

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**OPPOSITION OF CTIA TO REQUEST FOR STAY**

CTIA hereby opposes the request filed by Massillon Cable TV, Inc. (“MCTV”)<sup>1</sup> to stay the September 14, 2020 C-band earth station lump sum election deadline for all incumbent earth station operators pending MCTV’s petition for reconsideration. MCTV’s request is now the fourth effort in three months to stay aspects of the C-band transition and, like the previous three,<sup>2</sup> MCTV’s request also falls short. The Wireless Telecommunications Bureau (“Wireless Bureau”) should promptly deny this request for stay.

**I. MCTV HAS NOT SATISFIED THE REQUIREMENTS FOR A STAY.**

A stay pending Commission review is an “extraordinary remedy”<sup>3</sup> that requires the petitioner to show: (1) it is likely to prevail on the merits of its appeal; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other parties will not be harmed if the

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<sup>1</sup> Massillon Cable TV, Inc., Request For Stay And/or Waiver Of September 14 Deadline For Electing To Receive Lump-Sum Payment Pending Commission Review Of Petition For Reconsideration, GN Docket No. 18-122, IB Docket No. 20-205 (filed Sept. 2, 2020) (“Stay Request”). CTIA addresses only the stay request here, which would necessarily create transition delay with broad and harmful consequences.

<sup>2</sup> See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order Denying Stay Petition, 35 FCC Rcd 5807 (WTB 2020) (denying request the Small Satellite Operators’ request to stay the C-band transition); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order Denying Stay Petition, 35 FCC Rcd 6771 (WTB 2020) (denying PSSI Global’s request to stay the C-band transition); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order Denying Stay Petition, DA 20-998 (WTB rel. Aug. 31, 2020) (“ACA Stay Denial”) (denying ACA Connects request to stay the lump sum election deadline).

<sup>3</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Order Denying Stay Petition, 34 FCC Rcd 9584, ¶ 6 (WCB 2019).

stay is granted; and (4) the public interest would favor grant of the stay.<sup>4</sup> MCTV's request fails to make the requisite showing.

**A. MCTV Has Not Shown That the Public Interest and Equities Favor a Stay.**

The public interest weighs strongly against a stay and the consequent delay of the September 14 lump sum election date. MCTV's assertion that "no other party would be harmed" by a stay is incorrect.<sup>5</sup>

First, as the Wireless Bureau recently observed, a stay of the lump sum election deadline would undermine the public interest and harm third parties: "Delaying the lump sum election would create uncertainty for potential bidders, compromise the overall transition of FSS services to the upper 200 megahertz of the C-band, and could ultimately delay the availability of critical 5G wireless services to the American public."<sup>6</sup>

MCTV no doubt is aware of these concerns but its request contains only a single, conclusory sentence in response: "The [Wireless] Bureau, with the minimal stay requested would still be able to act in plenty of time so as to not impair the auction or the repack deadline."<sup>7</sup> This is not so. As the Wireless Bureau explained in detail, delay of the lump sum election deadline beyond September 14 would harm satellite operators, programmers, and prospective bidders in the C-band auction.<sup>8</sup> It would "create uncertainty for incumbent space station operators during this crucial transition period and could complicate, or even delay, their overall relocation

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<sup>4</sup> *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>5</sup> Stay Request at 4.

<sup>6</sup> ACA Stay Denial ¶ 39.

<sup>7</sup> Stay Request at 5.

<sup>8</sup> ACA Stay Denial ¶ 36.

efforts.”<sup>9</sup> Likewise, with the application window for the 3.7 GHz auction opening today, grant of a stay request would introduce “uncertainty, complicating [potential bidders’] auction strategies, and impeding their ability to plan and prepare for the financial obligations of 3.7 GHz Service licensees.”<sup>10</sup>

Ultimately, delay would threaten the success of the Commission’s carefully designed transition plan, which is critical to achieving a smooth and quick evolution to 5G in the C-band. “The cost of such delay and disruption would undoubtedly be enormous.”<sup>11</sup> For these reasons alone, MCTV cannot satisfy the stay standard, and the Wireless Bureau should swiftly deny MCTV’s request for a stay.

