

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding Flexible Use of the)	GN Docket No. 18-122
3.7-4.2 GHz Band)	
)	

**JOINT REQUEST FOR EXTENSION OF TIME
AND TO DISCLOSE LUMP SUM ASSUMPTIONS AND METHODOLOGY**

ACA Connects – America’s Communications Association (ACA)¹ and NCTA – The Internet & Television Association (NCTA)² (jointly, the “parties”) each welcomes the opportunity to comment on the preliminary lump sum categories and payment amounts in the Public Notice (“Lump Sum PN”) that the Wireless Telecommunications Bureau (the “Bureau”) put out for public comment this past Thursday, on June 4, 2020.³ With the publication of the Lump Sum PN yesterday in the Federal Register, comments are due on Tuesday, June 16, 2020, just over a week from publication.⁴

¹ ACA Connects is a trade association representing over 700 small and medium-sized independent companies that that provide multichannel video, voice, and broadband services in communities across the United States, largely in rural and smaller suburban markets. Collectively, these operators deliver services to nearly 8 million households and businesses.

² NCTA is the principal trade association of the cable industry in the United States, representing more than 200 cable program networks as well as cable operators that serve nearly 80 percent of the nation’s cable television customers. Cable program networks reach nearly 90 million U.S. television households and have invested more than \$430 billion in award-winning news, sports, and entertainment content since 1997. The cable industry also is the nation’s largest provider of broadband service after investing over \$290 billion over the last two decades to deploy and continually upgrade networks and other infrastructure.

³ *Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7-4.2 GHz Band Incumbent Earth Station Relocation Expenses*, Public Notice, GN Docket No. 18-122, DA 20-586 (rel. June 4, 2020) (“Lump Sum PN”).

⁴ *Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7–4.2 GHz Band Incumbent Earth Station Relocation Expenses*, 85 Fed. Reg. 34,726 (June 8, 2020).

ACA and NCTA first respectfully request a short six-day extension, until June 22, 2020, of the comment deadline to provide sufficient time to review the satellite operator transition plans due to be filed on June 12,⁵ so that these plans might inform the parties' comments on the proposed lump sum amounts. As the parties discussed in their filings on the preliminary cost catalog, it will be challenging to evaluate whether a proposed lump sum amount is truly representative of the average cost to transition an earth station antenna before seeing the satellite operators' transition plans, as that cost average could be significantly higher or lower depending on the satellite operators' specific grooming plans.⁶ Second, we ask that the Commission make the transition plans available on the Commission's website immediately after they are filed, *i.e.*, either Friday evening or Saturday morning, June 12 or 13. Having an adequate opportunity to review the transition plans will be essential to providing meaningful comments, and providing this additional time in addition to the modest extension request will be extremely beneficial for the feedback the Commission receives. Finally, the parties ask that the Commission disclose, a reasonable period of time prior to the comment deadline, the methodology by which it arrived at the proposed lump sum amounts and the assumptions that it used, which would also enable the parties to provide more focused comments addressing the Bureau's inquiries.

In the *3.7 GHz Report and Order*, the Commission concluded that it was appropriate to provide earth station operators a "choice": either "accept reimbursement for the reasonable relocation costs by maintaining satellite reception or . . . accept a lump sum reimbursement for *all* of their incumbent earth stations based on the average, estimated costs of relocating all of

⁵ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Red. 2343 ¶ 302 (2020) ("3.7 GHz Report and Order").

⁶ See Comments of NCTA – The Internet & Television Association, GN Docket No. 18-122, at 30 (filed May 14, 2020); Comments of ACA Connects – America's Communications Association on the Draft Cost Catalog and Lump Sum Categories and Amounts, GN Docket No. 18-122, at 7 (filed May 14, 2020).

their incumbent earth stations.”⁷ Such a choice, the Commission decided, would “provid[e] earth station operators flexibility . . . to make efficient decisions that better accommodate their needs.”⁸ Ensuring that the lump sums are set at appropriate levels – *i.e.*, are truly “based on the average, estimated costs of relocating . . . incumbent earth stations” – will help the entire transition to proceed more efficiently, which is especially critical now that the eligible space station operators have elected accelerated relocation. If earth station operators conclude that the lump sum amounts adopted are too low to represent their estimated costs and most or all opt to submit actual expenses for reimbursement, this would increase the burden on earth station operators, satellite operators, and the Relocation Payment Clearinghouse; would likely engender more disputes over reimbursement; and ultimately risk slowing the transition to the potential detriment of future 5G deployment.

