

February 19, 2020

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: **Ex Parte Submission for the Record [REDACTED VERSION]**  
*Expanding Flexible Use of the 3.7 to 4.2 GHz Band*  
GN Docket No. 18-122

Dear Ms. Dortch:

IntelSat US LLC (“IntelSat”) submits this ex parte in response to the recently released draft order in the above referenced proceeding.<sup>1</sup> Although the Federal Communications Commission (“Commission” or “FCC”) is to be commended for recognizing the need to properly incentivize eligible incumbent satellite operators in order to clear the lower 300 MHz of C-band spectrum as quickly as possible, there are several aspects of the Draft Order that depart from the critical need for appropriate alignment of incentives. As a result, the framework as currently drafted greatly reduces the likelihood that the approach under consideration by the Commission would achieve clearing in the accelerated time frames envisioned, while still protecting incumbent satellite services. IntelSat addresses each of those concerns herein.

**I. The Incentive Amount Identified for IntelSat Should be Based on Relative Contribution to Accelerated Clearing and Thus Should be Increased**

In the Draft Order, the Commission proposes to provide accelerated relocation payments to eligible space station operators as an incentive to clear the spectrum according to the Phase I and Phase II accelerated timelines.<sup>2</sup> The percentage assigned to IntelSat computes to 50% of the total amount of incentive.<sup>3</sup> This percentage, however, does not accurately reflect IntelSat’s share of the contribution to clearing C-band services to the contiguous 48 states.

IntelSat agrees the most appropriate basis for the allocation of Phase I and Phase II accelerated relocation payments among eligible space station operators, is the contribution each space station operator makes toward clearing the spectrum. The Draft Order correctly notes that one objective and reasonable measure of this contribution may include the scope of encumbered earth

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<sup>1</sup> Expanding Flexible Use of the 3.7-4.2 GHz Band, Draft Report and Order and Order of Proposed Modification, GN Docket No. 18-122, FCC-CIRC2002-01 (rel. Feb. 7, 2020) (“Draft Order”).

<sup>2</sup> See *id.* at ¶ 167, ¶¶ 209-221.

<sup>3</sup> *Id.* at ¶ 219.

stations.<sup>4</sup> As explained in Exhibit A, based on a statistically significant sample of the estimated 24,372 antennas, categorized by customer and application type, we estimate that Intelsat will be responsible for transitioning 68% of all antennas.

Additionally, Intelsat believes that revenue earned with respect to the current use of C-band spectrum in the contiguous 48 states provides a reasonable proxy for every one of the factors cited by the FCC for value being created by accelerated clearing: the number of customers; the amount of encumbered spectrum; the scope of incumbent earth stations served; content-distribution revenues; population coverage of the contiguous United States; and traffic.<sup>5</sup> As shown in Exhibit B, Intelsat estimates that its share of the C-Band revenues in the contiguous 48 states is 60%. Moreover, as shown in Exhibit B, based upon fleet usage in the contiguous 48 states, Intelsat's share of C-band transponder usage is 67%.

Incentives for accelerated clearing should be properly weighted to each satellite operator's C-band services to be cleared while protecting their existing customers. Given that revenues directly and indirectly reflect substantially all of the factors cited by the FCC as providing a measure of a satellite operator's contribution toward the transition process, Intelsat believes it should properly be apportioned between 60% and 67% of the total of all acceleration payments.

## **II. The Draft Order's Allocation Between the Phase I and Phase II Acceleration Payments Is Not Appropriately Proportional**

In the Draft Order, the FCC allocates 25% of accelerated relocation payments to Phase I, and 75% of such payments to Phase II.<sup>6</sup> This allocation, however, does not follow the mathematical logic of the Draft Order and should be adjusted.

The Draft Order assumes the present value of future profits Flexible Use licensees may expect to receive from overlay licenses in 2025 is \$0.50/MHz-pop or \$43.0Bn.<sup>7</sup> Further, it assumes that the 46 Partial Economic Areas ("PEAs") to be cleared in satisfaction of Phase I comprise 77% of the total value of the lowest 100 MHz to be cleared. Therefore, of the \$43.0Bn present value in 2025, the overlay licenses with respect to the first 46 PEAs/lowest 100MHz would have a future value of \$11.8Bn, and the balance of the spectrum would have a value of \$31.2Bn. Intelsat does not take issue with any of these assumptions.

