

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

In the Matter of)	
)	
Expanding Flexible Use of the 3.7 to 4.2 GHz)	GN Docket No. 18-122
Band)	IB Docket No. 20-205
)	

OPPOSITION OF CTIA TO APPLICATION FOR REVIEW

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CTIA respectfully submits this Opposition to urge the Commission to deny the ACA Connects—America’s Communications Association (“ACA”) Application for Review¹ of the decision adopting the lump sum payment amount for earth stations that elect to relocate out of the 3.7-4.0 GHz band on their own.² The decision of the Wireless Telecommunications Bureau (“Bureau”) comports with the directives in the Commission’s *C-band Order*³ and is grounded in an extensive record. It correctly found that its approach to lump sum payments would best advance the rapid, tightly coordinated, nationwide transition of the C-band and the advent of 5G, while ACA’s alternative approach would lead to a disjointed, slower transition that would frustrate the *Order*’s cardinal objective. In any event, ACA offers no valid grounds for the Commission to set aside the Bureau’s carefully reasoned and well-documented decision.

¹ Application for Review of the Public Notice of the Wireless Telecommunications Bureau Setting Lump-Sum Payment Amounts, GN Docket No. 18-122 (filed Aug. 13, 2020) (“App. For Review”).

² *Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections*, Public Notice, DA 20-802 (rel. July 30, 2020) (“*Final Cost Category Notice*”).

³ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (“*C-band Order*” or “*Order*”).

I. INTRODUCTION AND SUMMARY.

The C-band spectrum presents the most immediate and critical opportunity for the Commission to make wide-channel, mid-band spectrum available to help propel 5G deployment and reap the resulting benefits for innovation, enhanced consumer welfare, and economic growth in the United States.⁴ Under Chairman Pai’s leadership, the Commission adopted the *C-band Order* to repurpose 280 megahertz of underutilized C-band spectrum for flexible terrestrial use, correctly finding that an “important part of advancing U.S. leadership in next generation 5G networks is making additional mid-band spectrum available for 5G services.”⁵

Those benefits, however, depend on clearing incumbent users from the 3.7-4.0 GHz band as soon as possible. The Commission adopted “a robust transition schedule to ensure that a significant amount of spectrum is made available quickly for upcoming 5G deployments.”⁶ And it warned that delay in the schedule “will have significant negative effects for the American consumer and American leadership in 5G.”⁷ Incumbent satellite and earth station operators would thus need to work fast to meet the accelerated relocation deadlines for clearing out of the lower 300 megahertz of C-band spectrum, portions of which must be cleared as early as December 2021.

The Commission granted incumbent C-band earth station operators a choice in vacating 3.7-4.0 GHz: obtain reimbursement for reasonable relocation expenses to repack into the 4.0-4.2 GHz band, or elect a lump sum payment based on the average projected relocation costs and vacate the band on their own—whether through repacking or moving their operations to fiber. In

⁴ See, e.g., *The FCC’s 5G FAST Plan*, <https://www.fcc.gov/5G> (last visited Aug. 27, 2020).

⁵ *Order*, 35 FCC Rcd at 2345 ¶ 3.

⁶ *Id.* at 2345 ¶ 4.

⁷ *Id.*, 35 FCC Rcd at 2410-11 ¶ 162.

accordance with the *C-band Order*, the Bureau released the *Final Cost Category Notice* on July 30, 2020, announcing the lump sum amounts for different earth station facilities. It validly determined that satellite operators and programmers should be responsible for and reimbursed for the costs of purchasing compression equipment, known as integrated receivers/decoders (“IRDs”), and that earth station operators would be responsible for and reimbursed for the cost of installing IRDs. It thus included only installation costs in the earth station lump sum amount.

ACA challenges the Bureau’s careful and balanced allocation of costs among stakeholders. It asserts that the lump sum payment must include *both* the cost of purchasing *and* installing IRD equipment. But ACA fails to demonstrate that the Bureau’s determination of the lump sum amount was unlawful.

