

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

In the Matter of	)	
	)	
Incumbent Earth Stations	)	IB Docket No. 20-205
in the 3.7-4.2 GHz Band	)	
in the Contiguous United States	)	GN Docket No. 20-305

**ORDER**

**Adopted: October 23, 2020**

**Released: October 23, 2020**

By the Chief, International Bureau:

**I. INTRODUCTION**

1. On August 3, 2020, the International Bureau (Bureau) released a list of those FSS earth stations in the 3.7-4.2 GHz band in the contiguous United States (*August 3 Incumbent Earth Station PN*) that the Bureau found satisfy the criteria to be classified as incumbent earth stations for purposes of the C-band transition.<sup>1</sup> With this Order, the Bureau addresses waivers filed to permit incumbent earth station operators to add existing co-located antennas solely for purposes of interference protection in the 4.0-4.2 GHz portion of the band.<sup>2</sup> The Bureau also resolves pending petitions for reconsideration and waiver requests filed in response to the *August 3 Incumbent Earth Station PN*.

**II. BACKGROUND**

2. In the *3.7 GHz Band Report and Order* the Commission defined the criteria that earth stations must satisfy to be eligible as incumbent earth stations to receive reimbursement for their reasonable relocation costs.<sup>3</sup> Specifically, incumbent earth stations are those FSS earth stations that have demonstrated that they meet the following requirements:

- (1) The FSS earth station must have been operational as of the April 19, 2018 filing freeze and remain operational; and must have been registered (receive-only) or licensed (transmit/receive) in the 3700-4200 MHz band.
- (2) If the FSS earth station was unregistered or unlicensed before April 19, 2018, its registration or license applications must have been filed by November 7, 2018.<sup>4</sup>

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<sup>1</sup> See *International Bureau Releases List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 20-823 (Aug. 3, 2020) (*August 3 Incumbent Earth Station PN*); 47 CFR § 27.1411(b)(3). The C-Band transition is not occurring outside the contiguous United States, but U.S. licensed or registered earth stations in those locations may seek reimbursement of costs directly related to the transition if they satisfy the criteria for incumbent earth station status. Those earth stations, however, are not eligible to elect lump sum payments.

<sup>2</sup> See *Wireless Telecommunications Bureau and International Bureau Announce Guidance for Potential Waiver Requests to Permit Incumbent Earth Station Operators to Amend Registrations for Adding Existing Co-Located Antennas for Interference Purposes*, DA 20-1094 (Sept. 16, 2020) (*September 16 Waiver Guidance PN*).

<sup>3</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2391, paras. 116-23 (2020) (*3.7 GHz Band Report and Order*). The *3.7 GHz Band Report and Order* specifically rejected a request to open an additional earth station filing window. *Id.* at 2391, paras. 120-21.

<sup>4</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2391, para. 116.

- (3) If the FSS earth station was registered or licensed before April 19, 2018, the registrant or licensee must have:
- Certified the accuracy of the registration/license information in IBFS by May 28, 2019; or
  - Filed a modification/update to the registration or license in IBFS during the April 19, 2018 to November 7, 2018 filing window; or
  - Filed a timely renewal application for the existing registration or license by May 28, 2019.<sup>5</sup>

3. In response to the *August 3 Incumbent Earth Station PN*, the Bureau received a number of petitions for waivers and reconsideration. In addition, on September 16, 2020, the Wireless Telecommunications Bureau and the International Bureau issued the *September 16 Waiver Guidance PN* announcing guidance for potential waiver requests to permit incumbent earth station operators to amend certain existing registrations to add existing co-located antennas solely for purposes of interference protection in the 4.0-4.2 GHz portion of the band.<sup>6</sup>

### III. DISCUSSION

4. Waiver is appropriate where good cause has been demonstrated and the particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup> Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest, and the waiver does not undermine the validity purpose of the general rule.<sup>9</sup> Petitions for reconsideration are considered under section 1.106 of the Commission's rules.<sup>10</sup>

5. We summarize the requests for waiver and petitions for reconsideration by category, and include our decisions at the end of each category.

#### A. Interference Protection for Collocated Antennas

6. The *September 16 Waiver Guidance PN* set forth certain factors for potential waiver requests that may well justify the extraordinary relief required for grant of a waiver to permit incumbent earth stations operators to amend registrations for additional existing co-located antenna for interference protection purposes only.<sup>11</sup> Specifically it said we would expect to take into account the following considerations, among others, when reviewing waiver petitions to add additional antennas for interference protection only. The factors include:

- Whether the antenna would have been eligible for incumbent protection when the filing window closed on November 7, 2018;

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<sup>5</sup> *Id.* at 2391, para. 117; 47 CFR § 27.1411(b)(3) (defining incumbent earth stations); 47 CFR § 25.121 (describing earth station renewal requirements). *See also August 3 Incumbent Earth Station PN* at 2.

<sup>6</sup> *See September 16 Waiver Guidance PN*.

<sup>7</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also* 47 CFR § 1.3.

<sup>8</sup> *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.

<sup>9</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1158.

<sup>10</sup> 47 CFR § 1.106(j) (The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken.).

<sup>11</sup> *September 16 Waiver Guidance PN* at 2-3.

- Whether the request involves a site or facility with one or more incumbent earth stations in the 3.7-4.2 GHz band (providing the specific Callsign, SiteID, and AntID of the incumbent earth station(s));
- How far away the additional antennas are from an incumbent earth station (providing the specific Callsign, SiteID, AntID, and GPS coordinates of each antenna);
- How many additional antennas per registrant at any given site; and
- Whether grant of the waiver would require reimbursement of additional relocation expenses to the applicant.<sup>12</sup>

7. Nearly 70 requests for relief were submitted in response to the *September 16 Waiver Guidance PN*. We grant the waivers requests of Ace Telephone Association, AMC Networks Broadcasting & Technology, Blooming Prairie Farm Radio, Inc., Blue Ridge Cable Technologies, BTC Multimedia, LLC, Capitol Broadcasting Company, Inc. - Auburn site, Capitol Broadcasting Company, Inc. - Western Blvd. site, City of Lakes Media Inc, Clarity Telecom, LLC dba Vast Broadband, Communication Construction Services, Inc., Community Telecom Services, Connecticut Public Broadcasting Inc., DCI II, Inc., Evening Telegram Company dba Morgan Murphy Media, GlobeCast Americas, Incorporated, Graham Media Group, Inc., Gray Television, LLC,<sup>13</sup> Gridley Cable, Inc.,<sup>14</sup> Griffin Licensing, L.L.C., Hargray CATV Co., Inc., HTC Communications Co., Iowa State University of Science and Technology, KMHL Broadcasting Company, Lafayette City Parish Consolidated Government, Lakeland Broadcasting Company, Madison County Cable Inc., Midwest Communications Inc., Minnesota Valley Broadcasting Company, Montclair Communications, Inc., Mountain Broadcasting Corporation, MTCO Communications Inc., NBC Telemundo License LLC, Newcom International, Inc., Nexstar Broadcasting, Inc., Northeast Oklahoma Broadcast Network and Caleb Corporation, Northland Cable Properties, Inc., Vyve Broadband A, LLC and Vyve Broadband J, LLC, Pathway Com-Tel, Inc., PSSI Global Services LLC, RCN Companies<sup>15</sup> Service Electric Cablevision, Inc., South Carolina Educational Television Commission (SCETV), Sparta-Tomah Broadcasting Company, Sunbeam Television Corporation, The Board of Trustees of the University of Illinois (WILL), The Walt Disney Company, Univision Communications, Inc., Urban One, Inc., Verizon, WCMC-FM, LLC, Weigel Broadcasting Co., WHDH-TV, Wire Tele-View Corporation, Woods Communications Corporation, WPSD-TV, LLC, WPXI-TV, LLC, WRIG, Inc., and WTVQ-DT, LLC to allow the registration of additional antennas for interference protection only, and not for reimbursement of relocation expenses, to the extent the antennas at issue meet the following criteria:

