

Legal Statement

American Broadcasting Companies, Inc. (“ABC”), licensee of satellite earth station E860103 (the “C-Band Station”), hereby submits this statement in support of its application (“Mod Application”) to modify the C-Band Station authorization (SES-RWL-20060227-00303) to (1) delete the authorized transmitting antennas; (2) change the site location by only 1 second latitude; and (3) maintain C-band downlink capability using receive-only antennas installed at a site adjacent to the currently authorized site.

As explained herein, the International Bureau (“Bureau”) of the Federal Communication Commission (“FCC”) should process and grant the Mod Application during the special filing window as an exception to the temporary freeze on the filing of new or modification applications for Fixed Satellite Service (“FSS”) earth station licenses, receive-only earth station registrations, and fixed microwave licenses in the 3.7-4.2 GHz band (“C-Band”) because the proposed change is necessary to ensure the continued operation of ABC’s C-Band downlink following completion of construction at 50 West 66th Street in Manhattan, which is in the close vicinity of the current location of the C-Band Station. Indeed, the public interest will be served by grant of the Mod Application because it will enable ABC to continue to use C-Band spectrum for receive-only operations that it has maintained for over thirty years. Additionally, assuming the FCC adopts its terrestrial interference protection proposals in the Mid-Band Spectrum Proceeding,¹ grant of the Mod Application will facilitate WABC-TV’s continued reception of an interference-free satellite feed of ABC Television Network (“ABC Network”) programming for broadcast to WABC-TV’s millions of viewers. In the alternative, the Bureau should process and grant the Mod Application pursuant to a waiver of the filing freeze and treat ABC’s C-Band receive-only antennas as an incumbent FSS operation for purposes of continuing interference protection.

I. Background

ABC first obtained the C-Band Station authorization on January 22, 1986.² The C-Band Station has been used for two purposes. First, until recently, the C-Band Station was being used regularly to transmit a satellite feed of ABC Network programming to affiliates of the ABC television network.³ Second, the C-Band Station has been, and continues to be, used by WABC-

¹ 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, FCC 18-91, para. 27 (rel. July 13, 2018) (“*C-Band Order and NPRM*”) (proposing to protect incumbent earth stations from terrestrial interference and proposing 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 certified the accuracy of information on file with the Commission to the extent required”).

² See SES-LIC-19851223-0007 (granted Jan. 22, 1986). Since it was granted in 1986, the C-Band Station authorization was modified in 1994 to change the number of transmitter units and to update the emissions designator and again in 1999 to add an emissions designator. See SES-MOD-19861104-01270;

³ ABC presently uses the uplink capabilities of the C-Band Station from time to time for testing purposes. ABC anticipates that it will cease using the uplink in the near future and is proposing to delete the uplink antennas from the C-Band Station authorization, a change that is expressly permitted during the Special Filing Window. See 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 at 5 (IB, PSHSB, WTB Apr. 19,

TV to receive the satellite feed of ABC Network programming for broadcast to its viewers. After over thirty years of distributing and receiving programming ABC Network programming via the C-Band Station, ABC is now required to modify its C-Band operation as a result of a very nearby construction project at 50 West 66th Street in Manhattan that has caused, and will continue to cause, reliability issues with the reception by the antennas authorized by the existing C-Band Station license. This construction is presently underway and, once completed, will block signals to and from the C-Band Station such that it will no longer be capable of reliably transmitting and receiving ABC Network programming as described above.

Accordingly, in order for ABC to maintain the status quo and continuation of its C-Band receive-only operations in Manhattan, it is necessary for ABC to relocate the receive-only capabilities to the nearby roof of the ABC corporate headquarters at 77 West 66th Street (“66th Street”).⁴ The new location at 66th Street is across the street from, and adjacent to, the 30 West 67th Street (“67th Street”) site specified on the C-Band Station license.⁵ Due to space constraints at 66th Street, ABC cannot reuse the receive-only antennas that are presently installed at 67th Street but rather must install slightly smaller receive-only antennas. Importantly, the technical parameters of the receive-only antennas at 66th Street will remain largely unchanged from those of the 67th Street receive-only antennas presently authorized by the C-Band Station license.⁶ Indeed, ABC will operate the C-band receive-only antennas at 66th Street in the same manner as it has operated the 67th Street receive-only antennas for the past three decades. Presently, ABC anticipates that construction of the replacement C-Band receive-only antennas required to maintain the downlink capability authorized by the C-Band Station license will be complete later this year. During the interim, ABC will continue to use the receive-only capabilities of the C-Band Station license as it has been doing for many years.

