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

REPLY COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION

ACA Connects – America's Communications Association ("ACA Connects") hereby responds to the comments filed pursuant to the *Public Notice*[1] in the above captioned proceeding. Like ACA Connects, multiple parties recognize that C-band receive-only earth station users qualify as licensees, may receive incentive payments in an incentive auction, and ought to be compensated for loss of their rights.[2] In T-Mobile's words, registrants'

[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).

[2] *See, e.g.*, Comments of Charter Communications, Inc., GN Docket No. 18-122, at 4-7 (July 3, 2019); Comments of National Public Radio, Inc., GN Docket No. 18-122, at 3-4 (July 3, 2019); Comments of Competitive Carriers Association, GN Docket No. 18-122, at 27-29 (July 3, 2019) ("CCA Comments"); Comments of BYU Broadcasting GN Docket No. 18-122, at 6-8 (July 3, 2019); Supplemental Comments of PSSI Global, GN Docket No. 18-122, at 2-3 (July 5, 2019);

"authorizations allow for the use of an apparatus for communications, allowing them to fall squarely within the definition of a 'license.'"[3] As the Competitive Carriers Association put it, "[r]eceive-only registrants qualify as 'licensees' under the Communications Act."[4]

While the C-Band Alliance ("CBA") disputes the status of earth station operators, its own claim to protection from new services proves that earth station operators are even more entitled to protection by CBA's own admission. CBA claims a unique status based on its multi-billion dollar investment, even as the satellite operators have admitted that *earth station operators* have made an even greater investment. All along this proceeding, CBA has exhibited a single-minded focus on, and narrow view of, its own interests to the exclusion of all other participants in the C-band ecosystem. ACA Connects acknowledges that satellite operators have a contribution to make to C-band clearance. But goodwill is required of all parties to achieve a solution that serves the public interest.

I. EARTH STATION USERS HAVE A STRONGER INVESTMENT-BACKED CLAIM THAN SATELLITE OPERATORS

CBA claims that it is entitled to protection (and thus, to multi-billion dollar payments if protection ends) on account of its "billions of dollars" of investment in "infrastructure and systems."[5] It adds that the Commission cannot squander these "substantial portions of the

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Comments of T-Mobile USA, Inc., GN Docket No. 18-122, at 6-7 (July 3, 2019) ("T-Mobile Comments").

[3] T-Mobile Comments at 6.

[4] CCA Comments at 27.

[5] Comments of the C-Band Alliance, GN Docket No. 18-122, at 20 (July 3, 2019) ("CBA Comments").

investments made by members of the C-Band Alliance that facilitate actual service transmissions to millions of Americans . . . ."[6]

But earth station users have greater rights to the C-band than the satellite operators for the simple reason that they have invested even more. This is not just what ACA Connects says, it is what the satellite operators admit. Their expert has estimated that 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.[7]

The satellite operators cannot have it both ways—claim compensation based on their investment, then deny it to others despite the others' greater investment. Even if the CBA were correct that earth station users are not licensees (which it is not, see below), the Commission must evaluate all incumbents' investment-backed expectations as a factor in clearing the spectrum. What is good for the goose is good for the gander—the CBA cannot claim that only its investment deserves recognition, while the greater investment of the earth station operators deserves none.

II. EARTH STATION USERS ARE LICENSEES

Some commenters incorrectly claim that receive-only earth stations registrants are not licensees because they receive signals rather than transmitting them.[8] Their arguments

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[6] *Id*.

[7] *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)).

[8] *See, e.g.*, CBA Comments at 12 (claiming that the "Commission permits receive-only earth stations to register for interference protection as a means of guaranteeing the non-interference right of space station licensees"); Comments of Satellite Industry Association, GN Docket No. 18-122, at 3 (July 3, 2019) (maintaining that "space station operators possess enforceable rights to transmit, and any right of an earth station to receive a satellite communication is derivative of the right held by the space station operator") ("SIA Comments"); Comments of Verizon, GN

contradict Commission precedent. At a threshold level, they ignore that, until the *1979 Order*, receive-only earth station users were required to have a license, and that some receive-only earth station users obtain licenses today.[9] The argument that reception is not incidental to transmission[10] fares no better for the same reason. If transmission did not include incidental reception, the Commission would never have issued licenses to receive-only earth station users then, and it would not be issuing such licenses to earth stations receiving signals from foreign-licensed satellites to date.[11]

Docket No. 18-122, at 4 ("Earth station registrants are not licensees and have no licensed spectrum usage rights to relinquish.") ("Verizon Comments"); Comments of Google LLC on Interference Protection Rights, GN Docket No. 18-122, at 6 (July 3, 2019) ("Earth stations do not have interference protection rights independent of space station operators' rights to transmit without interference to authorized earth stations.") ("Google Comments").

[9] 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.").

