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
	)	
Petition for Rulemaking to Amend and Modernize 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	)	RM-11791
	)	
Fixed Wireless Communications Coalition, Inc., Request for Modified Coordination Procedures in Band Shared Between the Fixed Service and the Fixed Satellite Service	)	RM-11778

REPLY COMMENTS OF COMCAST CORPORATION AND NBCUNIVERSAL MEDIA, LLC IN RESPONSE TO PUBLIC NOTICE OF MAY 3, 2019

Kathryn A. Zachem
David M. Don
Brian M. Josef
Regulatory Affairs,
Comcast Corporation

Francis M. Buono
Ryan G. Wallach
Legal Regulatory Affairs,
Comcast Corporation

Margaret Tobey
Regulatory Affairs, NBCUniversal

COMCAST NBCUNIVERSAL
300 New Jersey Avenue, N.W.
Suite 700
Washington, D.C. 20001

July 18, 2019

TABLE OF CONTENTS

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
	)	
Petition for Rulemaking to Amend and Modernize 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	)	RM-11791
	)	
Fixed Wireless Communications Coalition, Inc., Request for Modified Coordination Procedures in Band Shared Between the Fixed Service and the Fixed Satellite Service	)	RM-11778

REPLY COMMENTS OF COMCAST CORPORATION AND NBCUNIVERSAL MEDIA, LLC IN RESPONSE TO PUBLIC NOTICE OF MAY 3, 2019

Comcast Corporation and NBCUniversal Media, LLC (collectively, "Comcast") hereby file these reply comments in response to the May 3, 2019 Public Notice ("*Public Notice*") in the above-captioned docket. As discussed herein, the Commission should reaffirm (1) the longstanding interference protections afforded to registered receive-only earth stations, and (2) its authority to compensate receive-only earth station operators as licensees for relinquishing their rights and/or relocating operations as part of an incentive auction (or a "market-based" alternative) and the associated repacking process for enabling terrestrial use of C-Band spectrum.

INTRODUCTION AND SUMMARY

The record confirms that registered receive-only earth station operators are entitled to interference protection under longstanding Commission precedent. Since 1970, the Commission has recognized that protecting receive-only earth stations from harmful interference is vital to the public interest, including the development, quality, and continuity of satellite services.

Accordingly, the Commission established a voluntary licensing regime and frequency coordination process to ensure such protection. The Commission later adopted a more streamlined registration process for receive-only earth stations in the interest of reducing the burdens associated with such authorization. But that procedural shift did not substantively alter the rights of authorized earth station operators. To the contrary, the Commission has emphasized over the last 50 years that, regardless of whether operators of receive-only earth stations obtain a license or instead rely on registration, they can obtain interference-protection rights backed by the Commission's enforcement mechanisms. The *NPRM* in this proceeding appropriately proposes to protect incumbent earth stations from harmful interference in the event the Commission decides to increase the intensity of terrestrial use of the C-Band,[1] and the record overwhelmingly supports that core proposition.

The Commission also has authority to compensate receive-only earth station operators for relinquishing their rights and/or relocating operations as part of an incentive auction (or a "market-based" alternative) and the associated repacking process. As some commenters have explained, operators that have registered for interference protection should be treated as "licensees" in applying Sections 309(j)(8)(G) and 316 of the Communications Act of 1934, as amended (the "Act"). In particular, the statutory definition of "license"—which encompasses an authorization "by whatever name the instrument may be designated by the Commission"[2]—together with Commission precedent treating registrations as "licenses" in other contexts where the public interest warrants such treatment, make clear that the Commission has broad discretion to deem registered earth station operators to be licensees for purposes of an incentive auction or

---

[1] *Expanding Flexible Use of the 3.7-4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd. 6915 ¶ 37 (2018) ("*NPRM*").

[2] 47 U.S.C. § 153(49).

alternative mechanism. The Commission's public interest authority under Title III and ancillary authority under Sections 4(i) and 303(r) further bolster its ability to require compensation for registered earth station operators, given the direct statutory authority that exists and the strong public interest rationale for doing so. Indeed, as many commenters recognize, the Commission could not successfully design a process for repurposing and repacking C-Band spectrum without appropriately addressing the interests and needs of registered earth station operators.