- The antenna was operational on April 19, 2018, and would have been eligible for incumbent protection when the filing window closed on November 7, 2018;
- The request involves a site or facility with one or more incumbent earth stations in the 3.7-4.2 GHz band and is within 150 meters of an already-registered antenna; and
- The request does not seek to add more than 25 antennas at a given site.

8. We conclude that these criteria minimize disruption to the overall interference environment while allowing a reasonable additional number of antennas in light of the previous perceived

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<sup>12</sup> *Id.* at 2.

<sup>13</sup> This relief is granted for one additional antenna co-located with an incumbent earth station. The remainder of Gray Television's request is addressed later in this Order.

<sup>14</sup> This relief is granted for five additional antenna co-located with an incumbent earth station. The remainder of Gridley Cable, Inc.'s request is addressed later in this Order.

<sup>15</sup> As set out in its waiver request, the RCN Companies consist of the RCN Telecom Services operating companies, Grande Communications Networks, LLC, and the WaveDivision operating companies.

uncertainty about the need to register each antenna in the registration process. In addition, the Bureau is still evaluating the waiver requests of Comcast Corporation and TEGNA, Inc., and we expect to issue a decision on those filings before the end of the month. At a later date, the International Bureau will provide directions to operators on how to make submissions in IBFS to formalize those approvals.

9. A number of waiver requests seek relief beyond these parameters. HC2 Station Group seeks to register an unregistered earth station in Santa Maria, California that it acquired as part of the acquisition of the television station assets after the November 7, 2018 filing deadline.<sup>16</sup> Vermont Broadcast Association seeks a waiver to reinstate three registration applications that were previously dismissed for fee non-payment, and therefore is not seeking to register antennas at a site or facility with one or more incumbent earth stations.<sup>17</sup> Gray seeks a waiver to add antennas that were not operational on April 18, 2018 and to register an otherwise unregistered earth station.<sup>18</sup> Arizona Western seeks to reinstate an earth station registration that, due to its own staff error, expired on April 12, 2019.<sup>19</sup> GlobeCast seeks to add two antennas under the expired earth station registrations.<sup>20</sup> Maine Public Broadcasting Corporation (Maine PBC) seeks a waiver for registration for unregistered antennas at one location 107 miles away from the location of an incumbent earth station.<sup>21</sup>

10. We deny these waiver requests. In each case, simple negligence on the part of the earth station owner during the relevant time period accounts for the failure to register or certify the station—and none of these requests is confined to the narrow opening for interference-only protection contemplated in the *September 16 Waiver Guidance PN*. There, the Bureau sought to identify criteria that would afford interference protection for additional antennas while minimizing disruption to the interference environment. Allowing these additional antennas requested in the waivers to claim interference protection on account of simple negligence would be too disruptive to the overall interference environment, reduce the utility of licenses to be issued in the 3.7-3.98 GHz band, and defeat the purpose of the Commission’s decision to establish criteria in the *3.7 GHz Band Report and Order*.<sup>22</sup> We therefore decline to grant waiver relief to these requests to add antennas to unregistered earth stations.

11. We also decline Maine PBC’s request to extend the interference protection zone across the state, well beyond the 150 meters from an incumbent earth station that we now find to be reasonable.<sup>23</sup> There is a strong public interest benefit in restricting the registration of additional antennas—even if for interference protection only—to only those antennas that are in the close vicinity of a registered earth station.

12. The Bureau has previously noted that the Commission’s Part 25 rules, consistent with the definition of “station” in the Communications Act, define earth stations as “stations...intended for

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<sup>16</sup> Waiver Request of HC2 Station Group Inc., GN Docket No. 20-305, IB Docket No. 20-205, GN Docket No. 18-122, at 1 (filed Sept. 24, 2020).

<sup>17</sup> Letter from Timothy Cooney, Counsel for Vermont Broadcast Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2. GN Docket No. 20-305 (filed Sept. 24, 2020).

<sup>18</sup> Letter from Henry Gola, Counsel for Gray Television Licensee LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 20-305, 2-3 (filed Sept. 25, 2020).

<sup>19</sup> Comments of Arizona Western, GN Docket No. 20-305, at 1 (filed Oct. 1, 2020).

<sup>20</sup> GlobeCast Waiver Request at 1-2.

<sup>21</sup> Waiver Request of Maine Public Broadcast Corporation, GN Docket No. 20-305, at 2-3 (filed Sept. 25, 2020) (Maine PBC Waiver Request).

<sup>22</sup> *NetworkIP, LLC v. FCC*, 548 F.3d at 127-28;

<sup>23</sup> See Maine PBC Waiver Request at 1.

communication.”<sup>24</sup> The Bureau also noted that parties were free to add existing antennas to registrations during the 2018 filing window, and many did exactly that.<sup>25</sup> Nothing in the Commission’s rules regarding earth station registration in this band suggests that an entity could rely on the registration of a single antenna at an earth station site to provide enforceable interference protection for other antennas at that site.<sup>26</sup> In other words, for incumbent earth stations, the earth station registration applies to the earth stations that are *registered*, that is, the individual antennas set out in the registration.

13. Similarly, a number of operators filed petitions seeking to add antennas to existing incumbent earth station registrations to be able to be compensated for repacking these antennas to the upper 200 megahertz of the C-band.<sup>27</sup> Press Communications, LLC (Press) and Woods TV filed requests for waiver.<sup>28</sup> NAB/NCTA, Massillon, KDNL, WSYX, KMPH, and RCN filed petitions for reconsideration of *August 3 Incumbent Earth Station PN* to the extent the Bureau denied requests from several registrants that sought to add antennas to their incumbent registrations to make these antennas eligible for cost reimbursement.<sup>29</sup>

14. Press seeks to add two antennas to an existing earth station registration and argues that over the course of the proceeding the Commission switched its focus from the physics of radio waves to registration paperwork.<sup>30</sup> Woods requests the addition of antennas to its incumbent registrations without a showing of good cause.<sup>31</sup> NAB/NCTA urge the Commission to allow earth station operators to register additional antennas collocated at the same site where one antenna is registered and was included in Bureau’s final list of incumbent earth stations, arguing that many operators were unaware of the

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<sup>24</sup> See *August 3 Incumbent Earth Station List Public Notice* at 3 (citing 47 U.S.C. § 153(42); 47 CFR § 25.103 (defining earth station)).