**B. MCTV Has Failed to Demonstrate Irreparable Harm.**

MCTV will not suffer harm, much less irreparable harm, from a denial of its stay request. MCTV argues that if it is not permitted to add existing earth station antennas to its registered sites before the lump sum deadline passes, MCTV “will be denied [its] constitutional right to reimbursement for the taking of numerous [receive-only earth stations] at duly registered sites.”<sup>12</sup> This is not a winning argument.

MCTV faces no irreparable harm from the passing of the lump sum election deadline. The lump sum payment is a voluntary alternative to reimbursement for actual relocation costs.<sup>13</sup> Incumbent earth stations that do not elect the lump sum payment will be made whole through the

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* ¶ 37.

<sup>11</sup> *Id.* ¶ 39.

<sup>12</sup> Stay Request at 4.

<sup>13</sup> *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, ¶ 31 (WTB rel. Jul. 30, 2020).

reimbursement of their actual relocation expenses. MCTV fails to identify any *actual harm* that would occur if the lump sum election deadline is maintained, “much less harm that would be certain or severe enough to be cognizable as irreparable harm.”<sup>14</sup> Any harm, moreover, would be economic, and economic loss is not irreparable harm under the stay standard.<sup>15</sup>

In any event, even were the Commission to change course and allow MCTV to register additional antennas, the Commission has well-established authority to fashion remedies in appropriate cases. The Commission could permit MCTV to make a lump sum election at a later point in time. Thus any theoretical loss stemming from a missed opportunity to elect a lump sum payment by September 14 could be remedied.

**C. MCTV Has Not Demonstrated Likelihood of Success on the Merits.**

MCTV’s stay request seeks relief of the lump sum election date pending resolution of its underlying petition for reconsideration of the Incumbent Earth Station List PN.<sup>16</sup> Upon review, MCTV’s argument that the International Bureau erred in denying its request to add additional antennas to its existing registrations is contradicted by the history of the proceeding. As the International Bureau noted, nothing in the Commission’s rules, the *C-band Order*, or public notices in the C-band proceeding “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>17</sup> As but one example, the *C-band Order* leaves open no ambiguity on the issue,

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<sup>14</sup> ACA Stay Denial ¶ 30.

<sup>15</sup> See, e.g., *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

<sup>16</sup> *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, 3 (IB rel. Aug. 3, 2020) (“Incumbent Earth Station List PN”).

<sup>17</sup> *Id.*

stating: “in order to qualify for reimbursement, *any antenna* at an incumbent earth station must also have been operational and registered in IBFS as of the relevant dates required by the [*Freeze PN*].”<sup>18</sup> The International Bureau properly denied requests to add antennas to existing registrations.<sup>19</sup> MCTV fails to show that the International Bureau committed error in enforcing the Commission’s clear directives with respect to this issue.

## II. CONCLUSION.

The Commission should swiftly deny MCTV’s request to stay the lump sum election deadline.

Respectfully submitted,

/s/ Jennifer L. Oberhausen

Jennifer L. Oberhausen  
Director, Regulatory Affairs

Thomas C. Power  
Senior Vice President and General Counsel

Scott K. Bergmann  
Senior Vice President, Regulatory Affairs

Kara Graves  
Assistant Vice President, Regulatory Affairs

**CTIA**  
1400 16th Street, NW  
Suite 600  
Washington, D.C. 20036  
(202) 736-3200

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<sup>18</sup> *C-Band Order* ¶ 201 n.539 (emphasis added).

<sup>19</sup> Incumbent Earth Station List PN at 3-4.

**CERTIFICATE OF SERVICE**

I, Jennifer L. Oberhausen, hereby certify that the foregoing Opposition of CTIA to Request for Stay was served this 9<sup>th</sup> day of September 2020 to:

Mark J. Palchick  
Rebecca J. Goldman  
Jonathan P. Garvin  
Lerman Senter PLLC  
2001 L Street, NW  
Suite 400  
Washington, DC 20036  
(202) 416-6746  
*Counsel to Massillon Cable TV, Inc.*

/s/ Jennifer L. Oberhausen  
Jennifer L. Oberhausen