DISCUSSION

I. THE COMMISSION SHOULD MAINTAIN INTERFERENCE PROTECTION RIGHTS FOR REGISTERED RECEIVE-ONLY EARTH STATIONS AS THE INTENSITY OF TERRESTRIAL C-BAND USAGE INCREASES

As many commenters recognize,[3] licensed and registered receive-only earth station operators have enjoyed enforceable interference protection for nearly half a century—indeed, since the Commission began accepting applications for non-governmental domestic communications satellite systems in 1970.[4] As the Commission contemplates proposals that

---

[3] *See, e.g.*, Comments of ACA Connects – America's Communications Association, GN Docket No. 18-122, at 5-6 (July 3, 2019) ("ACA Comments"); Comments of National Public Radio, Inc., GN Docket No. 18-122, at 3-5 (July 3, 2019) ("NPR Comments"); Comments of the Wireless Internet Service Providers Association, GN Docket No. 18-122, at 6-8 (July 3, 2019) ("WISPA Comments"); Comments of Charter Communications, Inc., GN Docket No. 18-122, at 5-6 (July 3, 2019) ("Charter Comments"); Comments of BYU Broadcasting, GN Docket No. 18-122, at 5-8 (July 3, 2019) ("BYU Comments"); Letter from Jason E. Rademacher, Cooley LLP, Counsel for The Church of Jesus Christ of Latter-day Saints, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 2 (July 10, 2019).

[4] *See Establishment of Domestic Communication-Satellite Facilities by Nongovernmental Entities*, Report and Order, 22 F.C.C.2d 86 ¶ 24 (1970) ("*1970 Order*") ("[I]n the course of coordinating earth stations with terrestrial systems it may prove impossible in some instances to accommodate earth stations at desired sites without some adjustment in the frequencies and routes of terrestrial systems or other measures to avoid interference."); *Regulation of Domestic Receive-Only Satellite Earth Stations*, First Report and Order, 74 F.C.C.2d 205 ¶ 4 (1979) ("*1979 Order*") ("One of the fundamental bases for the development of our regulation of satellite facilities is the existence of interference in shared frequency bands and the effect it might have on the quality of service available to the public.").

would substantially increase the intensity of terrestrial use of the C-Band, maintaining interference protection for receive-only earth station registrants remains an important priority.[5]

A receive-only earth station operator is entitled to affirmative interference protection if it has sought and received authority from the Commission to conduct such operations. This authority initially consisted of a formal "license."[6] Although the Commission has held that "[t]he Communications Act of 1934 does not *require* licensing of receive-only earth stations," it determined that "the power to regulate receive-only earth stations is ancillary to [its] other regulatory responsibilities to maximize effective use of satellite communications."[7] And the Commission emphasized that the purpose of "exercis[ing] this discretionary power over receive-only stations" was to ensure their "protection from interference."[8] By contrast, the Commission made clear that "no interference protection is afforded to unlicensed facilities."[9]

The Commission streamlined its voluntary "licensure" regime in 1991 by adopting a voluntary "registration" process for earth stations that operate with U.S.-licensed space stations (which was later expanded to include space stations approved for market access by the United States).[10] Critically, however, the shift from licensure to registration—which was intended to

---

[5] Such interference protection is vital irrespective of what use is ultimately made of the 3.7-4.2 GHz band, including in the event the Commission were to authorize point-to-multipoint fixed wireless broadband service. Comcast has expressed concerns about the authorization of such service, *see* Comments of Comcast Corporation and NBCUniversal Media, LLC, GN Docket No. 18-122, at 35-36 (Oct. 29, 2018), but in all events, the Commission would have to protect incumbent earth station operators.

[6] *1979 Order* ¶¶ 8-9.

[7] *Id.* ¶ 31 (emphasis added).

[8] *Id.*

[9] *Id.* ¶ 38; *see also 1970 Order* ¶ 32 n.10 ("We think that receive/only stations must be licensed by the Commission if they are to be protected from interference.").