However, consistent application of the formula for calculation of the acceleration value of an income stream, as articulated in paragraph 215 of the Draft Order, would indicate the incremental value of 48 months of acceleration for Phase I, and 24 months of acceleration for Phase II, at \$4.77Bn and \$5.75Bn respectively, of the \$10.52Bn total per paragraph 216. This represents a mix of acceleration value of 45% and 55%, for Phase I and Phase II respectively, vs. 25% and 75% per paragraph 219. Intelsat believes the \$9.7Bn of accelerated relocation payments should

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<sup>4</sup> *Id.* at ¶ 218.

<sup>5</sup> *See id.* at ¶¶ 218-219.

<sup>6</sup> *Id.* at ¶ 219.

<sup>7</sup> *Id.* at ¶ 216.

be accurately allocated 45% to Phase I and 55% to Phase II for the purposes of consistent application of the *Emerging Technologies* framework.

### **III. The Contingent Requirement to Repay the Phase I Incentive Payment Should be Eliminated**

In the Draft Order the FCC states that a space station operator electing accelerated relocation under paragraph 258 who meets the Phase I deadline, but later misses the Phase II deadline, would be required to return any Phase I Payment it previously received.<sup>8</sup> Intelsat believes that the FCC's stated justification for assessing any such contingent repayment is flawed.

First, the FCC's rationale for this structure is justified by its "goal...to facilitate the expeditious deployment of next-generation services nationwide across the entire 280 megahertz...and... properly align the incentives of the space station operators to hit that target."<sup>9</sup> It certainly is the case that Phase I clearing is necessary to achieve Phase II clearing. Assuming that Phase I and Phase II payments are sized proportionately to the value of acceleration being delivered, then satellite operators' incentives are already well aligned with the FCC's goals, without the additional, unnecessary, and overly punitive requirement of a potential claw-back of the Phase I acceleration payment.

Second, this penalty concept is inconsistent with the theoretical value of such accelerated relocation payments calculated under the *Emerging Technologies* framework. Specifically, Phase I and Phase II accelerated relocation payment values are calculated based on the estimated value of the spectrum; the months of acceleration; the weighted average cost of capital; and the relative value of the 46 PEAs/lowest 100 MHz to be cleared in Phase I, versus the total value of all of the spectrum to be cleared. There is no mathematical interrelationship under this framework that provides for a change in the value of Phase I accelerated relocation payments based on whether Phase II clearing has been timely delivered or not. Simply put, if the Phase I clearing deadline has been met, purchasers of the spectrum have received the value associated with accelerated clearing and satellite operators should be paid amounts fairly earned, subject to no further contingency to repay them based on the outcome of the Phase II clearing. In order to ensure that satellite operators are properly incentivized to undertake both Phase I and Phase II clearing, without risk of later losing acceleration payments properly earned, the Commission should eliminate the contingent requirement to repay the Phase I accelerated relocation payment.

Intelsat similarly believes the requirement to post a Letter of Credit as security for the repayment of the Phase I acceleration payments<sup>10</sup> is both punitive and unnecessary for the reasons stated above. If the Phase I clearing deadline is met then the value associated with the clearing has been delivered and should not be subject to claw-back, thus eliminating the need for any security for potential repayment.

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<sup>8</sup> *Id.* at ¶¶ 173, 265.

<sup>9</sup> *Id.* at ¶ 265.

<sup>10</sup> *Id.* at ¶ 267.

#### **IV. The Penalties for Missing Accelerated Relocation Deadlines Are Unnecessarily Punitive and Will Fail to Achieve the FCC's Goals**

Intelsat does not take issue with the concept of offering both carrots and sticks to the eligible satellite operators as incentives to clear fixed satellite service ("FSS") operations out of the lower 300 MHz as quickly as possible. However, the Draft Order contemplates that Phase I and Phase II payments are reduced to zero if a satellite operator is as little as a single day late relative to the deadlines.<sup>11</sup> This represents a draconian and asymmetric application of the concept of carrots and sticks and is completely inconsistent with the mathematical calculations in the Draft Order of the value of acceleration.<sup>12</sup> As currently drafted, this penalty provision could serve as a powerful disincentive for eligible satellite operators to accelerate clearing. Simply put, a satellite operator who despite its best efforts was projected to be one day late relative to a deadline would have no incentive at all to continue to accelerate clearing. As such, this draconian penalty is not in the public interest.

Phase I accelerated relocation payments are valued based on 48 months of acceleration against the relocation deadline (as adjusted per Section IV above) of December 31, 2025 ("Relocation Deadline"). Arguably, a satellite operator who delivers the Phase I spectrum just one month before the Relocation Deadline should still be able to receive 1/48, or 2.1%, of the Phase I accelerated relocation payment. We believe an appropriate mix of carrots and sticks, would be to provide satellite operators a three-month grace period relative the Phase I acceleration deadline, following which accelerated relocation payments would be reduced by 3.0 percentage points at the end of each month, until they reach a value of zero on December 31, 2024.

