

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

In the Matter of)	
)	
Expanding Flexible Use of the)	GN Docket No. 18-122
3.7 GHz Band)	
To: The Commission		

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

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July 3, 2019

Table of Contents

Summary.....	ii
Introduction.....	1
I. RECEIVE-ONLY EARTH STATION REGISTRATIONS ARE AN EXERCISE OF THE COMMISSION’S ANCILLARY JURISDICTION	3
II. THE SCOPE OF PROTECTION FROM HARMFUL INTERFERENCE IS LIMITED TO REGISTRATION AND COORDINATION	6
III. SECTION 316 DOES NOT APPLY TO CHANGES TO EARTH STATION REGISTRATIONS OR COORDINATION PROCESSES	8
IV. RECEIVE-ONLY EARTH STATION OPERATORS DO NOT HAVE “LICENSED SPECTRUM USAGE RIGHTS”	9
A. Title III Licenses Undoubtedly Confer “Licensed Spectrum Usage Rights”	10
B. Receive-Only Earth Station Registrations Do Not Confer Any Rights Sufficient To Constitute “Licensed Spectrum Usage Rights”	11
C. Contrary Readings Incorrectly Assume Registrations Are The Equivalent Of Licenses And Lead To Absurd Results The Commission Already Rejected	12
D. The Commission Can, However, Require That New C-Band Licensees Provide Compensation To Earth Station Operators	14
V. AUTHORIZING SHARING WITH P2MP FIXED SERVICE IS IN THE PUBLIC INTEREST	15
Conclusion	17

Summary

The Public Notice released May 3, 2019 asks questions crucial to the Commission's disposition of this proceeding – questions about the nature of satellite and earth station operators' rights. With regard to earth station operators, the answers to these questions define the extent of the Commission's authority to protect them from harmful interference or provide them with payments to compensate for the modification or relocation of their facilities. Some commenters in this proceeding have tried to reverse engineer these definitions to satisfy their preferred policy outcome. Others have exaggerated the scope and nature of earth station protection from interference by insisting on a mythologized account of these rights that bears little relation to 40 years of consistent Commission precedent.

WISPA believes that the best way to answer the Commission's questions is found in long-standing precedent holding that receive-only earth stations do not have license rights under Title III of the Communications Act of 1934, as amended ("Act"). Their registration rights are not a sweeping grant of authority to use C-band spectrum to transmit, but are rather an exercise of the Commission's ancillary authority under Title I of the Act for the limited purpose of providing a mechanism for interference protection. The Commission's decisions repeatedly state that the scope of this discretionary interference protection is defined by the obligation of earth station operators to coordinate with licensed Fixed Service providers that also occupy the band.

The Commission is thus not obligated to observe the process and limitations of Section 316 when considering changes that it could make to receive-only earth station registrations. It could elect to fundamentally change the nature of protection afforded by the registration. Or, in recognition of the substantial investment made by earth station operators and the important

consumer benefits enabled by their facilities, the Commission could decide to tailor such changes to preserve service quality and minimize disruption as a further exercise of its ancillary authority.

Moreover, the nature of these registrations precludes receive-only earth station operators from holding “licensed spectrum usage rights” as that term is used in Section 309(j) of the Act. “Usage rights” of licenses under Title III means the right of licensees to use the spectrum for transmission – a bundle of rights far broader than a receive-only earth station’s interference protection narrowly defined by coordination rights. A contrary reading does not make sense under the Act and would imply the absurd result that every passive receiver could be considered to have a usage right in spectrum equivalent to that held by Title III licensees.

Nevertheless, the Commission does have authority to require new flexible-use C-band licensees to compensate receive-only earth station operators for modifying or relocating their registered facilities in exchange for clearing a portion of the band, consistent with how it has exercised that authority in past auctions. Earth stations will continue to play a vital role in the infrastructure necessary to deliver video programming to consumers and represent many millions of dollars of investment. As such, and as has already been explained on the record, the Commission should exercise its discretion to provide such compensation as part of a Commission-administered auction.

The background necessary to answer these questions highlights the importance of the Commission acting on the proposals advanced in the Petition for Rulemaking filed by the Broadband Access Coalition (“BAC”). Fixed Service has a co-primary allocation in C-band and the right to use the spectrum for transmission. The BAC proposes a simple, feasible, and compelling way to expand fixed broadband access to more than 80 million Americans quickly, and in a way that will demonstrably protect the interests of receive-only earth station operators.