[10] *See Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise*

streamline the authorization process and thereby reduce regulatory burdens—did not alter operators' rights to interference protection or otherwise result in substantive changes to the Commission's regulatory scheme. To the contrary, the Commission "emphasize[d] that a registration program [would] afford the same protection from interference as would a license issued under [its] former procedure[s]."[11] To that end, consistent with the obligations previously imposed on receive-only earth station licensees, registrants were and are required to participate in frequency coordination under Part 25 of the Commission's rules.[12]

The Commission's longstanding policy of affirmatively protecting authorized receive-only earth station operators from interference has not changed in the 28 years since the registration regime was established in 1991.[13] In fact, Commission procedures treat "licensure" versus "registration" of receive-only earth station operations as a distinction without a difference in most respects. Although renewals of pre-1991 authorizations continue to be characterized as "licenses," while post-1991 authorizations use the terms "registration" and "license" and

---

Application Processing Procedures for Satellite Communications Services, First Report and Order, 6 FCC Rcd. 2806 (1991) ("*1991 Order*"); *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, 15 FCC Rcd. 7207 ¶¶ 1, 16 (1999) (adopting "a procedure that … permit[s] earth station licensees to access a particular non-U.S. satellite to provide particular services without further regulatory approval once that non-U.S. satellite is authorized to provide those services in the United States"); *see also* 47 C.F.R. § 25.131(j)(2) ("Operators of receive-only earth stations need not apply for a license to receive transmissions from non-U.S.-licensed space stations that have been duly approved for U.S. market access.").

[11] *1991 Order* ¶ 7.

[12] *Id.* ¶ 4.

[13] *See, e.g.*, *NPRM* ¶ 37 n.74 ("Receive-only earth stations in the FSS that operate with U.S.-licensed space stations, or with non-U.S.-licensed space stations that have been duly approved for U.S. market access, may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the Fixed Service in accordance with the procedures of §§ 25.203 and 25.251, subject to the stricture in § 25.209(c).").

"registrant" and "licensee" interchangeably, both forms of authorization afford an identical interference protection right with a 15-year, renewable term.[14] Moreover, in shifting from licensure to registration, the Commission noted that "[t]he information required for an application for registration would be the same as [was previously] required for a license application."[15] As a result, those seeking authority to operate receive-only earth stations—whether via licensure or registration—are required to file such applications on the same FCC Form 312.[16]

A receive-only earth station operator's right to interference protection therefore does not depend on whether the authorizing mechanism is labeled a license or a registration.[17] Rather, the Commission's commitment to protect receive-only earth station operations from interference is grounded in an applicant's participation in frequency coordination—a process that occurs

---

[14] *Compare* 47 C.F.R. § 25.131(b), (h) (specifying a 15-year renewable term for registered receive-only earth stations), *with id.* § 25.121(a), (e) (specifying a 15-year renewable term for licensed earth stations).

[15] *1991 Order* ¶ 4.

[16] *See, e.g.*, 47 C.F.R. § 25.131(a)-(d).

[17] *See* ACA Comments at 6 ("[T]he result of a registration was, and is, the same as the result of a formal license—protection from harmful interference…."); NPR Comments at 4 (Even after the "shift[] to a voluntary registration system, … the Commission's position on interference protection remained consistent: receive-only earth stations are entitled to complete protection from RF interference."); BYU Comments at 7 ("Regardless of the designation, because a license is any 'instrument of authorization,' earth stations operate as licensees when they register and are given interference protections for 'authorized frequency bands' by the Commission."); Charter Comments at 4-5 (explaining that the shift from licensure to registration "w[as] not intended to, and did not in practice, substantively change the rights of earth station operators"); Comments of the Competitive Carriers Association, GN Docket No. 18-122, at 28 (July 3, 2019) ("CCA Comments") ("Under the APA, mere titular differences in the authorizations that two categories of licensees hold cannot support substantive differences in the protections they receive."); WISPA Comments at 4-5 ("[T]he Commission streamlined its voluntary licensing processes 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.").

regardless of whether the authorization is a registration or a license.[18] Thus, receive-only earth station operators that have sought and received authorization are unequivocally entitled to affirmative interference protection under well-settled law. That should remain the case going forward.