- *First*, the Bureau’s decision to include IRD equipment installation (but not purchase) costs in the lump sum payment was based on a record showing that this allocation would best advance the Commission’s objective of a smooth and rapid relocation process.
- *Second*, the Bureau acted well within the broad authority the Commission delegated to it to manage this aspect of C-band clearing.
- *Third*, the Bureau did not contradict the *Order* as ACA contends, because the *Order* did not require that IRD purchase costs be included in the lump sum payment.
- *Fourth*, the Bureau provided ample opportunity for stakeholders to weigh in on the lump sum payment issues, its decision was solidly grounded in the record, and its actions were consistent with the Administrative Procedure Act (“APA”) despite ACA’s claims to the contrary.

The Commission should thus affirm the Bureau’s determination as to lump sum payments and deny ACA’s Application for Review. It should take that action not merely because ACA’s arguments fail on the merits, but also because of the public interest harms that could result from reversing the Bureau’s decision. Granting ACA’s request to shift IRD equipment purchase costs onto hundreds of individual earth station operators risks piecemeal, disjointed clearing that would upend the transition process, jeopardizing the Commission’s cardinal goal to expedite

clearing of C-band spectrum, as well as the benefits that will flow from repurposing this spectrum for 5G. In contrast, the benefits ACA members would enjoy from granting its request would be narrow and entirely monetary. ACA’s goal is transparent: to maximize the amount of funds available to its members, which they could use to transition to fiber (no IRD equipment is required in a transition to fiber)—or to profit from their election by transitioning themselves for less than the lump sum payment. There is no basis for the Commission to overturn the Bureau’s ruling—and every reason to affirm it.

II. THE BUREAU PROPERLY IMPLEMENTED THE *C-BAND ORDER*.

A. Treating IRD Equipment Purchase Costs as a Satellite Cost Advances the Cardinal Objective to Rapidly Clear C-band Spectrum.

The Bureau rightly concluded that the selection and purchase of IRD equipment “are an integral part of the satellite operators’ national transition process,” and as a result it associated IRD purchase costs with the transition of satellite transponders, not individual earth stations.⁸ The Bureau relied on its finding that “[s]atellite operators, together with programmers, must be able to elect and purchase compression equipment uniformly and on a nationwide basis—and to coordinate the technology upgrade process—to accomplish a successful transition.”⁹ Placing this task on those parties is “more faithful to avoiding the disruption of service for FSS operations in

⁸ *Final Cost Category Notice* ¶ 17.

⁹ *Id.* ¶ 18 (footnote omitted).

the C-band,”¹⁰ and thus aligns with the *Order*’s objectives.¹¹ At the same time, the Bureau balanced that finding with classifying the costs of installing the equipment at earth stations as an earth station cost: “Allowing MVPD operators to maintain individual responsibility for installing such equipment strikes an appropriate balance by allowing MVPD operators to maintain control over the portion of their transition specific to their own earth stations.”¹²

The record fully supports the Bureau’s finding that the allocation of costs it chose best advances the *C-Band Order*’s public interest objectives. Numerous stakeholders warned that allocating IRD equipment purchase costs as earth station costs would directly impede rapid clearing of C-band spectrum.¹³ They also demonstrated that the selection and purchase of compression equipment is most efficiently done on a centralized, coordinated basis by satellite operators working with programmers.¹⁴ ACA disagrees with the Bureau’s factual findings but

¹⁰ *Id.* ¶ 21 (footnote omitted).

¹¹ *See Order*, 35 FCC Rcd at 2356 ¶ 28 (“Stakeholders have repeatedly emphasized the need to make C-band spectrum available for flexible use as quickly as possible, with the goal of conducting an auction of overlay licenses in the 3.7-3.98 GHz band by the end of 2020.”).

¹² *Final Cost Category Notice* ¶ 20.