II. The Mod Application Should Be Processed and Granted in the Special Filing Window Because the Proposed Changes Are Necessary to Maintain ABC’s Pre-April 19, 2018 Receive-Only Operations

On April 19, 2018, the FCC released a public notice announcing a temporary freeze on the filing of, *inter alia*, applications to modify FSS earth station licenses in the C-Band.⁷ As a limited exception to the freeze, until October 17, 2018, the FCC is accepting applications to register or license C-Band antennas that were operational as of April 19, 2018 (“Special Filing Window”). The purpose of the Special Filing Window is to ensure that the FCC’s records

2018) (“Freeze PN”) (inviting operators of registered FSS earth PN stations to update FCC records during the Special Filing Window if an earth station is no longer in use).

⁴ ABC already has transferred the vast majority of its distribution of ABC Network programming from the C-Band Station to an alternative C-Band station licensed to an affiliate of ABC. *See supra* at n. 3 (explaining that ABC presently is using the transmit capabilities of the C-Band Station license on an intermittent basis).

⁵ Unlike the 66th Street site, the 77th Street location will not be blocked by the construction at 50 West 66th Street.

⁶ *See* Statement of William J. Getz, at 2-3 (explaining that the technical changes are minor in nature and that the new antennas at 66th Street will use the same satellite arc as the existing antennas).

⁷ *See* 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 at 1, 3 (IB, PSHSB, WTB Apr. 19, 2018) (“Freeze PN”).

accurately reflect existing C-Band operations in order to “inform the Commission’s pending inquiry addressing new opportunities for use of [the C-Band.]”⁸ The Bureau should process and grant the Mod Application pursuant to the limited exception because, although the Mod Application specifies new receive-only antennas, the proposed changes are necessary for ABC to maintain the existing C-Band downlink capability and operation upon which it has relied for the past thirty years.

As explained above, ABC has used the C-Band Station at its current location since the mid-1980’s to enable WABC to receive ABC Network programming. Due to circumstances beyond ABC’s control, namely, new construction in Manhattan, the C-Band Station no longer can be reliably used for this purpose. Thus, in order to continue to receive ABC Network programming in the same manner as it did on April 19, 2018, ABC is installing two receive-only antennas at 66th Street, a location that is directly across the street and within the line of site of the presently licensed site location. Even though the 66th Street antennas were not constructed and operational as of April 19, the predecessor antennas at 66th Street being replaced by the antennas at 67th Street have been constructed, operational, and licensed since 1986, well before the April 19 cut-off date. Indeed, ABC is not seeking to register its use of any additional C-Band spectrum by the instant Mod Application, but rather is seeking to replace the presently authorized C-Band downlink with virtually identical receive-only antennas at a site located only 1 second latitude from the current site location.⁹ The changes proposed in the Mod Application simply preserve the status quo of ABC’s April 19, 2018 C-Band downlink operation. Accordingly, because the 66th Street C-Band receive-only antennas will replace the receive-only antennas that have been authorized by the C-Band Station license since 1986, the Bureau should treat the 66th Street C-Band receive-only antennas as if they were constructed and operational as of April 19. Indeed, it is only as the result of the nearby construction project – over which ABC has no control – that ABC is relocating its C-Band capabilities which have been authorized for over thirty years. Accordingly, the Bureau should process the Mod Application in accordance with the Special Filing Window.

Processing the Mod Application pursuant to the Special Filing Window is in the public interest because to do so will preserve the status quo of ABC’s pre-April 19 receive-only operations and thus will afford “incumbent” status to ABC for purposes of future protection from new terrestrial services in the C-Band.¹⁰ As a result, WABC-TV can continue to receive ABC Network programming on an interference-free basis for broadcast to its viewers. By contrast, if the Bureau does not deem the Mod Application to be eligible for processing during the Special Filing Window (and does not grant a waiver of the filing freeze), WABC-TV’s ability to receive an interference-free satellite feed of ABC Network programming would be compromised. For example, WABC-TV relies on its C-Band downlink capabilities to receive programming such as ABC NEWS, ESPN Sports on ABC, and other ABC Network-produced or syndicated program

⁸ *Id.* At 1.

