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
	)	
Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz	)	GN Docket No. 17-183 (Inquiry Terminated as to 3.7-4.2 GHz)
	)	
Petition for Rulemaking to Amend and Modernize Parts 25 and 101 of the Commission's Rules to Authorize and Facilitate the Deployment of Licensed Point-to-Multipoint Fixed Wireless Broadband Service in the 3.7-4.2 GHz Band	)	RM-11791
	)	
Fixed Wireless Communications Coalition, Inc., Request for Modified Coordination Procedures in Band Shared Between the Fixed Service and the Fixed Satellite Service	)	RM-11778

COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION

Matthew M. Polka
President and Chief Executive Officer
ACA Connects – America's Communications Association
Seven Parkway Center
Suite 755
Pittsburgh, PA 15220
(412) 922-8300

Ross J. Lieberman
Senior Vice President of Government Affairs
ACA Connects – America's Communications Association
2415 39th Place, N.W.
Washington, D.C. 20007
(202) 494-5661

Pantelis Michalopoulos
Georgios Leris
Travis West
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Counsel for ACA Connects – America's Communications Association

July 3, 2019

TABLE OF CONTENTS

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
	)	
Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz	)	GN Docket No. 17-183 (Inquiry Terminated as to 3.7-4.2 GHz)
	)	
Petition for Rulemaking to Amend and Modernize Parts 25 and 101 of the Commission's Rules to Authorize and Facilitate the Deployment of Licensed Point-to-Multipoint Fixed Wireless Broadband Service in the 3.7-4.2 GHz Band	)	RM-11791
	)	
Fixed Wireless Communications Coalition, Inc., Request for Modified Coordination Procedures in Band Shared Between the Fixed Service and the Fixed Satellite Service	)	RM-11778

COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION

ACA Connects – America's Communications Association ("ACA Connects") hereby responds to the *Public Notice*[1] in the above captioned proceeding. Yesterday, ACA Connects joined the Competitive Carriers Association ("CCA") and Charter Communications ("Charter") to present a comprehensive proposal for repurposing a large portion of the C-band spectrum (3.7-4.2 GHz)—at least 370 MHz or more—for 5G wireless services.[2] That proposal marks the first time that incumbents and prospective new licensees have come together on an industry-designed

[1] International Bureau and Wireless Telecommunications Bureau Seek Focused Additional Comments in 3.7-4.2 GHz Band Proceeding, *Public Notice*, GN Docket No. 18-122, RM-11791, RM-11778, DA 19-385 (May 3, 2019) ("*Notice*").

[2] Letter from Ross Lieberman, ACA Connects – America's Communications Association, Alexi Maltas, Competitive Carriers Association, and Elizabeth Andrion, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (July 2, 2019) ("Joint Proposal").

plan for repurposing the C-band, which is critically important to winning the global race to 5G. The comprehensive proposal is a win-win for consumers, rural America, incumbent users of the C-band, the satellite industry, and future wireless users. It efficiently frees up almost twice the amount of spectrum made available compared to the only other serious proposal to date. Moreover, it ensures a fiber alternative in rural America, funded by winning bidders, helping to resolve the urban rural digital divide. It also reserves for the American public a significant portion of the proceeds from the refarming of the spectrum, and relies upon an FCC-led auction that ensures the disinfectant of sunlight, avoiding a secretive process. These comments complement the Joint Proposal, provide further support for the Commission's authority to implement it, and answer the Commission's questions.

I. INTRODUCTION AND SUMMARY

The Commission asks the right questions about the comparable status of earth station operators and that of satellite operators with respect to the C-band spectrum. It also appropriately inquires about the license modifications that would be necessary for the refarming of the C-band, and the most efficient, fast, and fair process for accomplishing the refarming of C-band spectrum for fifth generation ("5G") services. Specifically with respect to earth station operators, the Commission asks whether they qualify as licensees,[3] among other questions. In ACA Connects' view, the answer is yes:

- Holders of earth station registrations have the same rights to the C-band spectrum as holders of space station licenses. Registered earth station operators meet the definition of licensee and have "licensed spectrum usage rights," just as space station

[3] *Notice* at 6 ("Do licensed or registered receive-only earth station operators meet the definition of licensees that have licensed spectrum usage rights that they could voluntarily relinquish in an incentive auction?").

licensees do. Receive-only earth stations are subject to registration rather than prior Commission approval, not because they enjoy less protection than any other spectrum user, but simply because other spectrum users do not need to be protected from them. As the Commission made clear when introducing the registration process decades ago, it was only eliminating the issuance of a "formal" license, meaning plainly that earth station operators (certainly those who have registered) continue to hold licenses after the change as they had done before it. Indeed, the FCC still issues formal licenses for many receive-only earth stations to permit them to access non-U.S. licensed satellites.