<sup>25</sup> See *August 3 Incumbent Earth Station List Public Notice* at 3.

<sup>26</sup> 47 CFR § 25.115(b); 25.203(b). To the contrary, the longstanding rules governing registration of receive-only earth stations in this band provide that such stations are to be protected against interference from terrestrial fixed wireless transmissions only pursuant to the filing of a coordination report, which requires applicants to submit “all relevant transmitting and/or receiving parameters of the proposed station.” In that context, it was not reasonable for a registrant to assume that the registration of a single antenna, either before the 2018 freeze or during the 2018 filing window, would provide enforceable interference protection rights for all other antennas at a site – including antennas with very different receiving parameters. The Bureau’s temporary waiver of the coordination report requirement for registration applications during the filing window did not change the basic construct that interference protection adhered to individual antennas. Rather, it just recognized that it made no sense to require coordination reports addressing potential interference from fixed wireless when the Commission was considering the potential reallocation of spectrum to terrestrial mobile wireless service. *Freeze Public Notice* at 4.

<sup>27</sup> Note that these requests are broader than the possible waiver petitions outlined in the *September 16 Waiver Guidance PN*; they seek incumbent status (and reimbursement for transition expenses) for additional antennas, not merely interference protection in the 4.0-4.2 GHz portion of the band.

<sup>28</sup> Request for Waiver of Press Communications, LLC, IB Docket No. 20-205 and GN Docket No. 18-122 (filed Sept. 14, 2020) (seeking a waiver to add second and third antennas to call sign E180460) (Press Waiver Petition); Petition for Waiver of Woods TV (filed Sept. 11, 2020) (requesting the addition of antennas to its incumbent registrations without a formal waiver showing).

<sup>29</sup> See *August 3 Incumbent Earth Station List Public Notice* at 3; see, e.g., Letter from Thomas Cohen, Counsel for RCN, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 20-205, at 1-2 (filed Sept. 2, 2020) (asking the Commission to reverse the Bureau’s decision in the *August 3 Incumbent Earth Station PN*) (RCN *Ex Parte* Letter).

<sup>30</sup> Press Waiver Petition at 5-7.

<sup>31</sup> Petition for Waiver of Woods TV at 1-2.

requirement to register all antennas.<sup>32</sup> Massillon, KMPH, and WSYX argue that the Commission never indicated that the number of antennas would be a limiting factor in seeking reimbursement.<sup>33</sup> KDNL argues that “all operational antennas should be provided full protection and reimbursement rights.”<sup>34</sup> Massillon asserts that denying reimbursement for the transition of these antennas would be an unconstitutional taking.<sup>35</sup> RCN argues that not ensuring that every incumbent earth station operator is made whole would undermine the objectives of this proceeding.<sup>36</sup>

15. We deny the petitions for waiver filed by Press and Woods TV; the petitioners have not shown good cause to waive the certification requirements of *July 2018 Order and NPRM*.<sup>37</sup> We also deny the petitions for reconsideration filed by NAB/NCTA, Massillon, KDNL, WSYX, KMPH, and RCN.<sup>38</sup> As we discussed in the *August 3 Incumbent Earth Station PN*, operators were responsible for registering each antenna during the filing window in order for those antennas to be considered part of an incumbent earth station registration. Parties were free to add existing antennas to registrations during the 2018 filing window, and many did so.<sup>39</sup> Moreover, the Commission’s rules regarding earth station registration in this band do not suggest that an entity can rely on the registration of a single antenna at an earth station site to provide enforceable interference protection for other antennas at that site.<sup>40</sup> An earth station registration applies to the earth stations that are *registered, i.e.*, the individual antennas set out in the registration.<sup>41</sup> Indeed, Schedule B to Form 312, which filers must use to register their earth stations, instructs the applicant to list *specific antennas*. Any other assumptions are erroneous. So it should not surprise anyone that the C-band Cost Catalog awards the majority of costs on a per-antenna basis, rather than an per-earth station site basis, and requires the calculation of such costs based on those antennas included in the list of

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<sup>32</sup> See NAB/NCTA August 12 *Ex Parte* Letter at 1-2. We note that NAB/NCTA subsequently submitted a narrower request for the Commission to permit additional antennas to be added to incumbent earth station sites *for interference protection only* (not to be considered incumbent). That request formed the basis for the *September 16 Waiver Guidance PN*.

<sup>33</sup> Petition for Reconsideration of WSYX, IB Docket No. 20-205, at 2 (filed Sept. 2, 2020); Petition for Reconsideration of KMPH, IB Docket No. 20-205, at 2 (filed Sept. 2, 2020).

<sup>34</sup> Petition for Reconsideration of KDNL, IB Docket No. 20-205, at 6 (filed Sept. 2, 2020).

<sup>35</sup> Petition for Reconsideration of Massillon Cable TV, Inc., IB Docket No. 20-205, at 11-12 (filed Sept. 2, 2020) (Massillon Petition).

<sup>36</sup> RCN *Ex Parte* Letter at 2.

<sup>37</sup> See 47 CFR § 1.3.

<sup>38</sup> See 47 CFR § 1.106.

<sup>39</sup> See *Bureaus Announce Freeze and Limited Filing Window in the 3.7-4.2 GHz Band*, Public Notice and Frequently Asked Questions, DA 18-398 (April 19, 2018) (*Freeze Public Notice*).

<sup>40</sup> 47 CFR 25.115(b); 25.203(b). As the Bureau has previously explained, the longstanding rules governing registration of receive-only earth stations in this band provide that such stations are to be protected against interference from terrestrial fixed wireless transmissions only pursuant to the filing of a coordination report, which requires applicants to submit “all relevant transmitting and/or receiving parameters of the proposed station.” In that context, it was not reasonable for a registrant to assume that the registration of a single antenna, either before the 2018 freeze or during the 2018 filing window, would provide enforceable interference protection rights for all other antennas at a site – including antennas with very different receiving parameters. The Bureau’s temporary waiver of the coordination report requirement for registration applications during the filing window did not change the basic construct that interference protection adhered to individual antennas. Rather, it just recognized that it made no sense to require coordination reports addressing potential interference from fixed wireless when the Commission was considering the potential reallocation of spectrum to terrestrial mobile wireless service. *August 3 Incumbent Earth Station PN* at 4, n.20 (citing *Freeze Public Notice* at 4).

<sup>41</sup> Indeed, Schedule B to Form 312, which filers are required to use to register their earth stations, instructs the applicant to list specific antennas.

incumbent earth stations.<sup>42</sup> Accordingly, we deny these petitions for reconsideration and waiver requests.

