

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

In the Matter of

Expanding Flexible Use of the 3.7 to 4.2 GHz Band)	GN Docket No. 18-122
)	
Expanding Flexible Use in Mid-Band Spectrum)	GN Docket No. 17-183
Between 3.7 and 24 GHz (Inquiry Terminated)	
as to 3.3-4.2 GHz))	
)	
Petition for Rulemaking to Amend and Modernize)	RM-11791
Parts 25 and 101 of the Commission's Rules to)	
Authorize and Facilitate the Deployment of))	
Licensed Point-to-Multipoint Fixed Wireless)	
Broadband Service in the 3.7-4.2 GHz Band))	
)	
Fixed Wireless Communications Coalition, Inc.)	RM-11778
Request for Modified Coordination Procedures in)	
Band Shared Between the Fixed Service and the)	
Fixed Satellite Service)	

SUPPLEMENTAL COMMENTS OF PSSI GLOBAL

PSSI GLOBAL SERVICES, L.L.C. ("PSSI") responds to the Commission's request that interested parties supplement the record in this proceeding and address specific questions posed by the Commission.¹

1. PSSI Global is the leading full-service satellite transmission company in the United States. As it has previously explained – both in written and oral presentations to the Commission – the future of PSSI as an ongoing business could be severely impacted if the Commission were to adopt any of the proposals in the Notice of Proposed Rulemaking² in this proceeding that would have the impact of eliminating Fixed Satellite Service operators from the C-band. As is clearly demonstrated in the record of this rulemaking, PSSI is not alone in noting the potential harm that could befall the Nation's highly

¹ *Public Notice*, Report No. DA 19-385, released May 3, 2019.

² In re Expanding Flexible Use of the 3.7 to 4.2 GHz Band in GN Docket No. 18-122 (Order and Notice of Proposed Rulemaking), 33 FCC Rcd 6915 (2018) (hereafter the "Notice" or the "NPRM").

successful and profitable media industry from substantial changes in the current regulatory regime for the C-band. PSSI continues to believe that some form of the C-Band Alliance proposal, which limits the loss of C-band spectrum repurposed to terrestrial mobile service to a maximum of 200 MHz, is the least damaging alternative for future operation of the C-band.

2. PSSI will not repeat here the arguments in support of its position. PSSI has filed Initial Comments and Reply Comments, as well as eight *ex parte* filings arguing the merits of its position in the ongoing debate over the C-band. PSSI incorporates those filings by reference in this Supplement.

Responses to Commission Questions

3. The Public Notice sets out a series of questions for which the Commission has requested information from interested parties. PSSI will focus on the questions addressed to earth station operators.

A. What are the enforceable interference protection rights granted to licensed or registered receive-only earth station operators against co-primary terrestrial operations?

4. PSSI is the holder of 32 Radio Station Authorizations for C-band facilities issued by the Commission. Although the majority of the licenses are for PSSI's transportable facilities, some are for fixed earth stations. The licenses have a range of expiration dates from 2021 through 2034. If one were to examine any of PSSI's C-band Radio Station Authorizations, there are no limitations stated on the license regarding interference protection rights.³

5. There is no way to characterize the authorizations held by PSSI as anything but "licenses"⁴ as

³ See, e.g., Radio Station License E871627, issued to PSSI (Attachment 1 hereto).

⁴ 47 U.S.C. § 153(49).

that term is defined in the Communications Act.⁵ Accordingly, they are entitled to all the protections accorded them by the Communications Act. PSSI has met all the conditions of such licenses, including performing the necessary frequency coordination for the numerous locations at which it is present in order to provide C-band services for live events programming.

6. Although these C-band earth stations receive signals downloaded from Geostationary Orbit (“GSO”) satellites, they are entitled to the same interference protection rights as other any other licensed station. Notwithstanding that with the C-band licenses, PSSI does not itself engage in the “transmission of energy”, under Section 3(57) of the Communications Act, the authorized facilities provide “services incidental to such transmission” which are encompassed within the statute’s definition of “transmission of energy”⁶ by taking the signal from the GSO satellite operators and permitting its distribution. The Commission has previously recognized the need for interference protection of C-band earth station operators from out-of-band operations⁷, so that it is clear that the Commission has already recognized such rights and must now grant them for purposes of this proceeding.

B. What obligations does section 316 of the Act place on the Commission vis-à-vis licensed or registered receive-only earth station operators?

7. Having established that PSSI and similarly situated FSS authorization holders have valid

⁵ The Communications Act of 1934, as amended, 47 U.S.C. §§ 151, et seq. (hereafter the “Communications Act”).

⁶ 47 U.S.C. §§ 153(49) and (57).

⁷ C-band FSS stations entitled to protection from out-of-band Citizens Broadband Radio Service in the 3.5 MHz band. Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band (Report and Order and Second Further Notice of Proposed Rulemaking), 30 FCC Rcd 3959, 4047 (¶ 296) (2015). Significantly, in addressing the need of C-band FSS operators for interference protection, the Commission noted that “FSS providers value the C-Band because its propagation characteristics allow for greater service reliability compared to other bands, especially in adverse weather conditions.” Id., at ¶ 292.

licenses, can the Commission modify those licenses? Certainly, even the more limited CBA proposal, which would involve repurposing of the lower 200 MHz of the C-band, would require all such C-band authorizations to be changed so as to eliminate the ability to operate in the lower part of the C-band. However, if the Commission were to determine to repurpose the entire 500 MHz of the C-band, such an action would amount to a cancellation of PSSP's licenses.