Phase II accelerated relocation payments are valued based on 24 months of acceleration against the Relocation Deadline. Arguably, a satellite operator who delivers this spectrum just one month before the Relocation deadline should still be able to receive 1/24, or 4.2%, of the Phase II accelerated relocation payment. Intelsat believes that an appropriate mix of carrots and sticks would be to provide satellite operators a three-month grace period relative the Phase II acceleration deadline, following which accelerated relocation payments would be reduced by 6.7 percentage points at the end of each month, until they reach a value of zero on June 30, 2025. This change maintains appropriate incentives without creating untenable risks for satellite operators participating in the process.

#### **V. The Three Clearing Deadlines Should Each Be Moved Out Three Months Given A Lack of Critical Information to Commence Clearing**

The Draft Order establishes dates by which the clearing of the lower 300 MHz of C-band must occur. Specifically, if the satellite incumbents elect to avail themselves of the accelerated clearing incentive, the lowest 120 MHz in 46 of the top 50 PEAs must be cleared by September 30, 2021, and the lower 300 MHz of C-band must be cleared nationwide by September 30, 2023 (both amounts inclusive of a 20 MHz guard band).<sup>13</sup> If the satellite incumbents do not avail themselves of the accelerated clearing incentive, then the lower 300 MHz must be cleared nationwide by the

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<sup>11</sup> See *id.* at ¶ 167.

<sup>12</sup> See *id.* at ¶¶ 215-216.

<sup>13</sup> *Id.* at ¶ 169.

five-year sunset deadline of September 30, 2025 or the satellite incumbents would be subject to potential fines.<sup>14</sup> However, as explained below, the first accelerated deadline—September 30, 2021—is a mere 15 months after the June 26, 2020 date when the acceleration is contemplated to commence. The original proposal from Intelsat and other satellite operators indicated 18 months was required.<sup>15</sup>

Although Intelsat is prepared to execute against the 18 months proposed for the Phase I clearing of the lower 120 MHz and 36 months for Phase II clearing, the clock cannot start until key decisions that logically must be made prior to the start of clearing may occur. The most salient such decision is the decision by the incumbents *whether to even accelerate the transition or not* based on the overall framework the FCC adopts. The Draft Order states that at least 80% the incentive payment must be accepted in order for the Phase I and Phase II acceleration deadlines to apply.<sup>16</sup> Yet that decision will not be known until June 26, 2020, when the Wireless Telecommunications Bureau will issue a Public Notice announcing whether sufficient elections have been made to trigger early relocation or not.<sup>17</sup> It is only logical that the 18-month Phase I period run from that date, when it will be known to all incumbent satellite operators that there is an accelerated clearing and Phase I and Phase II deadlines are operative. Further, it makes little sense for any individual satellite operator to commence the clearing process before it is even required to indicate its intent to accept the accelerated relocation payments.

Intelsat therefore urges the Commission to instead start the 18-month Phase I deadline when the critical gating acceleration decision is announced, and to conform the remaining deadlines accordingly. This would result in transition deadlines of December 31, 2021, December 31, 2023, and December 31, 2025, respectively. These suggested revised deadlines are more likely to be perceived as fair and executable by the satellite operators and, therefore, create a higher likelihood of accelerated clearing, which Intelsat believes to be in the public interest.

#### **VI. To Support the New Target Dates, Critical Decisions Are Needed Sooner Than the Draft Order Envisions**

To begin clearing the spectrum, satellite operators require key foundational elements of the transition plan to be in place. Intelsat believes that it is critical that the Commission adopt more aggressive timelines for the following aspects of the Draft Order to provide greater certainty to the satellite operators, earth station owners, and the programmer/broadcast community. Subject to adoption of each of the adjustments to the Draft Order provided below, Intelsat believes the adjusted deadlines recommended in Section IV above are supportable and executable. Failing adoption of these adjustments, Intelsat believes the deadlines should be appropriately further adjusted.

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<sup>14</sup> *Id.* at ¶ 155, ¶¶ 174-176.

<sup>15</sup> See Comments of the C-Band Alliance, GN Docket No. 18-122 (Oct. 29, 2018) at 2 (“[clearing] can be completed within 18-36 months of a final Commission order”).

<sup>16</sup> Draft Order at ¶ 259.