- The main implications of the earth station and satellite operators' co-equal status are two. First, any refarming requires modification of both categories of licenses. Under Section 316 of the Act, this requires a 30-day opportunity for the licensees to protest.[4] Second, earth station operators, like satellite operators, qualify as licensees with licensed spectrum usage rights, and therefore the Commission may encourage them to relinquish these rights by means of an incentive auction.
- The Commission should conduct a reverse incentive auction on a national basis. The participants could consist of satellite operators, with the incentive payments divided between the winning operator and earth station users under a pre-set formula. Alternatively, if the FCC favors an incentive auction that allows both satellite and earth station operators to bid on relinquishing their rights, such an auction should similarly be on a national basis or incorporate a mechanism that equalizes the spectrum to be refarmed across local markets. The quantity of spectrum to be cleared

[4] 47 U.S.C. § 316(a)(1).

nationwide should either be set by the Commission or determined by the incentive auction, possibly within a range.

- The Commission should then conduct a forward 5G auction. A portion of the proceeds from that auction should be earmarked to reimburse all incumbents for their transition costs, including the purchase of Indefeasible Rights of Use ("IRU") or new wavelength services in some cases and the construction of fiber in others, and to obtain and install equipment required for those earth station users who will migrate from C-band to fiber delivery. Another portion should be used for incentive payments at the levels determined by the incentive auction.
- Even if an incentive auction is unavailable, the Commission has ample authority to require payments to incumbents that would cover not only the cost of transition to fiber that they face but also their cost of capital and opportunity cost, as well as payments for economic incentives. The Commission could impose such payments as a condition, either on the new 5G licenses to be issued, or on the modification of the incumbents' licenses, or using its Title III rulemaking authority, as it has done in the past.

II. REGISTRANTS ARE LICENSEES

The *Notice* properly asks whether "licensed or registered receive-only earth station operators meet the definition of licensees," and whether they "have licensed spectrum usage rights."[5] The answer to both questions is yes. To understand that the FCC never eliminated the status of earth station operators as licensees, it is useful to survey briefly the history of the treatment of receive-only earth stations by the Commission.

[5] *Notice* at 6.

A. The Commission consistently considered earth station operators as licensees.

In short, while the Commission first streamlined and then eliminated "formal" licenses for receive-only earth stations, it did that for one reason alone: to reduce regulatory burdens on station operators. It never intended to demote them or downgrade their status as licensees. Until 1979, earth station operators had to obtain a formal license.[6] The gradual deregulation of that space started with the *1979 Deregulation Order*, which eliminated the mandatory licensing regime for receive-only earth stations, and replaced it with a voluntary licensing program.[7] Earth station users who chose to be licensed received interference protection.[8]

In 1986, the Commission took its streamlining further, eliminating some filing requirements while reaffirming its focus on "protecting proposed earth station sites from interference caused by terrestrial point-to-point microwave transmitters."[9]

The introduction of the registration process in 1991 was simply a further step in the same deregulatory trend with the goal of further easing those operators' burdens.[10] As the

---

[6] Regulation of Domestic Receive-Only Satellite Earth Stations, *First Report and Order*, 74 FCC 2d 205, 208 ¶ 8 (1979) ("The current receive-only licensing process has three steps: frequency coordination, construction permit and license . . . Construction permits and licenses are issued pursuant to the provisions of Title III of the Communications Act of 1934.") ("*1979 Order*").

[7] *1979 Order*, 74 FCC 2d at 206 ¶ 2.

[8] *1979 Order*, 74 FCC 2d at 214 ¶ 27 ("Moreover, an optional licensing program would enable those who need and/or wish to have protection to obtain an enforceable right to a particular level of interference free reception through the prior coordination process.").

[9] Deregulation of Domestic Receive-Only Satellite Earth Stations, *Second Report and Order*, 104 FCC 2d 348, 349 ¶ 3 (1986).

[10] Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services, *First Report and Order*, 6 FCC Rcd. 2806 (1991) ("*1991 Order*").