¹³ *See, e.g.*, Letter from Jennifer L. Oberhausen, CTIA, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 2 (filed July 9, 2020) (“CTIA July 9 Letter”) (“[A] decentralized, MVPD-driven approach could delay or upend elements of the transition.”); Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 1 (filed July 7, 2020) (“[A]llocating these costs to MVPDs (and therefore averaging these costs into MVPD earth station lump sum amounts) will create incentives that may impair the reception of programming by consumers, inflate transition expenses, and create confusion that delays the completion of the transition.”); Letter from Matthew S. DelNero, Counsel to the Content Companies and the National Association of Broadcasters, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 3 (filed July 6, 2020) (“Content Companies July 6 Letter”) (“Without centralizing this process by allocating IRD costs as a non-MVPD, national expense, the ability to complete these upgrades in the accelerated timeline set forth in the C-band Order will be endangered.”).

¹⁴ *See, e.g.*, CTIA July 9 Letter at 2 (“Technology upgrades must be designed and deployed in a centralized manner to ensure that viewers’ experiences are unaffected.”); Content Companies July 6 Letter at 5 (“[C]onsistency and certainty in the IRD upgrade process is absolutely necessary to ensure a

does not establish that those findings were in any way incorrect.

B. The Bureau Acted Well Within Its Delegated Authority.

The Commission delegated broad authority to the Bureau to develop the Cost Category Schedule, including the lump sum payment amounts, and did not specify any factors for the Bureau to apply. It directed the Bureau “to announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments,” and “to identify amounts for various classes of earth stations—e.g., MVPDs, non MVPDs, gateway sites – *as appropriate*.”¹⁵ It also directed the Bureau “to make further determinations related to reimbursable costs, as necessary, throughout the transition process.”¹⁶

The rule governing lump sum payments confirms this ample delegated authority. Section 27.1412(e) provides that the lump sum amounts would equal “the estimated reasonable transition costs of earth station migration and filtering, *as determined by the Wireless Telecommunications Bureau*, in lieu of actual relocation costs.”¹⁷ Consistent with the *Order*, this rule does not place specific requirements or conditions on the Bureau’s determination of the lump sum payment. ACA fails to note this rule—and more broadly—it fails to make any showing that the Bureau exceeded its authority.

successful transition, and the Commission’s cost-allocation decisions should reflect this priority.”); Letter from Laura H. Phillips, Counsel to Intelsat, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 3 (filed May 26, 2020) (“There is no reason for the FCC to alter this longstanding process.”).

¹⁵ *Order*, 35 FCC Rcd at 2428 ¶ 203 (emphasis added).

¹⁶ *Id.* at 2448 ¶ 262.

¹⁷ 47 C.F.R. § 27.1412(e) (emphasis added).

C. The Bureau's Determination Comports with the *C-band Order's* Directive.

ACA is wrong in asserting that the *Order* directed that IRD equipment purchase costs are “earth station” costs that must be included in the lump sum amount.¹⁸ The *Order* made no such finding. In fact, it stated that earth station migration costs may “require the *installation* of new equipment or software” at earth station locations including for upgrades “such as compression technology or modulation”—and IRD *installation costs* are included in the lump sum amount.¹⁹ But contrary to ACA's claims, the *Order* does not mandate that *purchasing* such equipment or software is an earth station migration cost. As the Bureau correctly held, the *Order* “does not mandate that the cost of purchasing the equipment necessary to implement those technology upgrades is an earth station cost.”²⁰

The rules adopted as part of the *C-band Order* are also of no help to ACA. Section 27.1412(e) states that the lump sum should be “equal to the estimated transition costs of earth station migration and filtering,” and Section 27.1411(b)(4) defines “earth station migration” to include “the *installation* of new equipment or software at earth station uplink and/or downlink locations for customers identified for technology upgrades necessary to facilitate the repack, such as compression technology or modulation.”²¹ Neither rule identifies the cost of purchasing IRDs as an earth station cost to be included in the lump sum amount.

Had the Commission intended to allocate IRD equipment purchase costs as well as installation costs to earth stations, it could have said so. Instead, it chose to address only installation costs. The Bureau's decision to count only IRD equipment installation costs in

¹⁸ App. For Review at 9-15.

¹⁹ *Order*, 35 FCC Rcd at 2426-27 ¶ 201 (emphasis added).

²⁰ *Final Cost Category Notice* ¶ 21.