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

#### **A. Public Notice Regarding the Lump Sum Payment to Earth Station Operators That Elect to Opt-Out**

The Draft Order provides incumbent earth station operators with a choice to either “accept reimbursement for all reasonable relocation costs by maintaining satellite reception or ... accept a lump sum reimbursement for *all* their incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations.”<sup>18</sup> However, clearing cannot reasonably begin until all parties know which earth stations will take the lump sum payment and which require coordination and assistance by the satellite operators. Until the satellite operators have this information, they cannot efficiently plan the 18-month transition because the number of a customer’s affiliates that will be impacted will almost certainly affect the transition schedule—as well as affect the number of passband filters that will need to be ordered and installed. But, according to the Draft Order, that critical information for planning purposes may not be known until sometime *well after September 30, 2020*, when the Wireless Telecommunications Bureau is tasked with issuing a Public Notice to set the lump sum payment.<sup>19</sup> Intelsat therefore asks the Commission to move the deadline for the Wireless Bureau to issue the Public Notice of the lump sum amount from September 30, 2020 to June 26, 2020.

The Commission should also set a deadline—Intelsat proposes 30 days after the lump sum Public Notice is issued—for earth station operators to elect whether to opt in or take the lump sum. This process is needed so that satellite operators have a defined list of targets for clearing. Intelsat further suggests that earth station incumbents that fail to respond by the opt-out deadline should be deemed to have agreed to accept the equipment costs reimbursement associated with continuing to operate in C-band post clearing of both Phase I and Phase II.

Additionally, Intelsat reminds the Commission that the C-Band Alliance, when advocating for a market-based approach, went to great lengths to outline normal and reasonable anticipated costs for various activities at the earth stations and that information should be considered for purposes of benchmarking costs. The Schedule of Reimbursable Costs included in the Customer Commitment filed by the C-Band Alliance has been on the record of this proceeding for nearly a year.<sup>20</sup> The Commission should consider using those rates on a per antenna basis as the foundation for determining the lump sum payment.

#### **B. Relocation Payment Clearinghouse Selection Timeline**

The Draft Notice states that the Commission will create a committee of stakeholders to select a Relocation Payment Clearinghouse (“Clearinghouse”).<sup>21</sup> All parties responsible for clearing, however, would benefit from an earlier creation of such Clearinghouse. Without an established Clearinghouse in place, parties are left to determine on their own what will reasonably be covered

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<sup>18</sup> *Id.* at ¶ 201.

<sup>19</sup> *See id.*

<sup>20</sup> *See* Letter from Henry Gola, Counsel to C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019), Attachment A.

<sup>21</sup> *See* Draft Order at ¶¶ 242-243.

by the proceeding without any avenue for guidance or approval, which puts them at risk with respect to reimbursement. Additionally, without a Clearinghouse established, parties that reach an impasse early in the clearing process have no path to remediate or escalate disputes or potential problems quickly, which could slow the transition. Intelsat strongly urges the Commission to establish the search committee by March 31, 2020 (rather than June 1, 2020) and to require that it report findings to the Commission by June 26, 2020 (rather than September 30, 2020).

### **C. Relocation Coordinator Selection Timeline**

The Draft Notice states that if eligible satellite operators elect to accept accelerated relocation payments, the Commission will utilize a Relocation Coordinator, selected by a search committee of such operators, to ensure that the operators are relocating in a timely manner.<sup>22</sup> One of the Relocation Coordinator's duties would be to "review the transition Plans filed by the eligible space station operators and recommend any changes to those plans to the Commission to the extent needed to ensure a timely transition."<sup>23</sup> The Draft Order calls for the search committee to notify the Commission of its choice no later than September 30, 2020,<sup>24</sup> but under the terms of the Draft Order, the transition plans are due to be filed with the Commission by the satellite operators by July 13, 2020.<sup>25</sup> Given that changes to the plans recommended by the Relocation Coordinator after the work has begun could be highly impactful to a satellite operator's ability to complete the work on time, Intelsat does not believe this timing will work and should be adjusted. Review of the plans and coordination of the overall work must align to the start of the work. Intelsat therefore urges the Commission to change the search committee's notification date from September 30, 2020 to July 13, 2020 so that the Relocation Coordinator can review the transition plans before the transition actually begins.

### **VII. Intelsat Will Require Its Own TT&C Sites**

Because the Draft Order does not contemplate a meaningful role for the C-Band Alliance, efforts by Intelsat and SES to operate joint telemetry, tracking, and control ("TT&C")/Gateway sites are not likely to move forward. As such, Intelsat proposes that two of the TT&C/Gateway sites allotted to C-Band Alliance members in the Draft Order be granted to Intelsat. Intelsat also will require a third site for disaster recovery, which it plans to build outside of the United States. The third Intelsat site will not impact Flexible Use licensee operations, but the costs for the site will be submitted for reimbursement.