Commission put it then, it intended to provide "a simpler regulatory procedure."[11] To that end, "the program would eliminate the issuance of a *formal* license."[12] But the Commission was careful to note that the information required to apply for registration "would be the same as is currently required for a license application."[13] For that reason, a registration application must use, then as now, the same form as a license application: Section 25.131 directs both licensees and registrants to submit Form 312 to apply for a license or to register their earth stations, respectively.[14] And the result of a registration was, and is, the same as the result of a formal license—protection from harmful interference: the "registration program will afford the same protection from interference as would a license issued under our former procedure."[15]

Thus, the Commission's rationale for the change of procedure was only to help earth station operators, not to hurt them by demoting them. Elimination of "formal licenses" means that earth station operators continue as licensees, albeit as informal ones. Thus, earth station operators who have taken up the Commission's invitation to register are licensees enjoying all of a license's protections, including the fundamental hallmark of any Title III license—protection from harmful interference.[16]

---

[11] *1991 Order*, 6 FCC Rcd. at 2806 ¶ 4.

[12] *Id.* (emphasis added).

[13] *Id.*

[14] *See* 47 C.F.R. § 25.131(a)-(d).

[15] *1991 Order*, 6 FCC Rcd. at 2807 ¶ 7.

[16] Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, *Notice of Proposed Rulemaking and Notice of Inquiry*, 27 FCC Rcd. 3561, 3586 ¶ 79 (2012) ("The Commission may also modify licenses to achieve the public interest purpose of avoiding harmful interference."). While all receive-only earth station operators arguably qualify as licensees, registrants do so *a fortiori*, as they have fulfilled the requirement for enjoying protection from interference.

There is one more reason why the *1991 Order* could not have undone earth station operators' licensee status. That would have been a "fundamental change" to the rights of the previous formal licensees.[17] It would therefore have amounted to a license modification and even revocation, and would have triggered the procedures required by the Communications Act.[18]

Nor did the Commission eliminate all formal licenses for receive-only earth stations. The Commission still issues such licenses to permit many receive-only stations to access non-U.S. licensed satellites.[19] Specifically, a receive-only earth station license is one of the routes for allowing a foreign-licensed satellite access to the U.S. market.[20]

B. Registrants are licensees under the plain reading of the Communications Act.

Registered earth station operators also qualify as licensees under the Communications Act. The statute specifically defines a "license" as "that instrument of authorization required . . . for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission."[21] In turn,

[17] *MCI Telecommunications Corp. v. AT&T*, 512 U.S. 218, 228-29 (1984) (holding that the FCC's modification of a license could not make a fundamental change to the license).

[18] *See* 47 U.S.C. §§ 312, 316; *see also MCI*, 512 U.S. at 228-29.

[19] 47 C.F.R. § 25.131(j)(1) ("[R]eceive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station.").

[20] *See, e.g.*, EchoStar Satellite LLC, *Order and Authorization*, 21 FCC Rcd. 4077 (2006) (granting blanket authorization for one million receive-only earth stations to communicate with Mexican-authorized satellite EchoStar 4); *see also* Application of DIRECTV Enterprises, LLC, *Order and Authorization*, 19 FCC Rcd. 15529 (2004) (granting blanket authorization for one million receive-only earth stations to communicate with Canadian-authorized DIRECTV 5 satellite).

[21] 47 U.S.C. § 153(49).

transmission of energy is defined broadly, as including "instrumentalities" and "facilities" "incidental to such transmission."[22] Receive-only earth stations are not only incidental, but indeed fundamental, to such transmissions. It follows that earth station operators "use and operat[e] [their] apparatus for transmission of energy, or communications, or signals by radio," becoming eligible for "licenses" within the meaning of Section 3 of the Act. Moreover, Section 301 of the Act requires a license for the interstate use or operation of "any apparatus for the transmission of energy or communication or signals . . ."[23] This means that the Act requires a license for the operation of receive-only stations, which therefore meet the "required by this Act" element of the "license" definition. The fact that the Commission has decided to no longer require prior approval for earth station operators does not change their status, at least so long as they have availed themselves of the registration process. By the same token, domestic common carriers qualify as licensees because the Act requires a license for the construction and operation of "new lines,"[24] no matter that they no longer need an affirmative grant of Section 214 authority under the Commission's rules.[25]

---

[22] 47 U.S.C. § 153(57).