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To: Chief, International Bureau
Chief, Wireless Telecommunications Bureau

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”)¹ hereby submits its Comments in response to the invitation from the International Bureau and the Wireless Telecommunications Bureau (collectively, “Bureaus”) to supplement the record as requested by the Public Notice (“*Public Notice*”) released May 3, 2019 in the above-captioned proceeding.²

Introduction

Two years ago, the Broadband Access Coalition (“BAC”) – co-founded by WISPA – filed a Petition for Rulemaking seeking to share the 3700-4200 MHz band among fixed wireless point-to-multipoint (“P2MP”) and satellite earth stations, subject to coordination to protect earth stations from harmful interference.³ This spectrum, adjacent to and similar in its propagation

¹ WISPA is the trade association that represents the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses, and anchor institutions across the country. WISPA’s members include more than 800 WISPs, equipment manufacturers, distributors and other entities committed to providing affordable and competitive fixed broadband services. WISPs use unlicensed, lightly-licensed and licensed spectrum to deliver last-mile broadband and voice services to more than four million people, many of whom reside in rural, unserved, and underserved areas where wired technologies, such as FTTH, DSL and cable Internet access services may not be available.

² Public Notice, *Expanding Flexible Use of the 3.7 GHz Band*, GN Docket No. 18-122, DA 19-385, 84 Fed. Reg. 25514 (rel. May 3, 2019).

³ Broadband Access Coalition, *Petition for Rulemaking to Amend & Modernize Parts 25 & 101 of the Commission’s Rules*, RM-11791 (filed June 21, 2017) (“BAC Petition”).

characteristics to Citizens Broadband Radio Service (“CBRS”) spectrum, could provide ample spectrum for robust fixed wireless deployments with near-gigabit speeds, especially in rural America where there are fewer satellite earth stations and thus a significant amount of unused C-band spectrum and geographic area.

Since then, C-band satellite operators proposed a private sale of the spectrum to hasten its use for 5G mobile broadband, and the Commission opened the present rulemaking proceeding, asking whether and how (1) the lower part of the band might be made available for flexible use and (2) the remainder of the band could be shared with P2MP services.⁴ BAC, WISPA and others have shown through numerous filings that P2MP sharing is technically feasible and spectrally efficient, and will serve as a powerful driver of rural broadband deployment and adoption.⁵ At a time when consumer demand for spectrum-based services is rapidly expanding, the words of Commissioner Michael O’Rielly should guide the Commission’s consideration of the important issues in this proceeding: “We no longer have the luxury of over-protecting incumbents via technical rules, enormous guard bands, or super-sized protection zones. Every megahertz must be used as efficiently as possible.”⁶

Within the next several days, WISPA and others will be filing an extensive, sophisticated technical study conducted by Virginia Tech further validating that co-channel sharing – let alone non-co-channel sharing – between earth stations and P2MP is easy to accomplish, will require

⁴ *Expanding Flexible Use of the 3.7-4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915 (2018).

⁵ See, e.g., Comments of The Broadband Access Coalition, GN Docket No. 17-183 (filed Oct. 2, 2017); Reply Comments of The Broadband Access Coalition, GN Docket No. 17-183 (filed Nov. 15, 2017); Comments of The Broadband Access Coalition at 2-3 (“BAC Comments”); Reply Comments of The Broadband Access Coalition at 8-13, 14-19, 22-33; Comments of Google at 2-10; Comments of Microsoft at 2-4, 9-11; Comments of the Public Interest Spectrum Coalition at 5-12, 12-22.

⁶ Remarks of Commissioner Michael O’Rielly Before the Wi-Fi Alliance Annual Member Meeting (June 4, 2019) at 4.

few, if any, modifications to current earth station operations.⁷ The report relies on conservative estimates and standard-based assumptions in concluding that co-channel coexistence among P2MP and receive-only C-band earth stations will create significant opportunities for more than 80 million Americans in 78 percent of the geographic area of the country to access gigabit or near-gigabit service. The greatest availability of this currently underutilized spectrum will be in rural areas where earth stations are less prevalent.