⁹ *See* Statement of William J. Getz at 2-3. From a technical perspective, the only change between the presently authorized C-Band receive-only antennas and the receive-only antennas proposed in the Mod Application is minor (i.e., a 0.1 degree change in the azimuth limits and a slight change in antenna elevation angle limits (0.2 degrees toward the satellite arc’s western limit). *Id.*

¹⁰ The FCC has proposed to provide incumbent earth stations with terrestrial interference protection. *See supra* at n. 1.

material for broadcast to over 7 million television households in the nation's top television market. Grant of the Mod Application pursuant to the Special Filing Window furthers the public interest by ensuring that WABC-TV can broadcast the ABC Network programming it receives via satellite on an uninterrupted basis, thereby safeguarding viewers' ongoing access to ABC news, weather, sports, and other high-quality programming.

III. Alternatively, the Bureau Should Process and Grant the Mod Application Pursuant to a Waiver of the Filing Freeze in Order to Ensure that WABC-TV Can Continue to Receive Satellite Programming as It Has for Several Decades

In the event the Bureau determines that the Mod Application does not qualify for the Special Filing Window, ABC respectfully requests that the Mod Application be processed pursuant to a waiver of the temporary filing freeze, and that the Bureau afford incumbent status to the receive-only facilities specified therein. In the public notice announcing the filing freeze, the FCC expressly states that "requests for waiver of this freeze" will be considered "on a case-by-case basis and upon a demonstration that waiver will serve the public interest and not undermine the objectives of the freeze."¹¹ Grant of the requested waiver will not undermine the purpose of the freeze because the proposed modification simply enables ABC to maintain the status quo of its pre-April 19 receive-only C-Band operations.

The purpose of the temporary freeze on the filing of C-Band license and registration applications is to "preserve the current landscape of authorized operations in the 3.7-4.2 GHz band pending Commission action as part of its ongoing inquiry into the possibility of permitting mobile broadband use and more intensive fixed use of the band."¹² As demonstrated above, in this case, grant of the Mod Application will not result in any change to the current landscape of authorized C-Band operations because ABC has been using the same C-Band spectrum, at a nearly identical location, for over three decades. The Mod Application is necessary only because the downlink capabilities of the C-Band Station no longer will be reliable after construction of a new building at 50 West 66th Street in New York City adjacent to the current C-Band Station location is complete.

As explained above, ABC is not seeking to register any additional C-Band spectrum, nor is it proposing significant changes in the technical parameters of its presently authorized C-Band downlink.¹³ Rather, ABC is seeking to update the C-Band Station authorization to reflect virtually identical receive-only antennas that will replace its long-authorized downlink capabilities. Moreover, because the Mod Application specifies receive-only operations only, the change will have no impact on the existing operating environment for C-Band spectrum.¹⁴ In short, the Mod Application seeks to preserve the status quo and, thus, will not change the current landscape of authorized C-Band operations from that that existed as of April 19, 2018, the date

¹¹ See Freeze PN at 3.

¹² *Id.* at 1.

¹³ See *supra* at n. 9 and accompanying text.

¹⁴ See Statement of William J. Getz at 3.

on which the freeze took effect. Accordingly, grant of the Mod Application will not undermine the objectives of the freeze and thus should be processed.¹⁵

Additionally, grant of the Mod Application, and affording the receive-only facilities specified therein incumbent status, is in the public interest because, as explained above, such action would enable WABC-TV to continue to receive a reliable satellite feed of ABC Network programming free from terrestrial interference in the same manner as it has done since the mid-1980s. Should the Bureau determine that ABC's Mod Application does not qualify for waiver of the freeze or otherwise determine that ABC's long-standing receive-only operations in New York City should not be afforded incumbent status, ABC may no longer have a reliable and efficient means of receiving ABC Network programming for broadcast to its viewers, a result that clearly is not in the public interest.

¹⁵ To the extent necessary, ABC also requests a waiver of Section 25.131(d) of the FCC's rules to enable the Mod Application to be processed without the submission of a frequency coordination report. The purpose of the coordination requirement, namely "to establish interference levels between earth stations and future fixed microwave links", will not be undermined by granting the requested waiver because the Mod Application is being filed during the Special Filing Window, such that "there will be no additional fixed links in the band that could increase the interference received by authorized earth stations" in the C-Band. Moreover, and importantly, as explained above, the Mod Application specifies only receive-only antennas such that grant of the requested change will have no adverse technical effect on the radiofrequency environment.