



# PUBLIC NOTICE

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## 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

#### *Freeze and Filing Window in Furtherance of the Commission's Pending Inquiry in GN Docket Nos. 17-183, 18-122*

By this Public Notice, the International, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus (Bureaus) announce a temporary freeze effective on April 19, 2018, on the filing of new or modification applications for fixed-satellite service (FSS) earth station licenses,<sup>1</sup> receive-only earth station registrations,<sup>2</sup> and fixed microwave licenses<sup>3</sup> in the 3.7-4.2 GHz frequency band. The purpose of this freeze 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.<sup>4</sup>

As a limited exception to the freeze, the International Bureau concurrently opens a 90-day window during which entities that own or operate existing FSS earth stations in the 3.7-4.2 GHz band may file an application to register or license the earth station if it is currently not registered or licensed, or may file an application to modify a current registration or license, in the International Bureau Filing System (IBFS). This 90-day window will also provide the Commission and commenters with more

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<sup>1</sup> 47 CFR § 25.115(a), (b), (c)(2).

<sup>2</sup> 47 CFR § 25.115(b).

<sup>3</sup> 47 CFR Part 101, subparts H and I.

<sup>4</sup> *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Inquiry, 32 FCC Rcd 6373 (2017) (*NOI*). We note that as part of the MOBILE NOW Act Congress has required the Commission to assess the feasibility of Federal and non-Federal sharing the 3.7-4.2 GHz band and submit a report to the Secretary of Commerce and to Congress within 18 months. See Consolidated Appropriations Act, 2018, P.L. 115-141, which includes the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM'S) Act. Title VI of the RAY BAUM'S Act enacted provisions from the Senate-approved MOBILE NOW Act, which directly addresses the 3 GHz band and multiple other spectrum related policies. See MOBILE NOW Act, Sec. 603 (Identifying 255 Megahertz), Sec. 605 (3 Gigahertz Spectrum).

accurate information about existing earth stations, which will inform the Commission's pending inquiry addressing new opportunities for use of this band.<sup>5</sup>

## **Background**

On August 3, 2017, the Commission released a Notice of Inquiry titled *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz (NOI)*.<sup>6</sup> In that NOI, the Commission sought detailed comment on frequency bands that had garnered interest to potentially support increased flexible broadband uses, including the 3.7-4.2 GHz band.<sup>7</sup> The Commission stated that “with this Notice of Inquiry, we hope to obtain relevant data and information . . . so that we can make more informed and specific proposals in any future proceedings.”<sup>8</sup> While recognizing the existing FSS (space-to-Earth) and Fixed Service (FS) uses of the 3.7-4.2 GHz band, the Commission sought comment on the potential for more intensive use of that band for wireless broadband, including asking how current service rules governing geostationary satellite orbit FSS and FS could be modified to promote flexible use, stimulate investment, and encourage more intensive deployment.<sup>9</sup>

In response to the *NOI*, the Commission received comments from a variety of stakeholders, many of which addressed whether the Commission's information about current operations in the band is complete and up to date.<sup>10</sup> Some commenters stressed the importance of identifying existing unregistered earth stations before the Commission makes any substantial changes to the operations permitted in the band,<sup>11</sup> while other commenters contend that there may be earth stations in the database that are no longer in operation.<sup>12</sup>

## **Filing Freeze in 3.7-4.2 GHz Band**

To preserve the current landscape of authorized operations in the 3.7-4.2 GHz band pending the Commission's consideration of the issues raised in response to the *NOI*, the Bureaus announce a temporary freeze, effective as of April 19, 2018, on the filing of new or modification applications for earth station licenses, receive-only earth station registrations, and fixed microwave licenses in the 3.7-4.2 GHz band, except as otherwise noted herein. The decision to impose this freeze is procedural in nature, and therefore the freeze is exempt from the notice and comment and effective date requirements of the

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<sup>5</sup> The 90-day window is inapplicable to fixed microwave because license applications were mandatory for these operations prior to the freeze.

<sup>6</sup> *NOI*, *supra* note 4. The Commission noted that this inquiry could also help it address international activities and statutory obligations in collaboration with the State Department, NTIA, and other federal agencies. *See id.*, 32 FCC Rcd at 6374-75, para. 4.

<sup>7</sup> *NOI*, 32 FCC Rcd at 6374, 6378, paras. 2, 12.

<sup>8</sup> *NOI*, 32 FCC Rcd at 6376, para. 7.

<sup>9</sup> *See NOI*, 32 FCC Rcd at 6379-6381, paras. 16-23.

