

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
GCI Communication Corp.) IBFS File No. SES-LIC-20180608-01392
Request for Waiver of the Temporary Freeze on) Call Sign: E180787
Applications for New or Modified Fixed Satellite)
Service Earth Stations in the 3.7-4.2 GHz Band)

ORDER

Adopted: July 31, 2019

Released: August 1, 2019

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, the International Bureau (Bureau) grants the request of GCI Communication Corp. (GCI) for waiver of the temporary freeze on applications for new or modified earth stations in the 3.7-4.2 GHz band (Earth Station Freeze or Freeze). As discussed below, we find that this waiver to permit a new earth station to operate in this band in Chevak, Alaska will serve the public interest by allowing GCI to provide critical services to remote portions of Alaska, and that unique circumstances presented in this waiver application will not undermine the purposes of the Freeze.

II. BACKGROUND

2. On April 19, 2018, the International, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus announced a temporary freeze on the filing of new or modification applications for fixed-satellite service (FSS) earth station licenses, FSS receive-only earth station registrations, and fixed microwave licenses in the 3.7-4.2 GHz frequency band. The International Bureau also announced a 90-day filing window during which operators of existing, but unregistered or unlicensed, earth stations operating in the 3.7-4.2 GHz band could continue to file applications. The Bureau extended this filing window for an additional 90 days until October 17, 2018, and announced additional filing options for earth stations with multiple antennas. On July 13, 2018, the Commission

1 The Bureau will grant the earth station application and issue license terms and conditions separately in the International Bureau Filing System.

2 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, Public Notice, DA 18-398, 2 (IB/PSHSB/WTB Apr. 19, 2018), 2018 WL 1898716 (Earth Station Freeze Notice).

3 Id. at 3.

4 International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band; Filing Options for Operators with Multiple Earth Station Antennas, GN Docket Nos. 17-183, 18-122, Public Notice, DA 18-639, 1 (IB June 21, 2018), 2018 WL 3090857.

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released an *Order and Notice of Proposed Rulemaking (Order and NPRM)* that identifies several potential options for expanded flexible use of the 3.7-4.2 GHz band.⁵ In the *NPRM*, the Commission proposes to protect “incumbent” earth stations and to exclude earth stations failing to meet certain criteria, including a requirement that the earth stations were operational as of April 19, 2018, from the definition of incumbents.⁶ Additionally, the Commission proposes to permanently extend the Freeze on applications for new earth station licenses and registrations in the 3.7-4.2 GHz band.⁷

3. On July 17, 2018, GCI filed an application for a new transmit-receive earth station that will operate in the 3.7-4.2 GHz (space-to-Earth) and 5.925-6.425 GHz (Earth-to-space) frequency bands, typically referred to as the “Conventional C-band.”⁸ GCI states that the new earth station would operate in the rural Alaskan village of Chevak, which currently is served only by a C-band microwave radio system that is subject to degraded service and outages in winter months due to severe icing.⁹ GCI asserts that the earth station is necessary to ensure uninterrupted provision of critical communications services to the approximately 2,300 Alaskans residing in Chevak and neighboring village Hooper Bay.¹⁰ These services include mobile voice and broadband, telehealth, school access, 911 routing, and backup to wireline 911 services.¹¹ As part of its application, GCI requests a waiver of the Earth Station Freeze to enable it to operate an earth station that was not operational on or before April 19, 2018.¹² The application was placed on Public Notice on July 18, 2018.¹³ No comments were received. On July 22, 2019, GCI filed a letter providing additional details about the lack of suitable transmission alternatives to the C-band to serve Chevak, Alaska.¹⁴

III. DISCUSSION

4. We grant GCI’s request for a waiver of the ongoing Earth Station Freeze. In the Public Notice announcing the Freeze, the Bureau stated that requests for waiver of the Freeze would be assessed on a case-by-case basis and upon a demonstration that the waiver will serve the public interest and not undermine the objectives of the Freeze.¹⁵ Generally, the Commission may waive any rule for good cause

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The filing window was extended again until October 31, 2018. *See International Bureau Announces Two-Week Extension of Filing Window for Earth Stations Currently Operating in 3.7-4.2 GHz Band*, Public Notice, DA 18-1061 (IB Oct. 17, 2018), 2018 WL 5112022.

⁵ *See Expanding Flexible Use of the 3.7-4.2 GHz Band*, GN Docket Nos. 17-183, 18-122, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915 (2018) (*Order and NPRM*).

⁶ *Id.* at paras. 27-28. Specifically, the *NPRM* proposes to define incumbent stations as earth stations that: (1) were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of October 17, 2018; and (3) have timely filed a certification of the accuracy of information on file with the Commission. *Id.*

⁷ *Id.* at para 30.

⁸ IBFS File No. SES-LIC-20180608-01392.

⁹ *See* Letter from Kara Leibin Azocar, Regulatory Counsel, Federal Affairs, GCI Communications Corp. to International Bureau, Federal Communications Commission, IBFS File No. SES-LIC-20180608-01392 at 2-3 (GCI Letter).

¹⁰ *Id.* at 2.

¹¹ Waiver Request, IBFS File No. SES-LIC-20180608-01392 at 2-3. GCI has been operating this earth station under grants of special temporary authority since July 31, 2018.