[10] *See, e.g.*, CBA Comments at 12-13 ("As the Commission explained in 1979, and as remains true today, '[b]y definition, receive-only earth stations do not transmit' and thus do not need licenses. Furthermore, it would be 'unreasonable' to regard receive-only earth stations as 'facilities . . . incidental to radio transmission' because that interpretation 'would require that all television and radio receivers be licensed as well as receive-only earth stations'—a result plainly foreclosed by the statute and thus out of bounds to the agency."); Comments of Dynamic Spectrum Alliance, GN Docket No. 18-122, at 13 (July 3, 2019) ("In 1979 the Commission concluded that receive-only earth stations are not 'incidental' to transmission and therefore do not require a license under Section 301.") ("DSA Comments"); Comments of the Open Technology Institute at New America, GN Docket No. 18-122, at 18 (July 3, 2019) ("The Commission concluded in its 1979 Order that receive-only earth stations are not 'incidental' to transmission and therefore do not require a license under Section 301.").

[11] *See, e.g.*, Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities, *Report and Order*, 22 FCC 2d 86, 128 (1970) ("Satellite operating entities should have equal status with terrestrial users in interference problems and in access to the radio spectrum."); *see also* 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. Frequency coordination is an analytical process designed to desolve potential interference problems and must be performed prior to the filing of an application for construction permit and license.

CBA next argues earth station operators are not licensees by distorting what the Commission said when it converted mandatory earth station licenses to voluntary licenses in 1979. In CBA's version, the Commission stated: "[I]t would be 'unreasonable' to regard receive-only earth stations as 'facilities . . . incidental to radio transmission . . . .'"[12] But the crux of the statement is in the words the CBA omits: "While it might be argued that receiving facilities are incidental to radio transmission, the *full extension of that argument* would be unreasonable," because "it would require that all television and radio receivers be licensed as well as receive-only earth stations. [13]

What was unreasonable in the Commission's view was not whether "receiving facilities are incidental to radio transmission," but rather "the full extension of that argument." Moreover, the Commission was explaining that it was not mandated by the Act to require earth station licenses. But no one disputes that. And the Commission invoked its flexibility to move from mandatory licenses to a voluntary licensing regime. Voluntary licensees are no less licensees. And so are registrants.

CBA does not dispute that the Commission may require licenses for earth station operators and has in fact done so. That is all that is required for licensee status. The affirmative grant of a license is not necessary for licensee status. Otherwise, domestic common carriers would not qualify as Commission licensees.

Construction permits and licenses are issued pursuant to the provisions of Title III of the Communications Act of 1934.") ("*1979 Order*").

[12] CBA Comments at 13. A few other commenters support the CBA's argument and generally dispute that the idea that earth stations are licensees. *See, e.g.*, SIA Comments at 7-10; Verizon Comments, at 5-8; Google Comments at 6-7; DSA Comments at 12-15; Comments of the Wireless Internet Service Providers Association, GN Docket No. 18-122, at 3-5 (July 3, 2019).

[13] *1979 Order*, 74 FCC 2d at 217 ¶ 31 (emphasis added).

III. EARTH STATION USERS' RIGHTS ARE NOT DERIVATIVE

The CBA also argues that earth station operators' right to claim protection from harmful interference—the hallmark of a licensee's rights—is a mere side effect deriving from the satellite operators' licenses.[14] The problem is that there is no support for this theory. To the contrary, when the Commission replaced licenses with registrations, it was clear from the Commission's discussion of that change that the registrants had the same right to claim protection from interference that they had had as licensees, and there was no effort to anchor their right on someone else's license.[15]

IV. A FINDING THAT EARTH STATION REGISTRANTS ARE NOT LICENSEES WOULD STRIKE AT THE COMMISSION'S OWN AUTHORITY

A ruling that receive-only earth station users are not licensees would also set a dangerous precedent for the Commission's authority. While the court in *American Library Association* recognized that the Commission may have authority over reception of signals, it expressed doubt over that authority: "In sum, we hold that, at most, the Commission only has general authority under Title I to regulate apparatus used for the receipt of radio or wire communication while those apparatus are engaged in communication."[16] A holding that receive-only station operators do not qualify for licenses would likely be a decisive factor militating against such authority. By

[14] CBA Comments at 14; SIA Comments at 3 (maintaining that "space station operators possess enforceable rights to transmit, and any right of an earth station to receive a satellite communication is derivative of the right held by the space station operator."); Google Comments at 6 ("Earth stations do not have interference protection rights independent of space station operators' rights to transmit without interference to authorized earth stations.").

[15] 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, 2807 ¶ 7 (1991) ("[A] registration program will afford the same protection from interference as would a license issued under our former procedure.").

[16] *American Library Association v. FCC*, 406 F.3d 689, 704 (D.C. Cir. 2005).

stating that receive-only earth station operators are not licensees, the Commission would risk being in conflict with the D.C. Circuit's opinion in *American Library Association*.

V. CONCLUSION

The Commission should reaffirm that earth station users qualify as licensees and may be appropriately incentivized to vacate the band.

Respectfully submitted,

/s/

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