²¹ 47 C.F.R. §§ 27.1412(e), 27.1411(b)(4) (emphasis added).

setting the lump sum amount is in short entirely consistent with the *Order* and the rules implementing it.

ACA's argument that IRD equipment purchases must be treated as an earth station cost because the test should be whether IRDs are needed to allow earth stations to receive uninterrupted service is meritless. The Bureau properly rejected this "but for" argument because it has no foundation in the *Order*, and it would mean that all satellite equipment change costs would be eligible as earth station costs because those changes are also necessary for earth stations to transition successfully.²² In fact, as one satellite operator advised the Bureau, "the technology chosen by a programmer to reduce its bandwidth on the satellite must be employed on a comprehensive, system-wide basis to all of that customer's affiliated earth stations; individual earth stations cannot separately make decisions on which technology equipment to employ or the programmer-customer's distribution system will be broken."²³ And as programmers advised the Commission, "[i]n short, the development and procurement of IRDs is not a 'cost of relocating' an earth station; it is a cost of the transition of the satellite and appropriately is categorized as a satellite expense."²⁴

While ACA argues that a higher lump sum payment amount would subsidize the conversion of some MVPD earth stations to fiber,²⁵ the Bureau's action was consistent with the

²² *Final Cost Category Notice* ¶ 23 ("ACA also argues that the lump sum should include any 'but for' costs of transitioning earth stations—i.e., 'the money that the Clearinghouse would otherwise have paid to relocate earth stations to maintain satellite reception.' ACA's argument proves too much and would mean that the cost of new satellite acquisitions would also have to be included in the lump sum.").

²³ Letter from Laura H. Phillips, Counsel to Intelsat License, LLC, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 2 (filed July 27, 2020).

²⁴ Letter from Matthew S. DelNero, Counsel to the Content Companies and NAB, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 2 (filed July 24, 2020).

²⁵ App. For Review at 10-11.

Order's decision that the lump sum payment was not intended to subsidize fiber conversions or to compensate earth station operators for the cost of those conversions. The Bureau noted that replacing existing operations with fiber may be more expensive "by an order of magnitude." As the Bureau correctly explained:

The *3.7 GHz Report and Order* directs the Bureau to establish lump sum amounts based on the "average, estimated costs of relocating" incumbent earth stations, rather than to attempt to approximate the cost of transitioning to alternative transport, and specifically notes that any costs "over and above the lump sum (i.e., additional costs to transition to fiber) would be borne by the electing incumbent earth station operator." The Commission signaled in these portions of the *3.7 GHz Report and Order* that the lump sum was never intended to fully fund the cost of converting to fiber.²⁶

D. The Bureau Did Not Violate the APA.

Finally, ACA's assertions that the Bureau engaged in arbitrary and capricious decision-making are meritless. The Bureau issued multiple public notices seeking comment on the lump sum payment amounts and other components of the cost category schedule. It modified its preliminary proposals in response to public input—including input from ACA.²⁷ And ACA itself held numerous *ex parte* meetings with Commissioners and Bureau staff.²⁸ The Bureau's detailed

²⁶ *Final Cost Category Notice* ¶ 24 (footnotes omitted).

²⁷ For example, the Bureau stated, "[i]n response to information from commenters, we update the lump sum base amounts to include application modification fees" *Id.* ¶ 34 and n.122.

²⁸ *See, e.g.*, Letter from Ross Lieberman, ACA, to Marlene H. Dortch, GN Docket No. 18-122 (filed June 25, 2020) (reporting on meeting with Bureau); Letter from Ross Lieberman, ACA, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed June 30, 2020) (reporting on a meeting with Chairman Pai); Letter from Ray Hashem, Counsel to ACA, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed July 17, 2020) (reporting on a meeting with the Office of General Counsel); Letter from Ross Lieberman, ACA, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed July 27, 2020) (reporting on a meeting with the Office of Commissioner Starks); Letter from Ross Lieberman, ACA, to Marlene H. Dortch, FCC, GN

Final Cost Category Notice adopting the final lump sum figures thoroughly explains its reasoning. An agency is required to provide sufficient information about its proposals to allow parties to meaningfully comment, and to include in its final decision an explanation as to why it chose the particular actions it did. That is precisely what the Bureau did here. That ACA does not like those final figures does not make them arbitrary and capricious.