16. We are also not persuaded by Massillon's assertion that denying these additional unregistered antennas incumbent status would be an unconstitutional taking. As the Commission observed in the *3.7 GHz Band Report and Order*, the C-band transition is not a "taking" because the Commission's rules provide an opportunity for incumbents in the band to take actions that would ensure that they were not denied all economically beneficial or productive use of their property.<sup>43</sup> Massillon, and other similarly situated earth station operators, were provided an opportunity both to continue to operate their facilities, to provide the same services to customers after the transition, and to have the costs of the transition to the upper 200 megahertz paid for by incoming flexible use licensees. By never registering these antennas, despite having the opportunity to do so, Massillon forfeited its ability to continue to operate as an incumbent earth station in the band and thus incurred of its own volition any loss in the use of their earth stations.<sup>44</sup>

### **B. Interference Protection for Sites That Could Not Be Registered**

17. On May 1, 2020, Ziplly's parent company purchased three video properties in Washington, Oregon, Idaho, and Montana from Frontier Communications Corporation and Frontier Communications ILEC Holdings, LLC (Frontier) as part of a prepackaged agreement arising out of Frontier's bankruptcy.<sup>45</sup> These properties were served by a single Frontier earth station not included in the sale; Ziplly constructed its own earth station in Everett, Washington before the transaction closed, so as to provide uninterrupted service to customers.<sup>46</sup> Ziplly's construction of its own earth station was thus made necessary by the terms of the bankruptcy sale.<sup>47</sup> The Bureau's earth station freeze, which was promulgated not only before the sale but also before Ziplly and its Everett earth station existed, prevented Ziplly from registering the Everett earth station.<sup>48</sup> Ziplly requests the Bureau grant its waiver request and include its earth station on the list of incumbent earth stations because under the terms of the sale, it needed to build an earth station to accommodate all the signals currently being used in the C-band.

18. Fox Corporation (Fox) recently finalized a new operations center in Arizona, including a technical operations center in Tempe, Arizona, and a connected earth station in Gilbert, Arizona.<sup>49</sup> Fox originally intended this center to be a backup to its primary operations center in Los Angeles, but structural changes due to the spinoff of 21<sup>st</sup> Century Fox have resulted in Fox's plan to replace the Los Angeles center with the Arizona center as Fox's primary operations center.<sup>50</sup> Even before it becomes

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<sup>42</sup> See *August 3 Incumbent Earth Station PN* (citing *Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 4440, Attach. at 4 (April 27, 2020) (*C-band Cost Catalog*)).

<sup>43</sup> *3.7 GHz Band Report and Order* at para. 146.

<sup>44</sup> We also dismiss any requests for relief contained in the filings submitted in response to the *September 16 Waiver Guidance PN* by Nelson Cable Inc., Shepherd's Chapel, Tammy Lee, and Three Angels Broadcasting Network, Inc. We find that the request submitted by the Curators of the University of Missouri has been rendered moot by the Bureau's correction of a processing error within IBFS.

<sup>45</sup> See *Petition for Waiver of Frontier Communications, LLC., dba Ziplly Fiber*, IB Docket No. 20-205 and GN Docket No. 18-122, at 1-2 (filed Aug. 3, 2020).

<sup>46</sup> *Id.* at 2.

<sup>47</sup> *Id.* at 3-4.

<sup>48</sup> *Id.* at 2, 5.

<sup>49</sup> *Petition for Waiver of Fox Corporation*, IB Docket No. 20-205, at 1-2 (filed Sept. 4, 2020) (*Fox Waiver Petition*).

<sup>50</sup> *Id.* at 2.

Fox's primary center, the Arizona site is providing critical backup operations for the Fox network.<sup>51</sup> Fox applied for a license to transmit from the Arizona earth station in the uplink portion of the C-band in September 2019, but Fox states it will also require the ability to conduct downlink operations to the Arizona site. Because the site for the earth station was not finalized until April 2019, Fox was unable to file to register the earth station because of the Bureau's earth station freeze.<sup>52</sup> Fox requests a limited waiver of the earth station freeze to allow it to register its Gilbert, Arizona earth station to operate in the 4.0-4.2 GHz band.<sup>53</sup> Fox reiterates that it was impossible for it to register its earth station during the filing window before the freeze, because it could not choose a site until 2019, and these are exactly the sort of special circumstances the Commission contemplates in its waiver rules.<sup>54</sup>

19. We find Ziplly's and Fox's unique circumstances justify a waiver so as to allow each to receive interference protection in the 4.0-4.2 GHz band. Because of the structural changes at each company (resulting from a bankruptcy and a spinoff), neither Ziplly nor Fox could have planned for or registered the new earth station prior to the Bureau's deadline. Nevertheless, the new facilities are necessary to provide critical services that were once provided by old operations centers before the transactions. In Ziplly's case, purchase of the video properties helped to preserve service to customers in rural areas but made necessary Ziplly's construction of an earth station to receive the necessary video signals and provide continued service to customers relying on these sites. These events occurred after the freeze filing window closed, so Ziplly could not have registered the earth station during the window. In Fox's case, we find the timing of the transaction and the necessity of the new earth station's operations rise to the level of special circumstances for which the Bureau can grant a waiver, especially given that it would ensure continued service to millions of viewers nationwide due to the function of this earth station as a major hub for nationwide distribution of content. Finally, we find that granting these waivers before the auction is in the public interest because it will allow bidders to factor the need to protect these new sites into their bidding strategies and network construction plans.

20. In contrast, we deny Ziplly's request add its earth station to the list of incumbent earth stations (and thus receive potential reimbursement for the transition to 4.0-4.2 GHz) given that Ziplly knew the risk that it was assuming when it acquired the assets and decided to construct the site.

### C. Technical Errors

21. Gridley Cable and South Dakota Networks/DHE LLC each had one earth station that was registered before the 2018 filing window. Both operators submitted modification applications within the filing window, and therefore their earth stations should qualify as incumbent. In its modification, Gridley sought to add five antennas to its registration.<sup>55</sup> DHE's modification included minor updates to its registration.<sup>56</sup> Both operators successfully and timely paid the fees for their respective modification applications.

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 1, 2, 3.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> Fox Waiver Petition at 4-5.

<sup>55</sup> Waiver Request of Gridley Cable, Inc., GN Docket No. 20-305, at 1 (filed Sept. 25, 2020) (summarizing earlier correspondence with Bureau staff).

<sup>56</sup> Petition for Waiver of South Dakota Networks/DHE LLC (DHE), GN Docket No. 20-305, at 5-6 (filed Oct. 16, 2020 (also summarizing earlier email inquiries to Bureau staff). DHE requests a waiver to the extent necessary to accept its "Form 312 Recertification," which the Bureau interprets to mean acceptance of DHE's 2018 modification application (submitted via Form 312). Acceptance of the modification application would qualify DHE for incumbent status. There is no Form 312 Recertification in IBFS; as a result, earth station certifications were to be submitted by letter (not Form 312) in IBFS.



22. Upon further review of IBFS data forensics, Bureau staff determined that each operator had modification applications pending in IBFS within the filing window and that a technical error caused them not to be submitted. Given the verifiable good faith efforts by both operators to submit their modification applications and their timely application fee payments, we find good cause to accept these modification applications and include these earth stations on the incumbent earth station list.