The *Public Notice* asks questions about the nature of receive-only earth station rights under the Communications Act of 1934, as amended (“Act”), and the Commission’s regulations. These comments explain that well-established Commission precedent limits receive-only earth station operators to a narrow right of protection against interference under Title I of the Act. As such, the Commission has broad discretion to determine the extent of those interference rights outside of the requirements of Section 316 applicable to licenses. Moreover, while receive-only earth station operators do not hold “licensed spectrum usage rights,” the Commission can require new C-band licensees to provide compensation to earth station operators should they be required to modify or relocate their facilities.

Discussion

I. RECEIVE-ONLY EARTH STATION REGISTRATIONS ARE AN EXERCISE OF THE COMMISSION’S ANCILLARY JURISDICTION

The Bureaus ask questions about the scope of interference protection afforded to receive-only earth stations, whether Section 316 of the Act applies, and whether earth station operators hold “licensed spectrum usage rights.”⁸ To answer these questions, it is first necessary to

⁷ A summary of the Virginia Tech study, conducted by Reed Engineering, was presented at the National Press Club on July 2, 2019. A video of Dr. Jeffrey Reed’s presentation is available here: <https://vimeo.com/345824966>.

⁸ *Public Notice* at 5.

establish exactly what rights receive-only earth station operators hold. The Commission's precedent from well before 1991 makes clear that the Commission conceived of these rights as much more limited in scope than license rights under Title III of the Act.

In 1979, the Commission took the first step toward loosening requirements for receive-only earth stations by changing from mandatory licensing to voluntary licensing.⁹ In doing so, the Commission explained that in order to make "protection from interference available" it could exercise its ancillary jurisdiction under the Commission's Title I authority.¹⁰ The Commission reasoned that the Act did not compel a mandatory regime based on the wording of Title III: while Section 301 requires any person using or operating "any apparatus for the *transmission* of energy or communications or signals" to obtain a license, "by definition, [receive-only earth stations] do not transmit."¹¹ The Commission thus instituted a voluntary regime because "we continue to believe that the power to regulate receive-only earth stations is ancillary to our other regulatory responsibilities to maximize effective use of satellite communications."¹²

The Commission considered the argument that because the definition of "radio communication" includes "all instrumentalities, facilities, apparatus and services . . . incidental to such transmission,"¹³ licensing might nevertheless be required by Section 301 if receive-only earth stations were considered "incidental" to transmission."¹⁴ The Commission flatly rejected that suggestion, reasoning that "the full extension of that argument would be unreasonable because it would require that all television and radio receivers be licensed as well as receive-only

⁹ *Regulation of Domestic Receive-Only Satellite Earth Stations*, 74 F.C.C.2d 205 (1979).

¹⁰ *Id.* at ¶ 31.

¹¹ *Id.* (emphasis added). The Commission then noted that all parties commenting on the matter, including the Department of Justice, agreed. *Id.* at ¶ 31 n.22.

¹² *Id.*

¹³ 47 U.S.C. § 153(40)

¹⁴ *Regulation of Receive-Only Satellite Earth Stations*, 74 F.C.C.2d at ¶ 31.

stations. We therefore conclude that licensing of receive-only earth stations is not mandated by the Act.”¹⁵

Subsequently, the Commission streamlined its voluntary licensing processes¹⁶ and eventually converted voluntary licensing to voluntary registration, pointing out, as the *Public Notice* states, that registration would provide the same protection as the prior regime.¹⁷

The Commission has thus squarely addressed the nature of the rights afforded by receive-only earth station registrations. Registrations offer interference protection, but in no way are intended – nor have they ever been intended – to provide a right to transmit or carry any of the other trappings of a Title III right to use spectrum. This is plain from the face of the regulations: “The registration of a receive-only earth station results in the listing of an authorized frequency band at the location specified in the registration.”¹⁸ Before 1991, the Commission styled its procedure as a licensing regime, but also made clear that the procedure was nothing more than an exercise of the Commission’s ancillary jurisdiction for the limited purpose of providing interference protection. The Commission did not take away any interference protection from receive-only earth station operators in 1991, nor did it grant them any different type of protection or somehow convert Title I registrations into Title III licenses.¹⁹

¹⁵ *Id.*

¹⁶ *Deregulation of Domestic Receive-Only Satellite Earth Stations*, Second Report & Order, 104 F.C.C.2d 348 (1986).