ACA's complaint that the Bureau's contractor, RKF Engineering, did not meet with ACA raises no APA issue.²⁹ The *Order* granted the Bureau broad authority as to how to develop the cost category schedule, and it nowhere required the Bureau or its contractor to hold meetings with every party that wanted one. No party was denied the opportunity to present data and arguments on the lump sum payments. In addition, the Bureau's use of a third-party contractor was hardly novel; it aligns with other proceedings where the Commission was assisted by contractors and did not compel them to meet with every party. In the Broadcast Incentive Auction process, for example, the Commission sought comment on a cost catalog developed by a contractor "conducting confidential interviews directly with industry participants."³⁰ Far from ACA's insinuation that the Bureau engaged in a secretive process, its decision-making was open and responsive to comments. The APA requires no more.

ACA argues that the Bureau did not disclose its methodology,³¹ but in fact the Bureau sought comment multiple times, on a preliminary cost category schedule, on its methodology, and on its proposed lump sum amounts. The Bureau supplied stakeholders with sufficient

Docket No. 18-122 (filed July 29, 2020) (reporting on a meeting with the Office of Commissioner Rosenworcel).

²⁹ App. For Review at 17-18.

³⁰ *Media Bureau Seeks Comment on Widelity Report and Catalog of Potential Expenses and Estimated Costs*, Public Notice, 29 FCC Rcd 2989, 2990 (MB 2014).

³¹ App. For Review at 18-21.

information about that methodology for them to respond. And many parties filed extensive comments on the proposed amounts and methodology, undercutting ACA's claim that it was deprived of the opportunity to provide input. The APA requires agencies to demonstrate that their decision was based on an informed review of the record and to provide a sufficient explanation as to how they reached that decision. The Bureau did that.

And ACA fares no better in its attack on the Bureau's determination to exclude what it termed "outlier" costs.³² It was entirely reasonable for the Bureau to determine that certain costs were so rare that they should not be included in calculating the lump sum payment amounts that would be made available to all earth station operators. These outlier costs, the Bureau held, did not meet "a minimum threshold of likelihood that it would be incurred in a typical situation."³³ ACA's real complaint is that excluding outlier costs reduced the lump sum amounts—meaning its members would get less than they otherwise might and would be less likely to be able to profit from the clearing process. That result, however, does not establish that the Bureau's decision to exclude those costs was arbitrary and capricious.

Finally, ACA complains that the Bureau acted unlawfully by announcing the lump sum payment amounts before final Transition Plans were filed.³⁴ But it points to no language in the *Order* that compels the Bureau to defer completing action on the lump sum payments until final Transition Plans are filed. Nor was it arbitrary and capricious for the Bureau to sequence the

³² App. For Review at 20-21.

³³ *Final Cost Category Notice* ¶ 16.

³⁴ App. For Review at 23-25.

various submissions as it did. It provided earth station operators ample opportunity to comment on satellite operators' preliminary transition plans. And it recently extended the deadline for them to elect a lump sum payment until September 14, 2020.³⁵ By that date, earth station operators will have had three months to have assessed satellite operators' preliminary plans and a month to review the final plans.³⁶ The Bureau thus correctly held that earth stations are able to consider those plans in making their lump sum elections.³⁷ Again, there was no legal error that could invalidate the Bureau's action.

III. CONCLUSION.

For the reasons discussed above, the Commission should deny the application for review.

Respectfully submitted,

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³⁵ *Expanding Flexible Use of the 3.7-4.2 GHz Band*, Order, Order, DA 20-909 (rel. Aug. 20, 2020).

³⁶ Satellite operators' preliminary Transition Plans were filed June 13, 2020, and their final Plans were filed August 14, 2020.

³⁷ *Final Cost Category Notice* ¶ 16 n.65.

CERTIFICATE OF SERVICE

I, Jennifer L. Oberhausen, hereby certify that the foregoing “Opposition of CTIA to Application for Review” was served this 28th day of August, 2020 by email to:

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