23. Relatedly, the Community Agency requests relief in a petition for reinstatement of its registration pursuant to section 25.163(a) of the Commission's rules.<sup>57</sup> The Community Agency submitted a modification application for its receive-only earth station antennas on October 1, 2018, which sought to add seven additional antennas to its registration, and timely paid its application fees. On July 6, 2020, the Community Agency's earth station appeared on the preliminary list of incumbent earth stations for purposes of C-band transition and the list indicated that its modification application had been accepted for filing. On July 14, 2020, the Bureau granted the 2018 modification application. The *August 3 Incumbent Earth Station PN* nonetheless reversed course and did not include these antennas because their associated registration term had expired on April 29, 2020.

24. Section 25.163(a)(3) of our rules allows for the reinstatement of a station authorization if the petition (1) is filed within 30 days after the expiration date; (2) explains why a timely renewal was not filed; and (3) sets forth specific procedures that have been established to ensure timely filings in the future.<sup>58</sup> We conclude that TCA has satisfied the requirements of section 25.163(a), and we grant its petition. We conclude that a strict adherence to our rules would not be in the public interest, that there is no indication that TCA did not proceed in good faith in meeting its regulatory obligations, that there were arguably conflicting signals from the Bureau, and that granting TCA's request does not disadvantage any party while advancing the goals of the C-band transition. Because TCA's earth station was operational as of April 19, 2018, its registration modification was timely filed by November 7, 2018, and still pending as of April 29, 2020, and the fact that the Bureau itself included these antennas the incumbent list and granted its modification arguably signaled that there were no procedural or substantive problems with filing, there is sufficient rationale for the lack of a timely renewal. We thus grant reinstatement pursuant to section 25.163(a) of the Commission's rules and waive other rules to the extent necessary to do so.<sup>59</sup>

#### **D. Certification Issues**

25. The Commission's *July 2018 Order and NPRM* required all earth stations (except for those that were licensed/registered during the 2018 freeze filing window) to submit a certification as to the accuracy of the registration/license information on file in IBFS.<sup>60</sup> This requirement was reiterated in a public notice issued April 11, 2019, which announced Paperwork Reduction Act approval for this information collection and established a certification submission deadline of May 28, 2019.<sup>61</sup>

26. In response to the Preliminary List, the Bureau received approximately 40 requests from registered earth station operators that failed to certify the accuracy of their information in IBFS by the May 28, 2019 deadline. Many of these operators claimed that they were unaware of the certification

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<sup>57</sup> TCA's petition for reinstatement includes a request for waiver of sections 47 CFR §§ 25.121(e), 25.161(b), and 25.163(a). 47 CFR § 25.121(e) states that applications for renewals of earth station licenses must be submitted no earlier than 90 days, and no later than 30 days, before the expiration date of the license; 47 CFR § 25.161(b) states that a station authorization shall be automatically terminated in whole or in part without further notice to the licensee upon expiration of the license term; 47 CFR § 25.163 (a) lists the criteria for reinstatement of a station authorization.

<sup>58</sup> 47 CFR § 25.163(a).

<sup>59</sup> 47 CFR §§ 25.163(a), 25.121(e), 25.161(b).

<sup>60</sup> See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, GN Docket No. 18-122, 33 FCC Rcd 6915 (*July 2018 Order and NPRM*).

<sup>61</sup> See *Deadline for Information Submission on Earth Station and Satellite Use in the 3.7-4.2 GHz Band*, IB/WTB/OET Public Notice, DA 19-278 (April 11, 2019) (*April 2019 PN*).

requirement, and they requested that the Bureau accept their late-filed certifications.<sup>62</sup> The *August 3 Incumbent Earth Station PN* dismissed these requests to file a certification after the May 28, 2019 deadline.<sup>63</sup> The Bureau subsequently received seven requests for waiver and petitions for reconsideration.<sup>64</sup>

27. NAB/NCTA urge the Commission to accept certifications from earth station operators that misunderstood the requirement to certify the accuracy of their information for earth stations that were properly registered before the C-band proceeding began.<sup>65</sup> FTC contends that it inadvertently missed the certification deadline.<sup>66</sup> Brazos Valley states that its earth station was registered in 2016 and that it believed it did not need to register during the 90-day window established in the April 11, 2019 public notice and is concerned about its ability to pay for its own transition.<sup>67</sup> WLRN does not explain why it did not timely certify but instead argues that information about its ownership and broadcasting history should be sufficient for its earth stations to have been included on the list.<sup>68</sup> Canby Telephone Association states that it did not certify because it has limited administrative resources and small operators may lack familiarity with the Commission's rules.<sup>69</sup> Westar Satellite Services LP (Westar) states that it inadvertently overlooked filing certifications for the earth stations.<sup>70</sup> Univision Communications, Inc. (Univision) asserts that its registered earth station in Teaneck, New Jersey is absent from the August 3, 2020, incumbent earth station list due to a Univision clerical error.<sup>71</sup> In addition, Univision argues that the Commission has granted waivers in similar situations involving clerical errors in cases that would otherwise inflict undue hardship.<sup>72</sup> Good Karma Brands Milwaukee, LLC (GKBM) contends that it was not the licensee of the earth station prior to the Commission's April 11, 2019 Public Notice that established the 90-day window and, due to its own administrative oversight, did not realize that it had to comply with the Bureau's April 11, 2019 notice.<sup>73</sup> WNET states that it purchased an earth station on

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<sup>62</sup> See *August 3 Incumbent Earth Station PN* at 2-3.

<sup>63</sup> See *id.* at 3.

<sup>64</sup> We note that Capitol Broadcasting Company (Capitol) filed an application for review on September 2, 2020, in which it sought Commission review of the Bureau's decision not to include call sign E070177 on the incumbent list because Capitol did not submit a timely certification or modification application. Application for Review of Capitol, IB Docket No. 20-205 (filed Sept. 2, 2020). The application for review remains pending before the Commission.

<sup>65</sup> Letter from Patrick McFadden, Deputy General Counsel, National Association of Broadcasters to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 20-205 at 1-2 (filed Aug. 12, 2020) (summarizing an *ex parte* meeting in which NCTA-The Internet and Television Association also participated) (NAB/NCTA August 12 *Ex Parte* Letter). The Bureau will treat this blanket request as a request for waiver.

<sup>66</sup> See Petition for Reconsideration of FTC Management Group, Inc., IB Docket No. 20-205 at 2, 4-5 (filed Sept. 3, 2020) (FTC Petition).

<sup>67</sup> Petition for Reconsideration of Brazos Valley Public Broadcasting Foundation, IB Docket No. 20-205, at 2-4 (filed Sept. 2, 2020) (Brazos Valley Petition).

<sup>68</sup> Petition for Waiver of WLRN, IB Docket No. 20-205.

<sup>69</sup> Petition for Waiver of Canby Telephone Association, IB Docket No. 20-205, at 2-5 (filed Aug. 25, 2020).

<sup>70</sup> Request for Waiver of Westar Satellite Services LP, IB Docket No. 20-205, at 1 (filed Sept. 14, 2020).