"Hav[ing] made investments in the [C-Band] in reliance on the current … system,"[19] earth station operators possess investment-backed reliance interests that further underscore the importance of maintaining interference protection for registered receive-only earth stations. Indeed, given the Commission's longstanding commitment to such protection and its assurances that the shift from licensing to registration would not undermine substantive protections,[20] the Commission's interference-protection regime plays a key role in influencing the allocation of resources among various transmission technologies, including C-Band, fiber, and terrestrial wireless operations. The Commission has appropriately weighed reliance interests when considering rule changes that affect interference protection in the past.[21] And the Commission in this proceeding has consistently proposed to remain faithful to the principle that registered receive-only earth stations are entitled to interference protection as terrestrial use of the C-Band increases.[22]

---

[18] *See, e.g.*, *NPRM* ¶ 37 (noting that "[t]he coordination results entitle [an] FSS earth station to the interference protection levels agreed to during coordination, including against subsequent FS licensees); *1979 Order* ¶ 23 (holding that failure to participate in frequency coordination constitutes "a waiver of any claim to interference protection").

[19] *See* Comments of the Small Satellite Operators, GN Docket No. 18-122, at 17 (July 3, 2019) ("SSO Comments").

[20] *See supra* at 4-5.

[21] *See, e.g.*, *Omnipoint Corp. v. FCC*, 78 F.3d 620, 633 (D.C. Cir. 1996) ("[T]he Commission properly weighed the reliance interests of affected parties" in implementing rule change.).

[22] *See NPRM* ¶ 27 ("We propose to protect incumbent earth stations from harmful interference as we increase the intensity of terrestrial use in the [C-Band].").

If the Commission nevertheless decided to depart from its established policy in a manner that undermines earth station operators' reliance interests, it would require a substantial justification for such a change of course.[23] There is nothing in the record that could provide such a justification; to the contrary, commenters overwhelmingly recognize the importance of maintaining interference protection for C-Band registrants.[24]

II. THE COMMISSION SHOULD ENSURE COMPENSATION FOR REGISTERED RECEIVE-ONLY EARTH STATION OPERATORS THAT RELINQUISH THEIR INTERFERENCE PROTECTION RIGHTS OR INCUR TRANSITION-RELATED COSTS AS PART OF ANY TERRESTRIAL LICENSE ASSIGNMENT AND REPACKING PROCESS

The opening comments provide strong support for ensuring that the Commission has the authority to compensate receive-only earth station operators as licensees for relinquishing their rights and/or relocating operations as part of an incentive auction or alternative mechanism, and

---

[23] *See Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also Nat'l Ass'n of Indep. Television Producers & Distribs. v. FCC*, 502 F.2d 249, 255 (2d Cir. 1974) (emphasizing that the Commission must take into account justifiable reliance upon an old rule when adopting a new rule).

[24] *See, e.g.*, Comments of Verizon, GN Docket No. 18-122, at 2 (July 3, 2019) ("Verizon Comments") ("[T]he Commission intends to protect incumbent earth stations from harmful interference as it increases the intensity of terrestrial use of the C-Band (*a position Verizon supports*)" (emphasis added)); NPR Comments at 4-5 ("With the potential introduction of new, possibly more disruptive interference entering the band in the form of mobile wireless services, NPR expects the Commission to continue its critical role in protecting existing users."); Comments of Raytheon Company, GN Docket No. 18-122, at 4 (July 3, 2019) ("While Raytheon appreciates the competing interests that the Commission must balance in coming to a conclusion about repurposing some portion of the C-Band … , the Commission should not overlook the paramount objective of protecting incumbent operations for those licensees and registrants that wish to continue to use the C-Band."); Comments of T-Mobile USA, Inc., GN Docket No. 18-122, at 4 (July 3, 2019) ("T-Mobile Comments") ("[T]he ability of terrestrial licensees to use the C-band will depend on the need to protect earth station operations."); Comments of Google LLC, GN Docket No. 18-122, at 2-3 (July 3, 2019) ("Google … urges the Commission to adopt a framework that allows [for] more intensive terrestrial use … while fully protecting earth stations from harmful interference….").