[23] 47 U.S.C. § 301.

[24] 47 U.S.C. § 214(a) ("No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line[.]").

[25] *See* 47 C.F.R. § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies."); *see also* 47 C.F.R. § 63.02(a) ("Any common carrier is exempt from the requirements of section 214 of the Communications Act of 1934, as amended, for the extension of any line.").

The Commission itself has evidently interpreted the Communications Act as requiring a license for the reception of satellite signals. Otherwise, the Commission would not have issued formal licenses for receive-only earth stations prior to streamlining the applicable procedure.[26] And, as discussed above, the Commission still grants licenses for receive-only earth stations to operate with foreign-licensed satellites.[27]

III. THE COMMISSION MAY, AND SHOULD, MODIFY EARTH STATION USERS' AND SATELLITE OPERATORS' LICENSE RIGHTS AND CONDUCT AN INCENTIVE AUCTION

The Commission asks whether satellite operators' licenses should be modified;[28] it also asks whether it may conduct an incentive auction.[29] Here, too, the answers are yes. Moreover, the earth station and satellite operators' co-equal status has important implications for both of these questions. First, the refarming of C-band spectrum requires modification of both categories of licenses. Under Section 316 of the Act, this requires a 30-day opportunity for the licensees to protest.[30] ACA Connects would consider waiving that opportunity if the refarming is accompanied by the issuance of an adequate fiber transmission alternative, and by

---

[26] *1979 Order*, 74 FCC 2d at 208 ¶ 8 ("The current receive-only licensing process has three steps: frequency coordination, construction permit and license . . . Construction permits and licenses are issued pursuant to the provisions of Title III of the Communications Act of 1934.").

[27] 47 C.F.R. § 25.131(j)(1) ("[R]eceive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station.").

[28] *Notice* at 3-4 ("What obligations, if any, does section 316 of the Communications Act (or any other provision of the Act) impose on the Commission with respect to space station operators if the Commission were to authorize new terrestrial operations in the band under any of the proposals in the Notice or the record?").

[29] *Notice* at 6 ("Does the Commission's incentive auction authority allow it to structure a reverse auction in which satellite operators and licensed or registered receive-only earth station operators compete to relinquish their spectrum usage rights?").

[30] 47 U.S.C. § 316(a)(1).

commensurate incentives to those received by satellite operators.[31] Second, earth station operators, like satellite operators, qualify as licensees with licensed spectrum usage rights, and therefore the Commission may, and should, encourage them to relinquish these rights by means of an incentive auction.[32]

There can be little doubt that the Communications Act authorizes the Commission to conduct an incentive auction. The relevant statutory provision states: "[T]he Commission may encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible-use service rules by sharing with such licensee a portion, based on the value of the relinquished rights as determined in the reverse auction . . ."[33] On its face, this provision is alive and well, and not simply an authorization for a "one-off" use—the broadcast incentive auction conducted by the Commission. Indeed, the Commission has recognized that "Congress expressly authorized the Commission to conduct incentive auctions beyond the broadcast television spectrum incentive auction."[34] Indeed, the Commission is proposing to use this authority in order to conduct an incentive auction in another proceeding.[35]

[31] Joint Proposal at 3.

[32] 47 U.S.C. § 309(j)(8)(G)(i).

[33] *Id.*

[34] Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, *Fourth Further Notice of Proposed Rulemaking*, 33 FCC Rcd. 7674, 7685 ¶ 44 (2018) ("*Fourth NPRM*").

[35] *Id.* at 7686 ¶ 47.

The statutory language gives the Commission wide latitude on an incentive auction's structure, provided that a) it is a reverse auction and b) at least two competing licensees must participate.[36]

Not only does the Commission have authority to conduct an incentive auction; it should do so. The Joint Proposal filed by ACA Connects, CCA, and Charter yesterday identifies an incentive auction as one of the two recommended alternative routes for proceeding with C-band refarming.[37] ACA Connects had similarly recommended an incentive auction as an alternative in its Reply Comments.[38]

Specifically, ACA Connects recommends conducting such an incentive auction on a national basis to avoid the disenfranchisement of rural America that would likely result otherwise. Specifically, ACA Connects recommends the following process:

- The Commission modifies the satellite operators' licenses into transponder capacity units to eliminate the "hold-out" problem.
- The Commission holds a reverse incentive auction among satellite operators. The winning operator or operators have to divide the payment corresponding with the winning bid between itself and each earth station operator, under a formula agreed upon by the two industries, or, if there is no agreement, set by the Commission.
- The Commission holds a forward 5G auction.