¹² Waiver Request at 1-4. Although GCI’s application was filed during the earth station filing window, the filing window is available only for applications for earth stations that were constructed and operational as of April 19, 2018, when the Earth Station Freeze was announced. Since GCI’s proposed station was not operational as of April 19, 2018, this earth station application is outside the scope of the filing window.

shown.¹⁶ Waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁹

5. In the present case, we conclude that there is good cause to grant of a waiver of the Earth Station Freeze based on; (1) the unique operational conditions in remote western Alaska, (2) the absence of viable alternatives, and (3) the importance of the services that GCI provides to these remote Alaskan villages. The Commission has previously observed that certain conditions unique to Alaska make the provision of communications services in the state particularly difficult.²⁰ GCI cites these same unique conditions as justification for its own request for a waiver of the Earth Station Freeze.²¹ Specifically, GCI notes that the current fixed microwave system serving Chevak and Hooper Bay uses a mountain-top microwave repeater location on Askinuk mountain.²² This site routinely experiences severe icing in winter and spring months, which significantly damages the microwave radio antennas, and leading to link degradations and service outages.²³

6. GCI has also attempted to use alternative satellite bands. It has deployed “flyaway Ku-Band VSAT stations,” but has similarly found them incapable of withstanding the high winds and severe weather in this area of Alaska.²⁴ Further, GCI notes that Ku- and Ka-band options are not realistic alternatives for technical reasons: specifically, due to limited lower link availability resulting from propagation conditions and the higher link margins required for Ku- or Ka-band fading.²⁵ Other barriers include the high costs of replacing ground segment equipment, and the lack of available Ku- or Ka-band satellites with adequate coverage in Alaska. Fiber is not a viable option due to the freeze-thaw cycles experienced in this region of Alaska.²⁶ The nearest location to Chevak that has existing fiber optic

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¹³ *Satellite Communications Services re: Satellite Radio Applications Accepted For Filing*, Public Notice, Report No. SES-02079 at 5-6 (July 18, 2018).

¹⁴ *See supra* note 9.

¹⁵ *Earth Station Freeze Notice* at 3.

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162-63, para 72 (2016) (*Alaska Plan Order*) (quoting *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829 (2011)) (noting unique conditions in Alaska, including “its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season”).

²¹ Waiver Request at 1-2.

²² GCI Letter at 2-3.

²³ *Id.*; Waiver Request at 2-3 (GCI’s Askinuk Mountain tower is experiencing severe icing issues that have caused its microwave link, which services remote villages in western Alaska (Chevak and Hooper Bay), to go down).

facilities is Nome, Alaska, which is hundreds of miles away and across the Bering Sea.²⁷

7. Finally, as GCI has indicated, these satellite links will support critical community services. In addition to supporting mobile wireless voice and broadband services, the links will support other critical community services, including telehealth services to support health clinics in both Chevak and Hooper Bay, school access services for the Kashunamiut and Lower Yukon School Districts, wireless 911 routing, and as a backup to wireline 911 services.²⁸ Similarly, the Federal Aviation Administration will rely on images transported from Chevak and Hooper Bay to assist pilots in determining real-time weather conditions to reduce weather-related aviation incidents.²⁹ In summary, the facts in this case make strict compliance with the Earth Station Freeze inconsistent with the public interest and warrant a deviation.

8. Additionally, we conclude that grant of this waiver will not undermine the purpose of the Earth Station Freeze. The Earth Station Freeze is intended to “preserve the current landscape of authorized operations in the 3.7-4.2 GHz band” pending further consideration of the Commission’s ongoing inquiry into expanded flexible use of the band.³⁰ The Freeze was also intended to prevent the filing of speculative earth station applications in anticipation of potential future actions in the band by the Commission.³¹ Grant of this waiver will not undermine these purposes. First, the earth station requested by GCI is located in a remote part of western Alaska, far from any major urban areas or population centers. As such, grant of this waiver will result in no more than a *de minimis* change to the existing landscape of authorized operations in the 3.7-4.2 GHz band. Second, it is clear from GCI’s waiver request that this application is not speculative, but instead is a necessary extension of existing services provided by GCI in remote parts of western Alaska.³² Finally, we note that grant of this waiver is a Bureau-level decision and does not prejudice the Commission’s ability to take any action with respect to the Commission’s ongoing *NPRM* addressing flexible uses in the 3.7-4.2 GHz band.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to authority in Section 1.3 of the Commission’s rules, 47 CFR § 1.3, the request of GCI Communication Corp. for waiver of the Earth Station Freeze, as established by Public Notice DA 18-398 (rel. Apr. 19, 2018) IS GRANTED for the reasons set forth herein. This waiver applies only to the earth station associated with IBFS File No. SES-LIC-20180608-01392.

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²⁴ Waiver Request at 3.

²⁵ GCI Letter at 4-5.

²⁶ Waiver Request at 4.

²⁷ GCI Letter at 5.

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ *Earth Station Freeze Notice* at 2-3.

³¹ *Earth Station Freeze Notice* at 3.

³² See IBFS File Nos. SES-STA-20180620-01772; SES-STA-20180914-02716.

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Chief, International Bureau