the associated repacking process, regardless of the reallocation mechanism.[25] The Commission plainly has authority under the Act to safeguard the interests of earth station registrants—and, in turn, consumers—in designing an incentive auction or alternative process, most directly by treating such registrants as "licensees" in this specific context. The Commission's public interest authority under Title III and ancillary authority provide additional support for compensating earth station operators, given the express textual authority to protect earth station registrants and the accompanying compelling public interest considerations. Adequate compensation for earth station operators also will advance the Commission's public interest objectives in this proceeding.

A. The Commission Has Clear Legal Authority To Compensate Displaced Earth Station Registrants

The text of the Act and the record developed to date confirm that the Commission has ample discretion to treat registered earth station operators as "licensees" in this context. Pursuant to Section 309(j)(8)(G), "the Commission may encourage a *licensee* to relinquish voluntarily some or all of its *licensed spectrum usage rights* in order to permit the assignment of new initial licenses."[26] Which entities may qualify as licensees turns largely on the statutory definition of "license," which Section 3 defines as "that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, 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*."[27] By definition,

---

[25] *See, e.g.*, Charter Comments at 7-10; NPR Comments at 5-8; ACA Comments at 9-15; CCA Comments at 17, 33-34; BYU Comments at 10-13; T-Mobile Comments at 7-10.

[26] 47 U.S.C. § 309(j)(8)(G)(i) (emphasis added).

[27] *Id.* § 153(49) (emphasis added).

Congress empowered the Commission to ensure that form is not elevated over substance—i.e., that the mere label applied to a particular authorization is not dispositive of whether it may be treated as a "license" under other statutory provisions that establish the rights and obligations of entities that hold such authorizations. Indeed, that is why the Commission has been able to treat the authorizations it has assigned to receive-only earth station operators as conferring the same degree of interference protection regardless of whether the authorization is called a "license" or "registration."[28] And the Commission has similar discretion now to determine whether those same authorizations should be deemed "licenses" in connection with an incentive auction under Section 309(j)(8)(G).

The relevant statutory definitions bolster the Commission's ability to treat earth station registrations as "licenses" in a second respect—namely, the definition of "license" not only applies to authorizations "for the use or operation of apparatus for transmission of energy, or communications, or signals by radio," but also encompasses "all instrumentalities, facilities, and services incidental to such transmission," based on the express inclusion of those elements in the definition of the term "transmission of energy by radio."[29] The Commission can reasonably determine in this context that receive-only earth stations are "facilities … incidental to" the transmission of communications via satellite. Accordingly, the Act permits the Commission to treat such facilities authorizations as licenses. Thus, Congress made clear its intent to give the Commission wide latitude in determining which types of authorizations may be treated as "licenses," in this case by providing specific textual support for the proposition that

---

[28] *See 1991 Order* ¶ 7 (emphasizing that registration provided the "same protection from interference" as did licensure).

[29] 47 U.S.C. § 153(57); *see also id.* § 153(40) (defining "radio communication" to include "all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of such communications) incidental to [the] transmission" of signals, sounds, etc.).

authorizations applicable to incidental facilities and services are covered to the same degree as authorizations to transmit communications over the airwaves.

Verizon and the C-Band Alliance ("CBA") argue that the absence of any statutory mandate for receive-only earth stations operators to be licensed means that the Commission cannot (or at least should not) treat them as such.[30] But that claim proves far too much. The question presented by the *Public Notice* is not whether licensure of receive-only earth stations is *mandated* by the Act—there is no dispute that it is not—but rather whether treating earth station registrations as licenses in the context of an incentive auction is *permitted* by the Act. The answer is plainly "yes," based on the textual provisions discussed above. Indeed, if Verizon and the CBA were correct about the need for a statutory mandate (as opposed to permissive authorization), that would upend the Commission's decades-long practice of according interference protection to receive-only earth stations, by "license" before 1991 and by registration thereafter.