<sup>71</sup> Request for Waiver of Univision Communications, Inc., GN Docket No. 18-122, IB Docket No. 20-205, GN Docket No. 20-305, at 1-2 (filed Sept. 24, 2020) (Univision Waiver Request).

<sup>72</sup> Univision Waiver Request at 5 (citing *Application for Review of a Decision by the Wireline Competition Bureau By Sioux Falls School District*, Order, FCC 20-113, CC Docket No. 02-6, at 9 (rel. Aug. 7, 2020) (*Sioux Falls School District Order*)).

<sup>73</sup> Petition for Reconsideration of Good Karma Brands Milwaukee, LLC, GN Docket No. 20-305, at 2-4 (filed Sept. 2, 2020) (GKBM Petition).

March 18, 2020 for which the prior owner did not file for certification.<sup>74</sup>

28. As we noted in the *August 3 Incumbent Earth Station PN*, the *3.7 GHz Band Report and Order* expressly directed the Bureau to automatically terminate the registrations of earth stations that failed to file timely certifications.<sup>75</sup> The Commission emphasized the importance of certifications and noted that such certification “may . . . be used in defining incumbent earth stations to be protected from harmful interference consistent with parameters that may be developed in this proceeding,” providing earth station operators with notice that the failure to submitting all required information could affect the protection status of their facilities.<sup>76</sup> Operators had ample notice of the certification requirement, which was first announced in an Order published in the Federal Register and followed by a Public Notice reminding earth stations of their obligations to file such certifications.<sup>77</sup> The vast majority of earth station operators, including many small operators or companies operating in rural areas, acted in response to these multiple notices the Commission provided and submitted the required certifications. Given the clear notice provided to earth station operators of the need to submit a certification by a date certain, the public interest would not be served by adding to the uncertainty and expense associated with the upcoming auction by now entertaining untimely certifications.

29. With respect to Univision’s argument regarding the *Sioux Falls School District* decision, in that case the applicant submitted the correct form by the appropriate deadline, but filled-out the wrong dollar amount in a field that it misinterpreted.<sup>78</sup> By contrast, in each of the cases before the Bureau now, a certification was never submitted at all, amounting to more than a mere clerical error on one component of the submitted form. We also disagree with FTC that certification was merely administrative and that financial hardship resulting from an earth station having to pay for its own relocation by itself constitutes a unique circumstance. We understand that operators may face challenges as a result of their errors in failing to certify. In each of these cases in which operators failed to certify, however, there are no special circumstances (beyond inattention) upon which we could find the good cause necessary for the Bureau to waive the certification requirement for failure to file under the parameters prescribed by the Commission in the *3.7 GHz Band Report and Order*.

30. As such, we deny the petitions for waiver filed by NAB/NCTA, Canby, Westar, and Univision, as well as the alternative request for waiver filed by WLRN. The petitioners have not shown good cause to waive the certification requirements of *July 2018 Order and NPRM*. We also deny the petitions for reconsideration filed by FTC, Brazos Valley, WLRN, GKBM, and WNET.

31. In a related vein, Venture Technology requests that the Bureau waive the certification requirements for its two call signs that had applications filed just before the freeze filing window which were granted during the window and add them to the incumbent list.<sup>79</sup> For call sign E180031, Venture’s registration application was filed on February 23, 2018 and was granted by the Bureau on April 3, 2018. Venture subsequently filed a modification application on April 17, 2018, the day *before* the freeze took effect. That modification application was granted on April 25, 2020. For call sign E180107, Venture filed the registration application on April 17, 2018. Their registration application was granted on June 20, 2018. Venture did not certify either registration but argues that it believed the fact that the grants

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<sup>74</sup> Petition for Reconsideration of WNET, IB Docket No. 20-205 at 2-4 (filed Sept. 2, 2020) (WNET Petition).

<sup>75</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2394, para. 123.

<sup>76</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, 6923, para. 16 (2018).

<sup>77</sup> See *April 2019 Information Submission PN*; Federal Communication Commission, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, 84 Fed. Reg. 22733 (May 20, 2019).

<sup>78</sup> *Sioux Falls School District Order* at 1.

<sup>79</sup> Email from Christine Meng (on behalf of Venture Technology) to the [IBFSINFO@fcc.gov](mailto:IBFSINFO@fcc.gov) mailbox (rec’d Aug. 23, 2020).

occurred during in the filing window alleviated that requirement.

32. We find good cause to waive the certification requirement in this case and add these two call signs to the incumbent list. With respect to call sign E180031 it was reasonable for Venture to conclude that its modification application—filed the day before the freeze took effect and granted during the filing window—obviated the need for a certification. With respect to call sign E180107, the circumstances of this application were not expressly addressed in the *3.7 GHz Band Report & Order*: it was not exempt from the certification requirement because that exemption applied only to applications filed during the 2018 waiver window; however, the certification requirement itself did not apply by its terms because it applied only to authorizations that existed as of April 18, 2018. Because of this ambiguity, we grant Venture’s request to waive the certification requirement and add these call signs to the incumbent list.

#### **E. Unregistered earth stations**

33. In the *August 3 Incumbent Earth Station PN*, the Bureau reviewed and rejected requests from existing earth station operators that did not register during the filing window to open a new filing window or allow the registration of applicants that failed to register their earth stations to file new registration applications, noting that the Commission’s *3.7 GHz Band Report and Order* specifically rejected such requests and reconsideration was not sought on this issue.<sup>80</sup>

34. A number of petitioners now seek reconsideration of the Bureau’s decision not to reopen the registration filing window or seek individual waivers so that they are able to register now.<sup>81</sup> Media Gateway Facility contends that it was unaware of the registration window due to the incapacity of its operations director in late 2019. Media Gateway Facility, Gainesboro CATV, Sunman, Orion, and Frank Howard TV argue that they did not receive notification or were otherwise unaware of the registration requirement.

35. We deny the petitions for waiver filed by Gainesboro CATV, Sunman, Media Gateway Facility, and Orion. The petitioners have not shown good cause to waive the registration requirements of *July 2018 Order and NPRM* and permit current registration. We also deny the petitions for reconsideration filed by Frank Howard TV. On the notification issue, the Bureau is unable to provide individual notice by phone, email, or mail to each potential applicant, and pursuant to the Commission’s rules such notice is not required. Even if the Bureau determined that such notice was feasible, the Bureau could not have known who to notify because the operators’ earth stations were unregistered with the Commission. Rather, we relied on the numerous public notices and orders that the Commission and the Bureau have issued throughout this proceeding to notify potential applicants. Industry trade associations, trade press, and the industry ecosystem have also helped to spread the word. As a result, the Bureau received thousands of applications to register earth stations. A small number of potential applicants apparently did not see the notice provided by the Commission or did not act in time. We recognize that earth station operators may incur financial costs imposed as a result of their failure to register, but we note that the vast majority of earth station operators successfully complied with the requirements set forth by the Commission to qualify as an incumbent earth station for purposes of the transition.