¹⁷ *Public Notice* at 6, quoting *Amendment of Part 25 Order*, 6 FCC Rcd 2806, 2807 (1991).

¹⁸ 47 C.F.R. § 25.131(f).

¹⁹ The Commission did retain “licensing” for receive-only earth stations that receive signals from non-U.S. satellites not approved for market access, but that does not convert receive-only earth station registration or licensing into an exercise of Title III authority. The more extensive licensing application process was retained because it was the only opportunity for the Commission to examine factors related to the non-U.S. satellite and protect against non-U.S. interference with U.S. downlink transmissions. See *Amendment to the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic & International Satellite Service in the United States*, Report & Order, 12 FCC Rcd 24094, 24179-180 (1997). Clearly, and notwithstanding the use of the term “license,” this subset of receive-only earth stations did not somehow get broader rights or a qualitatively different authorization than that provided to the vast majority of receive-only earth stations under the registration process.

II. THE SCOPE OF PROTECTION FROM HARMFUL INTERFERENCE IS LIMITED TO REGISTRATION AND COORDINATION

To understand the scope of interference protection provided to receive-only satellite earth stations, it is important to recall the context in which the Commission originally formulated its rules – the 1970s, during which time point-to-point licenses were already authorized and links were in operation in the C-band and receive-only earth stations were relatively new to the band. While the Commission clearly saw the importance of encouraging satellite use of the band, it was also clearly aware that terrestrial Fixed Services operated on a co-primary basis. This was not a situation where the Commission sought to supplant one service with another, but instead a situation where the Commission was making it possible for two important services to co-exist on a coordinated, non-interfering basis.

This environment is reflected in the regulations and the Commission’s orders. Receive-only satellite earth stations do not obtain interference protection as a matter of statutory right, but rather only as a function of registration under the Commission’s rules. The Commission has repeatedly stated this. In 1979, the Commission emphasized that “[w]e wish to make it very clear that *no* interference protection is afforded to unlicensed facilities,” and that “[e]lection not to coordinate [by an earth station] is a waiver of any right of objection and acceptance of any existing or future interference.”²⁰ The Commission thus based the purpose and importance of registration on the function of interference protection.

With registration, an earth station operator could then obtain protection, but only to the extent agreed with Fixed Service licensees: “Interference protection levels are those agreed to during coordination.”²¹ Indeed, the Commission’s rules still reflect not just an even-handed

²⁰ *Regulation of Domestic Receive-Only Satellite Earth Stations* at ¶ 38 (emphasis in the original).

²¹ 47 C.F.R. § 25.131(f)

approach to establishing interference protection, but actually places the responsibility on earth station operators to select “site and frequencies for earth stations . . . to minimize the possibility of harmful interference between the sharing services.”²² In 1986, the Commission underscored the importance of engaging with Fixed Service operators, stating “[f]ailure to respond to a coordination request from a terrestrial applicant constitutes acceptance of any interference that might be caused to a [receive-only earth station].”²³

Overall, however, the Commission repeatedly emphasized that its coordination requirements were intended to accommodate and encourage both services. The original expression of C-band coordination rules, including “full-band, full-arc” coordination dating to 1970 makes this clear:

. . . the procedure for coordination . . . makes the assumption that each earth station and each radio relay station within the coordination distance contours utilizes the entire pertinent frequency band or bands. Also, an earth station may be planned to point at more than one satellite location. Since the 4- and 6-GHz bands are coequally shared between the communication-satellite service and the fixed common carrier service, *the above assumption is made to allow for flexibility and growth in both services.* Applicants should therefore endeavor to find suitable locations for earth stations that present the least amount of potential interference problems. . . . Readjustments to certain stations in the terrestrial network may be a solution in some cases.²⁴

These original expressions of the mutual obligations on C-band users sound far more balanced, objective and fair than the repeated, broad assertions of spectrum dominance reflected in earth station operator comments in this proceeding.²⁵ Reading the record, one could easily surmise that “full-band, full-arc” coordination was solely intended to shove Fixed Service aside to protect earth station operators and their operational flexibility. But that would be a mistake,

²² 47 C.F.R. § 25.203(a).

²³ *Deregulation of Domestic Receive-Only Satellite Earth Stations* at ¶ 17 n.32.