Verizon and the CBA further assert that, in the *1979 Order*, the Commission "rejected the notion that receive-only earth stations are 'incidental' to transmission … 'of energy by radio.'"[31] But that is an overstatement. In that decision, the Commission in fact acknowledged that receiving facilities *could* be deemed "incidental to radio transmission," but then determined that such a finding was not necessary to conclude that the Commission had the "power to regulate receive-only earth stations," which "is ancillary to [its] other regulatory responsibilities to

[30] Verizon Comments at 8-9; Comments of the C-Band Alliance, GN Docket No. 18-122, at 10-12 (July 3, 2019) ("CBA Comments").

[31] *See* Verizon Comments at 6-8; CBA Comments at 12-13.

maximize effective use of satellite communications."[32] Verizon and the CBA overlook the significance of the Commission's decision, *in the very same order*, to adopt a voluntary licensure regime based on that authority.[33]

The Commission has treated holders of "registrations" as licensees in other contexts where the public interest warranted such a classification. For example, in establishing its rural call completion rules, the Commission held that "intermediate providers" that are required to *register* with the Commission may be treated the same as other *licensees* and authorization holders for enforcement purposes.[34] In so holding, the Commission noted that it "has found that the term 'license' encompasses registrations" in various other contexts as well.[35]

To be sure, Commission precedent makes clear that registrations held by operators of receive-only earth stations are not deemed "station licenses" in *all* contexts. For example, in 2015, the Commission considered how receive-only earth station registrations should be treated in connection with *pro forma* assignments and transfers of control. There, the Commission

---

[32] *See 1979 Order* ¶ 31. Moreover, there is an obvious distinction between the Commission's regulation of commercial receive-only earth station operations and of off-the-shelf, mass-market consumer devices. While the Commission questioned the wisdom of deeming the latter "incidental to radio transmission," *see id.*, only the former's status is at issue in this proceeding, and decades of precedent confirm that the Commission has authority to treat such commercial operators as licensees.

[33] *See id.*

[34] *Rural Call Completion*, Third Report and Order, 33 FCC Rcd. 8400 ¶ 21 (2018).

[35] *Id.* ¶ 22 & n.82 (citing the Administrative Procedure Act ("APA") definition of "license," which includes an agency registration, as well as FCC precedent reaching the same conclusion in the enforcement context); *see also Aurora Holdings of Wis., Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd. 3688 ¶ 15 (2018) ("The Commission has previously adopted the APA definition of 'license' and has found that the definition includes an antenna structure registration."); *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd. 4272 ¶ 43 (1995) (same).

observed that such registrations "are neither construction permits nor station licenses."[36] But the purpose of that classification was to relieve registrants of needlessly burdensome approval requirements that otherwise would apply under Section 310(d) of the Act,[37] consistent with the streamlining rationale that prompted the shift from licensing to registration in 1991.[38] By contrast, treating registered station operators as licensees in the context of an incentive auction and transition process is necessary to effectuate the important policy objectives that have always undergirded the registration regime—i.e., ensuring interference protection through processes that are as streamlined and efficient as possible.[39] Moreover, the courts have made clear that the Commission may—indeed, must—tailor its application of statutory terms to the relevant objectives at stake, even when that results in construing a term differently in connection with distinct statutory provisions.[40]

In addition to asking about designating receive-only earth station registrations as licenses, the *Public Notice* seeks comment on the obligations that Section 316 places on the Commission vis-à-vis such stations.[41] If the Commission determines that receive-only earth station registrants constitute "licensees" in connection with an incentive auction and repacking process—as it

---

[36] *E.g.*, *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd. 14713 ¶ 306 (2015).

[37] *Id.*

[38] *See 1991 Order* ¶ 4 (explaining that the "registration program would provide receive-only operators with interference protection while offering a simpler regulatory procedure").

[39] *See id.* ¶¶ 4-7, 44.