### **VIII. The Order Should Reflect That There Will be No C-Band Alliance Going Forward**

As noted above, the Draft Order does not contemplate a meaningful role for the C-Band Alliance. The FCC will determine terms and conditions of the auction, establish a clearinghouse for distribution of payments, and determine eligible cost reimbursements to incumbents, while each operator will be individually responsible for all clearing obligations as determined by the FCC. As

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<sup>22</sup> See *id.* at ¶¶ 273-275.

<sup>23</sup> *Id.* at ¶ 279.

<sup>24</sup> *Id.* at ¶ 277.

<sup>25</sup> *Id.* at ¶ 270.

such, the C-Band Alliance will not be relevant to serving the functions that it contemplated in its proposal. As the C-Band Alliance stated in its December 7, 2018 submission to the FCC, “[t]he C-Band Alliance exists for the sole purpose of carrying out the Market-Based Approach.”<sup>26</sup>

Accordingly, to be consistent with the construct of the Draft Order, where the Draft Order treats the C-Band Alliance as a single entity, it should instead treat Intelsat, SES, and Telesat as individual companies. Specifically, Intelsat requests that the Commission revise the grant of joint representation on the currently seven-member Clearinghouse search committee<sup>27</sup> to include the direct representation of Intelsat.

**IX. The Commission Should Clarify When Accelerated Relocation Payments Will be Made to the Satellite Operators and That Financing Costs Will be Reimbursable**

The Commission states that, following the filing of a Certification of Accelerated Clearing, Flexible Use licensees will make their accelerated relocation payments to the Clearinghouse within 60 days.<sup>28</sup> And while the Draft Order is clear that the Clearinghouse will “collect and distribute the accelerated relocation payments,”<sup>29</sup> the Draft Order is silent on the question of when such distribution will occur. Intelsat requests that the Commission clarify this point. Additionally, Intelsat requests that the Commission clarify that the cost of financing clearing costs needed for the transition will be a reimbursable expense, consistent with the position the Commission took in the broadcast incentive auction.<sup>30</sup>

**X. The Technical Protections in the Draft Order Are Likely to Result in Substantial Interference to Remaining FSS Operations**

Intelsat shares the concerns of the National Association of Broadcasters and the Content Companies that the technical rules set forth in the Draft Order will not be sufficient to protect remaining FCC operations—including critical TT&C operations—from harmful interference from Flexible Use operations.<sup>31</sup> Intelsat will be meeting with FCC staff about these concerns and expects to put additional information on the record shortly.

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<sup>26</sup> Reply Comments of the C-Band Alliance, GN Docket Nos. 18-122 and 17-183, RM Docket Nos. 11791 and 11778, at 2 (Dec. 7, 2018) (emphasis omitted).

<sup>27</sup> See Draft Order at ¶ 243.

<sup>28</sup> *Id.* at ¶ 268.

<sup>29</sup> *Id.*

<sup>30</sup> See *FCC Post-Auction Reimbursement: Broadcaster Frequently Asked Questions* (Apr. 13, 2017) at 14, available at <https://www.fcc.gov/sites/default/files/reimbursement-faqs-07242018.pdf>.

<sup>31</sup> See Letter from Patrick McFadden, Associate General Counsel, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Feb. 14, 2020) at 4.

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Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Michelle V. Bryan

Michelle V. Bryan  
Executive Vice President, General Counsel and Chief  
Administrative Officer

Susan H. Crandall  
Associate General Counsel

**Exhibit A**  
**Intelsat's Percentage of Antennas to be Cleared**

Using the licensed/registered C-band earth stations in International Bureau's Filing System and our visual verification of antennas at those sites located in the contiguous 48 states, Intelsat counts 24,372 antennas on those sites. We then categorized the sample into groups of antennas according to our understanding of their actual use—e.g., cable, broadcast, radio, religious broadcasters, etc. For each category, Intelsat then assumed that it will be responsible for clearing a percentage of antennas roughly equal to Intelsat's market share in each respective category. For example: if there are X number of cable antennas, and Intelsat has Y% percent of total cable customers, Intelsat multiplied X by Y to derive Intelsat's percentage of that category's antennas. When the Intelsat percentage of each category was added together, the total that Intelsat would be responsible for clearing came to 67.53%.

**Exhibit B**  
**Intelsat's share of C-band services to the contiguous 48 states**

**[EXHIBIT REDACTED]**