²⁴ *Establishment of Domestic Satellite Facilities by Nongovernmental Entities*, Report & Order, 22 F.C.C.2d 86, ¶ 35 (1970) (emphasis added).

²⁵ See, e.g., Comments of the Satellite Industry Association at 20-24; Reply Comments of The National Association of Broadcasters at 9-10.

given orders and regulations that consistently emphasize the importance of both services and the prerogatives of the Commission.²⁶

For reasons rooted firmly in the Commission’s longstanding policies surrounding introduction of satellite services into the C-band, the scope of interference protection for receive-only earth station facilities is limited by registration, and then by the terms of coordination with Fixed Service licensees. Moreover, given that the entire process was established as an exercise of the Commission’s ancillary jurisdiction, the Commission is free to change these procedures as they may be applied to earth station operators – including the outdated and overprotective “full-band, full-arc” coordination process that has led to gross underutilization of the band for Fixed Services – should the Commission find it in the public interest to do so.

III. SECTION 316 DOES NOT APPLY TO CHANGES TO EARTH STATION REGISTRATIONS OR COORDINATION PROCESSES

Section 316 of the Act specifies the process whereby the Commission can modify “licenses,” and the Commission may not use its authority under Section 316 to fundamentally change licenses.²⁷ The Bureaus have asked whether Section 316 imposes any obligations on the Commission vis-à-vis receive-only earth station registrations and licenses.

The only answer possible under the Commission’s own orders discussed above is none whatsoever. Whatever it may call them, the discretionary registrations at issue no more come with statutory rights protecting against fundamental changes than they come with a right to transmit or any of the other rights under Title III. Of course, should the Commission decide to

²⁶ See *American Satellite Corp.*, Memorandum Opinion, Order & Authorization, 72 F.C.C.2d 750, 753-54 (1978) (full-band/full-arc protects “our flexibility and that of the satellite operator”); *RCA Global Communs. Inc.*, 56 F.C.C.2d 660, 694 n.32 (1975) (rejecting a limited arc because “[w]e do not intend to allow such earth station restrictions to limit our flexibility in the assignment of orbital locations to domestic satellites”).

²⁷ 47 U.S.C. § 316; *Cellco Partnership v. FCC*, 700 F.3d 534, 543-544 (D.C. Cir. 2012).

modify the process around receive-only earth stations, it must follow the Administrative Procedures Act (“APA”) and may not, for example, act in an arbitrary or capricious way, or abuse its discretion.²⁸ But regardless of the general restrictions imposed by the APA, other federal law, or the Constitution, the Commission is in no way bound to observe Section 316 when dealing with the receive-only earth station registration and coordination process it created.

Even though Section 316 may not apply directly, the Commission could decide to recognize the substantial investment in earth station facilities and so exercise its discretion to limit changes to provide protection for these facilities. If it does decide to limit changes, the Commission should be clear that it is doing so as a further exercise of its Title I discretionary authority so as to avoid or at least limit future misrepresentations, exaggerations, and intentionally sowed confusion regarding the scope and nature of receive-only earth station rights.

IV. RECEIVE-ONLY EARTH STATION OPERATORS DO NOT HAVE “LICENSED SPECTRUM USAGE RIGHTS”

As the *Public Notice* states, the Act does not define what “licensed spectrum usage rights” means as used in Section 309(j)(8).²⁹ Rather than cherry-pick different parts of the Act’s various definitions to force a preferred but internally inconsistent outcome, the better approach is to first determine why the term “licensed spectrum usage rights” would apply without question to licenses issued under Title III, then show by comparison why that term would not apply to receive-only earth station registrations, and only then examine what authority the Commission might nevertheless have to compensate receive-only earth station operators.

²⁸ See 5 U.S.C. § 706.

²⁹ *Public Notice* at 5.

A. Title III Licenses Undoubtedly Confer “Licensed Spectrum Usage Rights”

At a minimum, the term “licensed spectrum usage rights” must encompass mandatory licenses granted pursuant to the Commission's authority under Section 301, as otherwise Section 309(j)(8) would make no sense. As part of Title III, it is logically and structurally consistent that the “licensee” and rights referred to in Section 309(j)(8) would mean a recipient of a license under that Title’s licensing authority.

