4), (a)(15).