[36] *See* 47 U.S.C. § 309(j)(8)(G)(ii)(I)-(II).

[37] *See* Joint Proposal at 6-7. The other route is a forward 5G auction coupled with an obligation of winning bidders to make payments to incumbents. *Id.* at 5-6.

[38] *See* Reply Comments of the American Cable Association, GN Docket No. 18-122, at 6-10 (Dec. 11, 2018).

- The proceeds from the 5G auction are first applied to a migration fund that will reimburse each industry for its costs, including the costs of a fiber alternative.
- The proceeds from the 5G auction are next used to pay the reverse auction's winning bids. These payments are divided between satellite and earth station operators under the formula mentioned above.
- After the foregoing payments are made, all proceeds are paid to the U.S. Treasury.
- After the foregoing payments are made, the licenses of satellite and earth station operators are modified as necessary to allow refarming of the C-band spectrum.
- The spectrum to be cleared will either be set by the Commission or determined by the incentive auction, possibly within a range.

The Commission asks if its incentive auction authority allows it "to structure a reverse auction in which satellite operators and licensed or registered receive-only earth station operators compete to relinquish their spectrum usage rights[.]"[39] While the Commission has the authority to conduct a reverse auction including both satellite and earth station operators as bidders, it should do so on a national basis and avoid balkanizing the process by conducting incentive auctions market by market.

As ACA Connects has pointed out, clearance of more spectrum in urban areas would severely damage rural America. Among other things, because of the national nature of satellite service, significant amounts of programming would likely no longer be available via C-band downlink even if spectrum remains available in rural and less dense areas.[40] Specifically, while

[39] *Notice* at 6.

[40] *See* Letter from Pantelis Michalopoulos, Counsel for ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 5 (Mar. 25, 2019).

the spectrum would theoretically remain available for satellite service to rural operators, the reality would be much different: this availability would be of little practical value if large programmers do not find it worth their while to backhaul certain content by satellites at all because their largest customers are no longer dependent on the C-band.

Uniform 5G refarming across the county would also help ensure that rural consumers have the same opportunities to benefit from increased spectrum as urban users. Rural areas deserve to have available the same amount of spectrum as urban areas, and such determinations should not be based on demand at a particular time that C-band spectrum is auctioned. Such an approach would effectively disproportionately harm rural areas where small operators in those areas might not be ready to bid for 5G, financially or otherwise, at the same time as larger operators. And, clearing the same amount of spectrum at the same time across the nation is the most straightforward and efficient path. Deferring clearance to a later time for rural areas on a stand-alone basis would be very difficult and would likely result in rural areas carrying the burdens of the refarming process while urban areas have already benefited.[41]

IV. THE COMMISSION MAY, AND SHOULD, AUTHORIZE PAYMENTS TO INCUMBENTS EVEN WITHOUT AN INCENTIVE AUCTION

If an incentive auction is unavailable, the Commission has ample authority to authorize and require payments to registered receive-only earth stations.[42] First of all, it is undisputed that the Commission may place conditions on new licenses when it finds that such conditions are in

[41] *See* Joint Proposal at 4.

[42] *Notice* at 6 ("If an incentive auction approach is unavailable, does the Commission have other statutory authorities that would enable it to authorize or require payments to licensed or registered receive-only earth stations to induce them to modify or relocate their facilities?").

the public convenience, interest, or necessity.[43] There is thus no doubt that the Commission may condition new licenses on the new licensees' reimbursing incumbents for their relocation costs, including the cost of constructing or leasing, and migrating to, an alternative fiber delivery system.[44] These costs can also include the operators' cost of capital or opportunity cost. As the satellite operators have estimated, the value of the lost satellite assets is about $7.3 billion, while the "estimated lost economic value of all C-band earth station assets" is higher at $12.4 billion.[45] In fact, even if these payments did not qualify as costs, the Commission would have the authority to condition new licenses on the new licensees making such payments to the incumbents.