The language of Section 301 and Title III repeatedly characterizes licenses in terms of their “use” and thus buttresses this conclusion. Section 301 requires that the Commission issue a license to authorize “use” of spectrum for “transmission” and so hinges not on some abstract concept of “use” for any purpose, but rather on “use” of spectrum for the specific purpose of transmission: “No person shall *use or operate* any apparatus for the *transmission* of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”³⁰ Title III then repeatedly refers to “use” of licenses in the context of transmission: for example, the Commission will “determine the power which each station will use”; the Commission will “regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and the apparatus therein”; applications must set forth “the frequencies and the powers desired to be used.”³¹

Finally, this reading of “licensed spectrum usage rights” makes sense given Congress’s intent when it created incentive auctions under Section 309(j): the creation of a mechanism

³⁰ 47 U.S.C. § 301 (emphasis added).

³¹ 47 U.S.C. §§ 303(c), 303(e), 308(b).

whereby currently licensed users (i.e., transmitters) could be induced to surrender their licenses and clear the way for newly licensed users (again, i.e., transmitters).³²

B. Receive-Only Earth Station Registrations Do Not Confer Any Rights Sufficient To Constitute “Licensed Spectrum Usage Rights”

This analysis also shows, by contrast, that receive-only earth station registrations do not have “licensed spectrum usage rights.” Registration confers one thing only: protection from harmful interference from co-primary Fixed Services pursuant to registration and coordination. It may be argued that receive-only earth stations “use” the spectrum to passively receive signals, but this is in no way a licensed right to use the spectrum to transmit as conceived of under Title III and required by Section 309(j)(8). To be clear, no other right is provided for in the regulations, which characterize the process and the resultant right narrowly: receive-only earth stations “may be registered with the Commission in order to protect them from interference” and “[t]he registration of a [receive-only earth station] results in the listing of an authorized frequency band at the location specified in the registration.”³³ The Commission created this regime to address the very specific problem of co-primary interference in a band and to encourage the deployment of satellite services – it did not intend to create a set of rights co-equal with radio licensees and, in fact, specifically disclaimed any such intent in 1979 and consistently thereafter.

Notably, there is no indication in the text of Section 309(j)(8) that Congress intended the Commission to interpret the term broadly to encompass anything outside of licenses issued under Section 301. Nor should there be, given what Section 309(j)(8) was meant to accomplish. The right to receive incentive auction payments is a significant benefit – an exception to the normal

³² WISPA notes that under its analysis Section 309(j)(8) would have equal application on its terms between exclusive and non-exclusive licenses.

³³ 47 C.F.R. §§ 25.131(b), (f).

regime of forward auctions intended to facilitate repurposing of spectrum in an efficient manner in specific situations. If Congress had intended to extend that benefit not only to Section 301 licensees but to anyone within the ambit of the Commission’s discretionary Title I authority, it would have said so and did not.

Thus, because receive-only earth station Title I registrations are far narrower than the usage rights granted to Title III licenses, and crucially do not include any right to “use” the spectrum for “transmission,” receive-only earth station operators cannot be considered to have “licensed spectrum usage rights” under Section 309(j)(8).³⁴

C. Contrary Readings Incorrectly Assume Registrations Are The Equivalent Of Licenses And Lead To Absurd Results The Commission Already Rejected

Arguments based on misapplication of the Act’s definitions, rather than the plain wording and intent of Section 309(j)(8), do not change this result.

A “license” is defined as “instrument of authorization . . . for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission” and that “transmission of energy . . . by radio” is defined to include “both such transmission and all instrumentalities, facilities and services incidental to such transmission.” As such, it might be argued that whatever the Commission calls it, a receive-only earth station registration is, in fact, a “license” because transmission of energy by radio includes facilities “incidental” to transmission.