<sup>10</sup> *See, e.g.*, CCA Reply Comments at 7; Google Comments at 5; NCTA Reply Comments at 12; SIA Reply Comments at 14-16; Verizon Reply Comments at 5.

<sup>11</sup> *See, e.g.*, NAB Comments at 3-4; SES Reply Comments at 24; SIA Reply Comments at 22-24; American Cable Association Comments at 3.

<sup>12</sup> *See, e.g.*, AT&T Comments at 9-10; CCA Reply Comments at 7; Google Comments at 5; BAC Comments at 8-9, DSA Comments at 8. Registrants are required to notify the Commission when a receive-only earth station is no longer operational or when it has not been used to provide any service during any 6-month period. 47 CFR § 25.131(i).

Administrative Procedure Act.<sup>13</sup> Moreover, we find that there is good cause for not delaying the effect of the freeze, except as noted below, as such a delay would be impractical, unnecessary, and contrary to the public interest because it would undermine the purposes of the freeze.<sup>14</sup> The Bureaus find that the freeze will help preserve the options available to the Commission for consideration of additional uses of the band while limiting the potential for speculative applications that might be filed in anticipation of potential future actions by the Commission.

*Earth stations.* During the freeze the International Bureau will dismiss applications, or those portions of applications, received for new earth station licenses, new receive-only earth station registrations, and modifications to earth stations currently authorized to operate in the 3.7-4.2 GHz band. EXCEPTIONS: The freeze does not extend to applications for renewal or cancellation of current earth station authorizations,<sup>15</sup> or modifications to correct location or other data required in the earth station file.<sup>16</sup> As discussed below, the freeze is delayed for 90 days for certain earth station applications.

*Fixed Microwave.* During the freeze, the Wireless Telecommunications and Public Safety and Homeland Security Bureaus will dismiss applications received for new or major modifications to fixed microwave stations to operate in the 3.7-4.2 GHz band. EXCEPTIONS: The freeze does not extend to applications for renewal, cancellation, minor modifications, or data corrections.<sup>17</sup>

The appropriate Bureau will consider requests for waiver of this freeze 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.

### **90-day Application Filing Window for Existing FSS Earth Stations**

In view of the current record developed in response to the *NOI*, and in the interest of equity for incumbent earth station operators, the International Bureau announces a 90-day window for filing applications to license or register existing earth stations in the 3.7-4.2 GHz frequency band as a limited exception to the implementation of this freeze. For purposes of this Notice, existing earth stations are those that have been constructed and are operational as of April 19, 2018. The filing window will close on July 18, 2018. This filing window provides a limited opportunity to operators with constructed and operational, but currently unregistered or unlicensed, earth stations to file applications to be licensed or registered for interference protection, subject to the outcome of the Commission's ongoing inquiry and any subsequent proceeding(s).<sup>18</sup>

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<sup>13</sup> See 5 U.S.C. § 553(b)(A) and (d); see also *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673, 680-82 (D.C. Cir. 1963).

<sup>14</sup> See 5 U.S.C. § 553(b)(B), (d)(3).

<sup>15</sup> 47 CFR § 25.121(e).

<sup>16</sup> See *International Bureau Addresses Accuracy of Earth Station Location Information in IBFS*, Public Notice, DA 17-1127 (IB rel. Nov. 21, 2017); 47 CFR § 25.117.

<sup>17</sup> See generally 47 CFR § 101.81(d) (microwave incumbents in 1.9 GHz and 2.1 GHz bands allocated for emerging technologies permitted to retain primary status when making data corrections that do not involve a change in the location of an existing facility).

<sup>18</sup> See 47 CFR §§ 25.131(d) & (f); 25.251.

Under Commission rules, applications for earth station licenses or registrations in the 3.7-4.2 GHz band must be accompanied by an exhibit demonstrating coordination with terrestrial stations.<sup>19</sup> The purpose of this coordination requirement is to establish the baseline level of interference that an earth station must accept in frequency bands shared by the FS and FSS on a co-primary basis. The coordination results entitle the FSS earth station to the interference protection levels agreed to during coordination, including against subsequent FS licensees.<sup>20</sup> However, according to the Satellite Industry Association, many receive-only earth station operators are deterred from voluntarily registering their antennas for interference protection due to the costs of completing the registration process, including the need for a coordination report.<sup>21</sup> The Commission also uses information collected in applications for earth station licenses and registrations to assist it in considering whether its rules require modification to accommodate changing market and technological conditions, and to facilitate the Commission's efforts to use spectrum more efficiently.<sup>22</sup>