36. The Bureau also received two requests from operators that missed the deadline to renew

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<sup>80</sup> See *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2391, para. 120.

<sup>81</sup> Request for Expedited Waiver of Gainesboro CATV, IB Docket No. 20-205 (filed Aug. 17, 2020); Petition for Reconsideration of Frank Howard TV Cable, IB Docket No. 20-205 (filed Aug. 19, 2020); Request for Expedited Waiver of Sunman Telephone Company Inc., IB Docket No. 20-205 (filed Aug. 31, 2020); Request for Expedited Waiver of Media Gateway Facility, LLC, IB Docket No. 20-205 (one petition per earth station filed) (filed Sept. 10, 2020); Petition for Expedited Waiver of Orion Cable Systems, IB Docket No. 20-205.

their registrations for various reasons and circumstances.<sup>82</sup> GlobeCast's two registrations expired on June 4, 2020; Globecast failed to renew those registrations and it now seeks reinstatement.<sup>83</sup> KLKN requests reinstatement of an expired registration which lapsed in 2020.<sup>84</sup>

37. As a result of the 2018 filing freeze, operators who missed their renewal filing deadline are unable to file a new registration application.<sup>85</sup> The Commission expressly froze the registration of new earth stations in order to provide a stable spectral environment for more intensive terrestrial use of the 3.7-3.98 GHz band and facilitate the rapid transition to terrestrial use. Neither GlobeCast nor KLKN shows good cause for a waiver here given that both appear to have allowed their registrations to lapse due to simple negligence.<sup>86</sup>

38. We next turn to the request of The Church of Jesus Christ Latter Day Saints (the Church) to add to the incumbent earth station list five call signs that were inadvertently omitted when the Church submitted its application.<sup>87</sup> On July 9, 2018, the Church filed an application for earth station authorizations, and a requested for a waiver that the FCC accept a single Form 312, with an attached spreadsheet providing the address and location of its 3,476 earth stations in the United States and territories.<sup>88</sup> As a technical matter, all filers are required to manually enter the required Form 312 information into IBFS (rather than by submitting a spreadsheet). In order to accommodate the large number of registrations from the Church, however, the International Bureau permitted applications be submitted in batches of approximately fifty at a time.<sup>89</sup> Due to the batch filing system, the Church notes, the "as-filed" copies of the registrations the Church was unable to verify whether there were any errors in the filings, or whether any locations were missing or repeated.<sup>90</sup> We deny the Church's request. During the filing process, the Bureau waived various processing requirements in order to attempt to streamline the submission of the large number of filings from the Church, by far the single largest filer.<sup>91</sup> Although there were challenges in IBFS in processing the batch applications, the applicant is responsible for the data entered into IBFS in the application process.

39. The Bureau also received petitions for waiver from operators that purchased unregistered earth stations after the registration deadline. On December 3, 2018, Massillon Cable TV, Inc. purchased a cable system in Woodsfield, Ohio that included one site with five antennas that were previously registered, but the registration had been allowed to lapse in 1982.<sup>92</sup> Vyve Broadband Investments, LLC acquired four earth station sites across three transactions in October 2018, August 2019, and December

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<sup>82</sup> Under Commission rules, a renewal application for an earth can be filed during a window beginning 90 days, and no later than 30 days, before the expiration date. 47 CFR § 25.121(e).

<sup>83</sup> Letter from Eddie Ferraro, GlobeCast Americas Inc., GN Docket No. 20-305, at 1-2 (filed Sept. 22, 2020). (GlobeCast Waiver Request).

<sup>84</sup> Email from KLKN to IBFSINFO@fcc.gov (rec'd Sept. 9, 2020).

<sup>85</sup> See *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2407, para. 149-151.

<sup>86</sup> See *NetworkIP, LLC v. FCC*, 548 F.3d at 127-28.

<sup>87</sup> Letter from Christina Burrow, Counsel to The Church of Jesus Christ of Latter-day Saints, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket 20-205, at 1-2 (filed Sept. 3, 2020) (September 3 LDS Church *Ex Parte*).

<sup>88</sup> September 3 LDS Church *Ex Parte* at 2.

<sup>89</sup> *International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in the 3.7-4.2 GHz Band; Filing Options for Operators With Multiple Earth Station Antennas*, Public Notice, DA 18-639 (rel. June 21, 2018) (*Earth Station Processing PN*).

<sup>90</sup> September 3 LDS Church *Ex Parte* at 2-3

<sup>91</sup> *Earth Station Processing PN* at 2-3.

<sup>92</sup> See Massillon Waiver Petition at 2-5 (filed July 17, 2020) (Massillon Waiver Petition).

2019 and was aware the four earth stations were not registered during the filing window.<sup>93</sup> Belzoni Cable, LLC stated it acquired three earth station sites in April 2019 that were not registered by their previous owners.<sup>94</sup>

40. We deny these waiver requests. The Bureau made clear in the Freeze Public Notice that for purposes of further action, the Commission “may . . . choose to take into consideration only those earth stations that are licensed, registered, or have pending applications for license or registration on file” as of the close of the filing window.<sup>95</sup> The PN also reminded earth station operators that they “may be subject to any rule changes the Commission may adopt in the future, in light of information in the record about the nature and extent of existing uses of the band.”<sup>96</sup> As we discussed in the *August 3 Incumbent Earth Station PN*, the *3.7 GHz Band Report and Order* provided no exception for unregistered earth stations acquired by a new entity and also specifically rejected requests to open a new registration window,<sup>97</sup> and the failure of acquiring parties to conduct due diligence regarding the registration or certification status of an earth station does not justify granting an exception, as Vyve and Massillon imply. Massillon’s argument that it was not aware of the existing filing process is also insufficient to warrant an exception. The Commission and the Bureau provided ample notice of the filing window and the certification window. In the case of Vyve, it admits that it was aware of the earth station freeze, the filing window, and the requirement to certify earth station information in IBFS. With this ample notice, Vyve accepted its subsidiaries’ decisions not to register these four earth stations during the filing window. Vyve’s decision to register those stations thereafter do not justify an exception to waiver of the Commission’s our rules.

#### **F. Untimely Payment of Application Fees**

41. Three operators request review or reconsideration of the Bureau’s decision not to place their earth stations on the August 3, 2020 incumbent earth station list for failure to timely file payment of the registration fee. None of the operators made a timely payment of the application fees and, as a result, their applications were dismissed.<sup>98</sup>

42. Cunningham Communications, Inc. argues that the fact that it had a pending application for registration in the Commission’s database as of November 7, 2018 qualifies Cunningham as an incumbent earth station even though it did not make a payment until July 13, 2020.<sup>99</sup> Cunningham also argues that it took other steps including having multiple conversations with Commission staff in February 2020 and that, because the Bureau was willing to accept payment in February 2020, well after the 14-day standard window for payment, Cunningham should not be punished for submitting payment another 135 days after those conversations.<sup>100</sup> Hotwire Communications, Ltd. claims it was unable to submit payment through the IBFS portal at that time, contacted staff, and requested an invoice but not the nonetheless did

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<sup>93</sup> Petition for Waiver of Vyve Broadband Investments, LLC., IB Docket No. 20-205, at 2-8 (filed Aug. 3, 2020) (Vyve Waiver Petition).