The Bureau states in the Lump Sum PN that it intends to consider the record compiled on these issues, including comments on the Lump Sum PN, and publish the final lump sum amounts and instructions for earth station operators choosing to make a lump sum election.⁹ In other words, these comments will be important to providing meaningful input for the Bureau’s consideration of lump sum amounts.

To provide earth station owners and operators a meaningful opportunity to comment on the proposed lump sum amounts, the Bureau should: (1) extend the comment deadline on the Lump Sum PN by six days, until June 22, to enable parties to review satellite operator transition plans and ensure their comments reflect that information; (2) publish the space station operators’ transition plans on its website immediately after they are received, either on the evening of June

⁷ 3.7 GHz Report and Order ¶ 202.

⁸ *Id.*

⁹ Lump Sum PN at 5.

12 or the morning of June 13; and (3) disclose the assumptions and methodology underlying its proposed lump sum payment amounts.

The Bureau should grant a brief extension of the Lump Sum PN comment deadline and make the satellite operator transition plans available immediately upon receipt. First, understanding the intentions of the space station operators to deploy new satellites and make technology upgrades and other changes to effectuate the transition is critical information for the parties to arrive at an informed opinion regarding what will be necessary in the transition of each earth station class and, consequently, to understanding reasonably anticipated average costs in each class. This is not information that has been shared with the parties or, to the best of our knowledge, with ACA or NCTA members by the satellite industry. As a result, there is a high degree of unpredictability about what the satellite operators will propose as their satellite transition plans. Accordingly, it is important that we and other interested stakeholders have the opportunity to review the space station operators' transition plans before commenting on the Bureau's lump sum proposals. Calculating appropriate lump sum amounts without seeing the transition plans requires making a number of significant assumptions. Thus, ensuring an adequate time to review the draft transition plans will improve the quality of the comments the Bureau receives, which will better inform its adoption of accurate lump sum amounts, and ultimately smooth the transition.

The Bureau should release the assumptions and methodology it relied on in arriving at the proposed lump sum amounts. Second, the Lump Sum PN seeks comment on a number of assumptions that the Bureau made in arriving at the lump sums it proposes, as well as comment on the methodology it used.¹⁰ For the most part, the Bureau does not explain in the Lump Sum

¹⁰ See, e.g., *id.* at 3 (“We also seek comment on the methodology for determining average estimated costs.”); *id.* at 4 (“We seek comment on the methodology for calculating the lump sum base amounts. Do the assumptions we

PN what assumptions it made or what methodology it used, except in general terms. As a result, it will be exceedingly difficult for interested stakeholders to provide the Bureau with the input it seeks. The ability of interested persons to comment meaningfully on the proposals, and the “methodology for calculating the lump sum base amounts,” would be immeasurably improved if additional information regarding the assumptions and methodology were released by the Bureau in a supplemental Public Notice.¹¹

Accordingly, the parties request that the Bureau provide a brief extension of six days to respond to the Lump Sum PN, until June 22, 2020, that it publish the transition plans on its website on an expedited basis (*i.e.*, on the same or the next calendar day as they are received), and that it release additional information regarding its assumptions and methodology underlying its proposed lump sum amounts for each of the proposed earth station categories in the Lump Sum PN. These actions, and the resulting informed public comment, will help ensure that the Bureau’s final lump sums satisfy the intentions of the Commission in the *3.7 GHz Report and Order* that the lump sums reflect the “the average, estimated costs of relocating all of [the] incumbent earth stations” in a given class to the upper 200 megahertz of the 3.7-4.2 GHz Band.¹²

make accurately represent the average transition for each class of earth station?”). Without more information provided by the Bureau, the assumptions are almost wholly unknown and, therefore, no comment can be provided. Further, the Lump Sum PN appears to solicit feedback on the Bureau’s assumptions, among other things, regarding “a typical number of channels that will need to be upgraded, the amount of equipment to be replaced, and other expenses necessary to achieve the technology upgrade.” *Id.* Yet none of these assumptions are provided with the Lump Sum PN.

¹¹ *See Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 234 (D.C. Cir. 2008) (“Under APA notice and comment requirements, ‘[a]mong the information that must be revealed for public evaluation are the technical studies and data upon which the agency relies [in its rulemaking].’” (quoting *Chamber of Commerce v. SEC*, 443 F.3d 890, 899 (D.C. Cir. 2006) (internal quotation marks omitted))); *see also Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 737 F.2d 1095, 1121 (D.C. Cir. 1984) (“Disclosure of staff reports allows the parties to focus on the information relied on by the agency and to point out where that information is erroneous or where the agency may be drawing improper conclusions from it.”).

¹² *3.7 GHz Report and Order*, ¶¶ 202-203.

Respectfully Submitted,

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