Second, the Commission has the authority to condition license modifications under Section 316 on the incumbents' receiving compensation for the diminution of their rights.[46] In

[43] *See, e.g.*, 47 U.S.C. § 303(r) (giving the Commission the authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter[.]"); Comprehensive Review of Licensing and Operating Rules for Satellite Services, *Second Report and Order*, 30 FCC Rcd. 14713, 14735 ¶ 54 (2015) ("The milestone requirements for most space station licensees are codified in Section 25.164 and are incorporated as conditions in license grants.").

[44] *See, e.g.*, Improving Public Safety Communications in the 800 MHz Band, *Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling*, 25 FCC Rcd. 13874, 13876 ¶ 6 (2010) ("When the band was originally to be used exclusively for MSS operations, the Commission established a right of MSS entrants who incurred relocation expenses to seek reimbursement from later entrants, consistent with established Emerging Technologies cost sharing principles."). The Commission has mandated reimbursement for primary licensees; it only does not mandate reimbursement for secondary licensees. Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Second Order on Reconsideration*, 30 FCC Rcd. 6746, 6805 ¶ 130 (2015) ("The Commission has never required that primary licensees (here, the 600 MHz Band wireless licensees) moving into a band reimburse users that have been operating on a secondary basis in that band.").

[45] *See* Coleman Bazelon, Maximizing the Value of the C-Band, The Brattle Group, at 22 (attached as Appendix A to Joint Comments of Intel Corp., Intelsat License LLC, and SES Americom, Inc., GN Docket No. 18-122 (Oct. 29, 2018)).

[46] *Cf.* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Second Order on Reconsideration*, 30 FCC Rcd. 6746, 6805 ¶ 130 (2015) (denying reimbursement only for secondary users of a spectrum band).

fact, conditioning a license modification lessens the burden of the change to the incumbent licensee, and thus alleviates the main concern underlying Section 316's restrictions on modification.[47]

Third, Section 303(r) of the Communications Act also authorizes the Commission to make "such rules and regulations . . . as may be necessary to carry out" the provisions of Title III.[48] Using this authority, the Commission has repeatedly required payments by new licensees to incumbents to implement the transition of spectrum to new users,[49] has structured these obligations with the goal of "providing incentives to incumbents to relocate,"[50] and has been affirmed by the D.C. Circuit in pursuing that goal.[51]

---

[47] *See, e.g.*, Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, *Report and Order and Order of Proposed Modification*, 27 FCC Rcd. 16102, 16168 ¶ 175 (2012) ("Providing the licensees with the ability to determine how to best effectuate the MSS band reconfiguration should further limit any burden the reconfiguration places on them.").

[48] 47 U.S.C. § 303(r).

[49] *See* Redesignation of the 17.7-19.7 GHz Frequency Band, *Report and Order*, 15 FCC Rcd. 13430, 13469 ¶ 81 (2000) (mandating a period during which terrestrial and satellite users negotiate "terms," followed by an involuntary displacement of terrestrial users if no agreement is reached, with the satellite users paying for the relocation costs); *see also* Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rulemaking*, 7 FCC Rcd. 6886, ¶ 24 (1992) (permitting existing licensees to "negotiate voluntary relocation agreements" and providing new licensees with the ability to request involuntary relocation if negotiations fail; if they fail, a new licensee "must guarantee payment of all relocation expenses [of the incumbent licensee], build the new microwave facilities at the relocation frequencies, and demonstrate that the new facilities are comparable to the old[.]").

[50] *Teledesic LLC v. FCC*, 275 F.3d 75, 87 (D.C. Cir. 2001).

[51] *Id.*

V. CONCLUSION

The Commission should clarify that earth station registrations have the same rights to the C-band spectrum as holders of space station licenses, that they qualify as licensees with licensed spectrum usage rights, and that therefore the Commission may encourage them to relinquish these rights by means of an incentive auction. The Commission should go forward with an incentive auction on a nationwide basis to refarm the spectrum and avoid an unprecedented private auction and the prolonged legal battle it would likely engender.

Respectfully submitted,

/s/
Pantelis Michalopoulos
Georgios Leris
Travis West
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Counsel for ACA Connects – America's Communications Association

Matthew M. Polka
President and Chief Executive Officer
ACA Connects – America's Communications Association
Seven Parkway Center
Suite 755
Pittsburgh, PA 15220
(412) 922-8300

Ross J. Lieberman
Senior Vice President of Government Affairs
ACA Connects – America's Communications Association
2415 39th Place, N.W.
Washington, D.C. 20007
(202) 494-5661

July 3, 2019