<sup>94</sup> See Petition for Waiver of Belzoni Cable, LLC., IB Docket No. 20-205 (filed Aug. 3, 2020).

<sup>95</sup> Freeze Public Notice at 5.

<sup>96</sup> *Id.*

<sup>97</sup> See *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2391, para. 120.

<sup>98</sup> See IBFS File Nos. SES-REG-20180531-07376 (Cunningham application), SES-REG-20181017-07402, SES-REG-20181017-07403, SES-REG-20181015-07070 (Hotwire applications), and SES-MOD-20181203-03530 (Jackson Energy Authority modification application).

<sup>99</sup> Application for Review and Request for Waiver of Cunningham Communications, Inc. at 5 (filed Aug. 10, 2020) (Cunningham Petition). In this public notice, we only address Cunningham’s petition for waiver, not the application for review, which is before the Commission.

<sup>100</sup> *Id.* at 7.

not submit payment until August 21, 2020.<sup>101</sup> Hotwire argues that to the extent the Commission accepts Cunningham's untimely payment, it must waive the payment deadline for Hotwire too.<sup>102</sup>

43. We decline the requests of Cunningham and Hotwire for relief. Contrary to arguments stating otherwise, neither qualified in 2018, and currently do not qualify, for incumbent earth station status pursuant to section 25.138(c).<sup>103</sup> Specifically, Cunningham filed its earth station registration application on May 31, 2018, but without fee payment within 14 days, it was never assigned an REG file number.<sup>104</sup> Similarly, Hotwire filed its earth station applications on October 17, 2018, without payment 14 days from that filing date, so its application never received an REG file number. Thus, as of November 7, 2018, neither filer had a pending application within the meaning of section 25.138(c). In addition, those applications were formally dismissed in April 2020 due to that non-payment. Accordingly, these filers do not qualify as incumbent earth stations pursuant to our rules.

44. Cunningham and Hotwire have failed to demonstrate special circumstances to justify a waiver of our rules.<sup>105</sup> The filers fail to provide sufficient evidence to show that the problems they had submitting payment on the IBFS system stemmed from a problem with the IBFS system itself, particularly since so many other filers were able to successfully pay the application fees using that system. Cunningham provides emails purporting to show that it experienced some struggle with paying the application fee on the IBFS system, but it is not clear that the system itself was the reason for the failure. Hotwire provides no evidence of problems using the IBFS system to pay the fees at the time of filing its applications or shortly afterwards. Further, we disagree with the filers that the Bureau has not consistently enforced the 14-day payment requirement. Although Bureau staff reached out to Cunningham in February 2020 regarding payment, such action does not provide *prima facie* evidence that the Bureau would have been willing to accept late payment. In any event, subsequent to that outreach, the Bureau received additional guidance from the Commission in the *3.7 GHz Report and Order*. In that Order, the Commission adopted the definition for incumbent earth stations that must be accommodated for purposes of the transition and declined to open another window in order to register earth stations.<sup>106</sup> Based on that Order, the Bureau finds that the filers had plenty of opportunity to comply with the eligibility requirements for incumbent earth station operators. Finally, the public interest benefits when we require filers to comply with the eligibility requirements in a timely manner in order for the transition to move forward as expeditiously as possible. Submission of payment after applications have already been dismissed creates delays in this transition. Thus, we decline the filers' requested relief.

45. Jackson Energy Authority requests a waiver to reinstate its modification application,

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<sup>101</sup> Petition for Reconsideration of Hotwire Communications, Ltd. at 2, 4-5, Attachment B (filed Sept. 1, 2020) (Hotwire Petition) (citing August public notice). Hotwire previously filed a request for waiver. See Request for Limited Waiver of Hotwire, IB Docket No. 20-205 (filed July 16, 2020).

<sup>102</sup> *Id.* at 5-6.

<sup>103</sup> 47 CFR § 25.138(c). Section 25.138(c) provides that "Fixed and temporary fixed earth stations operating in the 3.7-4.0 GHz portion of the band within CONUS will be protected from interference by licensees in the 3.7 GHz Service subject to the deadlines set forth in §27.1412 of this chapter and are eligible for transition into the 4.0-4.2 GHz band so long as they: (1) were operational as of April 19, 2018 and continue to be operational; (2) were licensed or registered (or had a pending application for license or registration) in the IBFS database on November 7, 2018; and (3) timely certified the accuracy of the information on file with the Commission by May 28, 2019."

<sup>104</sup> An applicant is assigned an INTR file number until fee payment clears, at which point an REG file number is assigned, and IB staff may begin substantive analysis and processing of the application. Applications in INTR status are not eligible for processing in IBFS.

<sup>105</sup> Hotwire seeks waivers of sections 1.10009(e)(4) and 25.138(c) of the Commission's rules. See Hotwire Petition at 2. Cunningham seeks a waiver of section 25.138(c). See Cunningham Petition at 1.

<sup>106</sup> *3.7 GHz Report and Order*, 35 FCC Rcd at 2391, paras. 116-123.).

which was dismissed for failure to pay the fee on a timely basis.<sup>107</sup> Jackson argues that it submitted a modification application on May 31, 2018, in response to the earth station freeze and filing window, a renewal application on December 3, 2018, and a certification on May 9, 2019 for this station.<sup>108</sup> But while Jackson's modification application was filed in May 2018, Jackson did not pay the application fee until December 2018, well after the 14-day time period allotted for such payments by the Commission's rules. Furthermore, a search of IBFS's internal forensic records reveals no evidence of a renewal application filed by Jackson in December 2018. The only renewal application in IBFS for Jackson's earth station appears to have been only recently created and filed (in 2020), and thus this is not persuasive evidence of the existence of a renewal application filed in December 2018.<sup>109</sup> As Jackson had neither a modification nor a renewal application on file for its earth station, its only relevant filing is its certification filed in May 2019. Timely certification in IBFS, however, is not sufficient to satisfy the criteria in section 25.138. We thus deny Jackson's request.

#### IV. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), (j), 405, and sections 1.3 and 1.106 of the Commission's rules, 47 CFR §§ 1.3, 1.106, the Bureau GRANTS the petitions for reconsideration and waiver requests to the extent described herein. The Bureau DENIES the petitions for reconsideration and waiver requests to the extent described herein.

47. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release, in accordance with section 1.102 of the Commission's rules, 47 CFR § 1.102. This action is taken pursuant to the authority delegated by Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Sullivan  
Chief, International Bureau

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<sup>107</sup> Application for Review and Request for Waiver of Jackson Energy Authority, IB Docket 20-205 (filed Aug. 24, 2020) (JEA Waiver Petition). In this public notice, we only address JEA's petition for waiver, not the application for review, which is before the Commission.

<sup>108</sup> JEA Waiver Petition at 2-3.

<sup>109</sup> See JEA Waiver Petition at Exhibit 3 (copy of renewal application with July 7, 2020 IBFS timestamp).