On examination, though, this argument falls apart in the face of the Commission’s 1979 decision that receive-only earth stations were not “incidental” to transmission and thus did not

³⁴ WISPA does not argue that the Commission cannot conduct any incentive auction. But the Commission could not conduct an incentive auction or provide these operators a share of the proceeds from the incentive auction on the premise that they hold “licensed spectrum usage rights.”

require a license under Section 301.³⁵ And the Commission’s reasoning holds up 40 years later: if the Commission had reached the opposite conclusion, then every television, every radio, and every other passive receiver for every other service would, under the unavoidable language of Section 301, *require* a license from the Commission, as every passive receiver would then be considered the equivalent of a transmitter. This is why the Commission rejected such a reading. Today, the reasoning rejecting such a reading is even more compelling given that were the Commission to accept it, then the Commission could reasonably expect dozens of interest groups to demand that their passive receivers be given similar Title I “licenses” with cognizable rights to payouts under Section 309(j)(8). This is an even worse result than the Commission feared in 1979, as it would hold out the promise of an entitlement for hundreds of millions of receivers and render auctions virtually unworkable across huge swaths of spectrum.

Nor does the fact that a license may include instruments not termed a “license” help the argument. This just recognizes that while the Commission may use different terms, any instrument authorizing the use of an apparatus for transmission is necessarily treated like a license under Section 301. But in this case the Commission was not required to create Title III licenses for receive-only earth station operators and clearly stated that it did not intend to do so.

In the end, this argument simply cobbles together definitions for the purpose of arriving at a conclusion already reached, and leads to results that would be far reaching indeed. The Commission and the public interest are better served relying on longstanding precedent and a straightforward application of the wording of Title III.

³⁵ *Regulation of Receive-Only Satellite Earth Stations*, 74 F.C.C.2d at ¶ 31.

D. The Commission Can, However, Require That New C-Band Licensees Provide Compensation To Earth Station Operators

While WISPA has shown that the rights of receive-only earth station operators are narrower than has been argued on the record of this proceeding, WISPA agrees that the Commission has the authority to authorize payments to these operators to compensate them if they are required to modify or relocate their facilities.³⁶ As has been shown by the operators and others, receive-only earth stations continue to play a vital role in consumers' ability to access video programming, and clearing part of the C-band will impose costs on earth station operators which, if not reimbursed, will result in the loss or impairment of service. Consequently, it is certainly within the Commission's authority to require new licensees that obtain the benefits of cleared spectrum to reimburse earth station operators for modification or relocation expenses under a forward auction.³⁷

The Commission has experience with different ways of compensating incumbents if they are required to migrate to other spectrum bands or technology platforms. In other bands, the Commission has established clearinghouses for the payment of reimbursement expenses for

³⁶ In this respect, WISPA agrees with commenters suggesting that some earth station operators can and should consider migrating to fiber networks. *See, e.g.*, Google Reply Comments at 16. The recent T-Mobile ex parte letter proposing complete migration to fiber facilities, however, is an abstraction that presumes a "one size fits all" approach. *See* Letter from Steve B. Sharkey, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed June 21, 2019). If attempted, this kind of wholesale substitution would likely prove inadequate, disruptive and substantially more expensive than predicted for the majority of earth station operators.

³⁷ Specifically, and as the Bureaus noted in the *Public Notice*, the record already includes extensive evidence of the Commission's ability to require new licensees to compensate incumbent parties in order to repurpose spectrum bands. *See* Letter from Elizabeth Andrión, Senior Vice-President, Regulatory Affairs, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 5-6 (filed Feb. 22, 2019). The Small Satellite Operators have also provided such evidence, while making a much broader argument that the FCC has inherent authority to authorize compensation. Letter from Scott Blake Harris, Counsel to Small Satellite Operators, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 3 (filed Mar. 25, 2019). While WISPA agrees that the Commission may compensate earth station operators consistent with its past precedent, this precedent does not support a broad, general authority to authorize sharing of auction revenue not otherwise authorized under the Act.

relocation of incumbents to “comparable facilities.”³⁸ In 1996, the Commission created a cost-sharing regime allowing new broadband PCS licensees to reimburse incumbents for the relocation of Fixed Service facilities.³⁹ In 2006, the Commission established rules requiring compensation for incumbent Fixed Service and Broadband Radio Service licensees through clearinghouses paid for by new Advanced Wireless Service licensees.⁴⁰ More recently, and albeit under statutory direction, the Commission has established extensive procedures for the compensation of low power television translator and FM broadcast stations.⁴¹

Accordingly, the Commission has the authority, capability, and competence to order and successfully administer a compensation mechanism for registered receive-only earth station facilities. A long line of Commission cases and the weight of the evidence in the record shows that protecting and relocating incumbent receive-only earth station operators to “comparable facilities” can be accomplished through existing Commission-directed mechanisms, and it is simply incorrect to maintain that a private auction is the only way to do so.