8. Section 316 of the Communications Act authorizes the modification of existing station licenses.⁸ Although Section 316 was initially conceived as involving an adjudication of a modification of a license, reviewing courts have held the Communications Act empowers the Federal Communications Commission to modify existing licenses, including by rulemaking, if it determines that such action will promote the public interest, convenience, and necessity. *Cellco Partnership v. FCC*, 700 F.3d 534 (DC Cir 2012). Even a minor disruption of a licensee's business can still permit a modification of a license when it is found to be in the public interest. *Cal. Metro Mobile Communs., Inc. v. FCC*, 365 F.3d 38, 46 (D.C. Cir. 2004).

9. However, the power to modify is limited. The Commission can modify licenses so long as "the FCC has not wrought a fundamental change to the terms of those permits and licenses." *Community TV, Inc. v. FCC*, 216 F.3d 1133, 1142 (D.C. Cir. 2000). Despite it being clear that the holding of an FCC license does not vest a property right, it has been recognized for more than 70 years that a license is a thing of value to the person to whom it is issued; a business conducted under it may be the subject of injury and that license confers a private right, although a limited and defeasible one. *L. B. Wilson, Inc. v. Federal Communications Com.*, 170 F.2d 793, 798 (DC Cir. 1948). A license can only be revoked or

⁸ 47 U.S.C. § 316(a).

canceled because of a violation of the terms of the license.⁹ If the Commission were to determine in this docket to cancel the licenses by repurposing the entire C-band or sufficiently more than 200 MHz for terrestrial mobile service, then there would have to be compensation provided to PSSSI and similarly situated FSS licensees and authorization holders. The Commission has the authority to direct such payment of such compensation. See Section D below.

C. Are registered receive-only earth station operators eligible to voluntarily relinquish their rights to protection from harmful interference in the reverse phase of an incentive auction because they qualify as “licenses” under § 309(j)(8)(G)?

10. This question presupposes that the Commission has the statutory authority to conduct an auction of the C-band. PSSSI respectfully suggests that it does not. Although the Commission would still be legally authorized to compensate PSSSI and other FSS licensees in the event of the loss of access to C-band spectrum, it is not because the Commission has auction authority under Section 309(j) of the Act for C-band.

11. The Commission believes it has such authority. NPRM, ¶ 109. However, Section 647 of the ORBIT Act plainly states that the Commission “shall not have the authority to assign by competitive bidding orbital locations **or spectrum used for the provision of international or global satellite communications services.**”¹⁰

12. The C-band spectrum is specifically and presently used by the existing licensees like Intelsat for “global communications services.” Members of the CBA provide coverage not only to the Continental U.S., but also to Mexico, Canada, the Caribbean and beyond. Indeed, PSSSI conducts C-band

⁹ 47 U.S.C. § 312.

¹⁰ 47 U.S.C. § 765f (emphasis supplied).

operations in a range of foreign locations at the behest of the U.S. media industry. As an example, PSSI regularly ships C-band vehicles to foreign locations such as the Bahamas to assist in the delivery of programming to be downloaded via Intelsat or Eutelsat satellites for distribution to U.S. audiences. This is because the orbital slots granted to the GSO satellites permit such international coverage. Thus, there might be an even clearer prohibition to spectrum auctions in the C-band than was presented in *Northpoint Technology, Ltd., and Compass Systems, Inc., v. F.C.C.*, 412 F.3d 145 (D.C. Cir. 2005) (DBS licensees *could* provide international coverage, while, in fact, CBA satellites *do provide* such international coverage).

D. Does the Commission have other statutory authorities that would enable it to authorize payments to such earth stations to induce them to modify or relocate their facilities?

13. PSSI agrees with the commenters who have previously argued that the Commission has other statutory authorities that would enable it to authorize or require payments to licensed or registered receive-only earth stations to induce them to modify or relocate their facilities.¹¹ Section 303(r) of the Act gives the Commission the statutory latitude to carry out its statutory mandates, including the modification of a class of licenses, by rulemaking.¹² *See also Celco Partnership, supra*, 700 F.3d at 542. Under Section 4(i) of the Communications Act, compensating FSS operators to change or limit frequencies originally authorized – or even to shut down completely – is reasonably ancillary to effective performance of its statutorily mandated responsibilities under Sections 303(c)¹³ and 303(r) of the

¹¹ May 3rd Public Notice, at pp. 6-7, n. 35 and n. 36, 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); American Cable Association Feb. 12, 2019 *Ex Parte* Letter at 2.

¹² 47 U.S.C. § 303(r).

¹³ 47 U.S.C. § 303(c).

Communications Act to assign frequencies and conditions for operation of such FSS licensed stations.¹⁴

Respectfully submitted,

PSSI GLOBAL SERVICES, LLC



By: _____

Stephen Díaz Gavin

RIMON, P.C.

1717 K Street, N.W., Suite 900

Washington, D.C. 20006

(202) 871-3772

stephen.diaz.gavin@rimonlaw.com

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¹⁴ See generally *New England Tel. & Tel. Co. v. FCC*, 826 F.2d 1101, 1107-08 (D.C. Cir. 1987); *State Corp. Com. v. FCC*, 787 F.2d 1421 (10th Cir. 1986) (FCC order preempting state utility commissions from requiring local telephone companies to adopt any particular subscriber plant factor sampling period represented reasonable exercise of its statutory authority pursuant to 47 USC §§ 221, 410).. Contrast *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).