We observe that the coordination requirement may impose an unnecessary burden on applicants considering whether to file during the 90-day window, as the freeze on the filing of applications for new or modified fixed microwave licenses will maintain the current interference environment for existing earth stations, as there will be no additional fixed links in the band that could increase the interference received by authorized earth stations in the 3.7-4.2 GHz band. Thus, to obtain the best information possible on existing earth stations in this band in furtherance of the Commission's ongoing inquiry without imposing a potentially unnecessary economic burden on eligible FSS earth station applicants in the 3.7-4.2 GHz band filing within the 90-day window, the International Bureau hereby grants a temporary waiver of the frequency coordination requirement.<sup>23</sup> Applicants who file within the 90-day window will otherwise be processed normally. Registrations or licenses granted for applications filed without the coordination report will include a condition noting that the license or registration does not afford interference protection from FS transmissions. Upon announcing the termination of the freeze, the International Bureau may modify or terminate the waiver by requiring or permitting registrants or licensees who filed applications within the 90-day window without a coordination report to file such a report as required by the Commission's rules, and to take any appropriate action in light of such filing.

Waiver of the Commission's rules is appropriate where particular facts make strict compliance with a rule inconsistent with the public interest, special circumstances warrant a deviation from the general rule, and the waiver does not undermine the validity of the general rule.<sup>24</sup> In the present case we find that the Commission's pending inquiry into operations in the 3.7-4.2 GHz band and the interests of equity warrant providing earth station operators with a chance to file applications despite the freeze. We

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<sup>19</sup> 47 CFR §§ 25.115(c)(2)(ii); 25.130(b)(1); 25.131(d); 25.203(c). The coordination procedures specified in 47 CFR §101.103 and § 25.251 shall be applicable except that the information to be provided shall be that set forth in 47 CFR § 25.203(c)(2).

<sup>20</sup> See 47 CFR §§ 25.131(d) & (f); 25.251.

<sup>21</sup> See SIA Comments at 23. See also Letter from Georgios Leris, Counsel for ACA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-183 (filed Jan. 12, 2018).

<sup>22</sup> See, e.g., OMB Control No. 3060-0678, Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations, Supporting Statement for Revision of a currently approved collection at 2 (filed with OMB on Sept. 7, 2017, Approved without change on Oct. 14, 2017 (ICR Ref. No. 201709-3060-005)).

<sup>23</sup> The International Bureau has delegated authority to act upon earth station applications filed pursuant to Part 25 rules. See 47 CFR § 0.261.

<sup>24</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular Tel Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

note the limited nature of this exception to the freeze, given the short window in which applications can be filed and the requirement that earth stations must be operational as of the release date of this Notice. We also find that the purpose of the coordination requirement—to establish interference levels between earth stations and future fixed microwave links—will not be undermined because we are placing a concurrent freeze on the filing of new or modified fixed microwave links.

All potential applicants are advised that the Commission may, for purposes of further action following the *NOI*, choose to take into consideration only those earth stations that are licensed, registered, or have pending applications for license or registration on file in IBFS as of July 18, 2018. All earth stations, regardless of whether or not they are authorized by the Commission, may be subject to any rule changes that the Commission may adopt in the future, in the light of information in the record about the nature and extent of existing uses of the band.

Under Part 25 of the Commission's rules, applicants for earth station licenses and registrations must file on FCC Form 312 Main Form,<sup>25</sup> complete Form 312 Schedule B, remit the statutory application-filing fee,<sup>26</sup> and provide any additional information required by applicable rules.<sup>27</sup> We emphasize that the limited window we open here is only available for earth stations constructed and operational prior to April 19, 2018. Applications must be filed electronically through IBFS at <http://licensing.fcc.gov/myibfs>.

We also invite operators of existing registered or licensed FSS earth stations to update records in IBFS within this 90-day period, where an earth station no longer exists or is no longer in use.

We note that after the 90-day window closes, the Commission may determine to require all licensees, registrants, and operators with pending applications for license or registration of FSS earth stations in the 3.7-4.2 GHz band to file a certification that the earth station was operational as of the start of the freeze and remains operational at the time of the certification along with additional technical details regarding their operations to inform the Commission's resolution of issues raised in the inquiry.

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<sup>25</sup> We note that for the purposes of this PN the International Bureau will not accept for filing any earth station application filed on Form 312 EZ.

<sup>26</sup> See 47 U.S.C. § 158. See also International and Satellite Services Fee Filing Guide (Aug. 30, 2016), <https://www.fcc.gov/document/international-bureau-application-fee-filing-guide>.

<sup>27</sup> 47 CFR §§ 25.115, 25.131, 25.203.