V. AUTHORIZING SHARING WITH P2MP FIXED SERVICE IS IN THE PUBLIC INTEREST

However the Commission might resolve the issues surrounding flexible use in the lower 200 megahertz of the C-band, the Commission should implement the BAC proposal that would allow P2MP Fixed Service to share the remaining 300 megahertz with satellite service on a co-

³⁸ See *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile & Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Ninth Report & Order & Order, 21 FCC Rcd 4473 (2006) (“AWS Order”).

³⁹ See *Microwave Relocation Cost Sharing Plan*, First Report & Order & Notice of Proposed Rulemaking, 11 FCC Rcd 8825 (1996).

⁴⁰ *AWS Order* at 4513-19, 4526-33; see also 47 C.F.R. §§ 27.1160-27.1174; 47 C.F.R. §§ 27.1176-27.1190; 47 C.F.R. §§ 27.1230-27.1239.

⁴¹ *LPTV, TV Translator, & FM Broadcast Station Reimbursement*, Report & Order, MB Docket No. 18-214, FCC 19-21 (rel. Mar 15, 2019).

primary basis.⁴² As noted above, Fixed Service has been authorized on a co-primary basis with satellite service for almost fifty years, under an existing set of regulations specifically designed to ensure coexistence. While some aspects of the current Part 101 rules will need to be modified to accommodate P2MP, sharing the band will be much simpler than the Spectrum Access System (“SAS”) that is being implemented in CBRS – a system that must dynamically re-assign shared frequencies, protect Federal shipborne and ground-based radar systems, and accommodate flexible, mobile use with different technical parameters.⁴³ Use of an automated frequency control (“AFC”) system, similar to that already proposed by the Commission in the 6 GHz band,⁴⁴ would require nothing like the complexity of the SAS, as it would only need to coordinate the spectrum use of fixed earth station and other fixed facilities using pre-coordinated licensed channels under specific technical parameters, in a band where there are no Federal incumbents.⁴⁵ The Virginia Tech report will show that earth stations in the upper 300 megahertz of the C-band can be protected from harmful co-channel interference and create significant opportunities for more than 80 million Americans to access gigabit or near-gigabit P2MP services.⁴⁶ Notably, opponents to P2MP sharing have not provided one credible argument that fixed systems could not easily share C-band spectrum using an AFC system.

⁴² See BAC Petition at 2-7; BAC Comments at 1-6. The proposal recently filed by ACA, CCA and Charter criticizes the CBA proposal for not adequately considering the interests of earth station operators or 5G proponents, then proceeds to completely ignore the BAC proposal, then fails to substantiate any of its assertions that 370 megahertz can be cleared in C-band without losing reliability and quality of service for the remaining earth station operators. See Letter from Ross Lieberman, Senior Vice President, ACA, et al., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed July 2, 2019) at 1-2, 3-4. These parties cannot be considered to have proposed “a plan that considers the needs of all stakeholders” when they ignore the 80 million consumers that could receive gigabit download speeds under the BAC proposal.

⁴³ BAC Comments at 28.

⁴⁴ See *Unlicensed Use of the 6 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 10496, 10503-505 (2018).

⁴⁵ BAC Comments at iii-iv, 26-30.

⁴⁶ See note 7, *supra*.

Given the importance of expanding broadband access quickly, it is perhaps most important that the BAC proposal prevents spectrum warehousing on coordinated channels by suggesting 20-megahertz channels and a 40-megahertz cap on a Fixed Service P2MP licensee until it certifies satisfaction of buildout requirements.⁴⁷ The proposal would then allow coordination of additional spectrum up to 160 megahertz, subject to protection through coordination.⁴⁸ The BAC thus uses similar channel sizes to the recently-filed CBA auction proposal,⁴⁹ but adds specific incentives to drive P2MP providers to roll out robust P2MP broadband service as fast as possible to American consumers, particularly in the rural areas where fixed wireless is best poised to bridge the broadband gap.

Conclusion

WISPA respectfully requests the Commission take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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July 3, 2019

⁴⁷ BAC Petition at 34.

⁴⁸ *Id.*

⁴⁹ See Letter from Bill Tolpegin, CEO, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed May 21, 2019) at 1-2.