[40] *See, e.g.*, *Am. Council on Educ. v. FCC*, 451 F.3d 226, 230-31 (D.C. Cir. 2006) (holding that the Commission reasonably construed the same term, "telecommunications service," to encompass different categories of service under the Telecommunications Act of 1996 and the Communications Assistance for Law Enforcement Act, based on differences in the statutory "texts, structures, legislative histories, and purposes").

[41] *Public Notice* at 4-5.

should—then it necessarily follows that under Section 316 such operators may not otherwise be deprived of their interference protection rights absent due process.[42] As to the question of whether Section 316 applies where "a satellite operator's transmission rights are not disturbed" but the Commission authorizes "additional terrestrial use that could interfere with the receipt of the signal,"[43] the answer plainly is "yes" if the Commission deems receive-only registrations to be "licenses" in this context. That is because Section 316 would apply to the ground segment as powerfully as to the space segment and would not countenance a drastic constructive modification of earth station licenses by introducing and authorizing interfering terrestrial uses. In short, Section 316 and its due process protections provide an additional justification for ensuring that repacked receive-only earth stations are at least granted access to comparable facilities.

Finally, the Commission has direct statutory authority under Section 3 to treat earth station registrations as licenses in this context, thus obviating the need to rely on more general Title III oversight authority under Section 303(c) or ancillary authority under Sections 4(i) and 303(r). Yet these additional provisions of authority further confirm and amplify the Commission's discretion in these circumstances. Notably, the Commission relied on ancillary authority when it initially established the voluntary licensing regime for receive-only earth

---

[42] *See* 47 U.S.C. § 316(a)(1) ("Any station license … may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity …. No such order of modification shall become final until the holder of the license … shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification ….").

[43] *Public Notice* at 4.

stations in the 1970s.[44] Such authority to create a licensing regime in the first instance, which has gone unchallenged, indicates that the Commission may treat equivalent registrations as licenses where the public interest is served by doing so. Unlike situations in which courts have struck down attempts to rely on ancillary authority untethered from any concrete statutory authorization,[45] the express textual conferral of authority to treat authorizations "by whatever name … designated by the Commission"[46] as licenses establishes a clear predicate to rely on ancillary authority as a supplemental basis to impose reimbursement conditions as part of any reallocation and repacking process. Moreover, the Commission has repeatedly relied on ancillary authority, together with its Title III authority, to require winning bidders in spectrum auctions to support cost recovery for incumbent services that have been disrupted, including in instances where the Commission must balance the needs of both satellite and terrestrial systems.[47]

---

[44] *1979 Order* ¶ 31.

[45] *See, e.g.*, *Comcast Corp. v. FCC*, 600 F.3d 642, 661 (D.C. Cir. 2010) (holding that the Commission must tie its assertion of ancillary authority to a "statutorily mandated responsibility").

[46] 47 U.S.C. § 153(49).

[47] *See Teledesic LLC v. FCC*, 275 F.3d 75, 78-79, 84-86 (D.C. Cir. 2001) ("[T]he new rules requiring satellite operators to pay the relocation costs incurred by terrestrial operators during the initial reallocation period … are both permissible and reasonable."); *see also Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Ninth Report and Order, 21 FCC Rcd. 4473 ¶¶ 39-40 (2006); *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 ¶ 13 (1993) ("*1993 Order*") ("We continue to believe that in most cases in which relocation is necessary voluntary negotiations will be successful and will result in the least disruptive means for accommodating new technology services….").

B. Ensuring Adequate Compensation for Registered Receive-Only Earth Station Operators Will Advance the Public Interest

The record clearly establishes that there are numerous important public interest justifications for invoking the Commission's broad legal authority to ensure that any steps taken to authorize terrestrial operations in the C-Band are fair, transparent, and for the benefit of the American people.

Ensuring that receive-only earth station operators are fairly compensated is critical to the successful repurposing of C-Band spectrum to enable terrestrial 5G operations in the band, which, in turn, is a vital component of the Commission's broader 5G deployment initiatives.[48] Indeed, the Commission has made clear that repurposing some amount of C-Band spectrum for 5G is both a necessary step in the efficient and timely build-out of next-generation wireless networks and essential to U.S. leadership in the global race for 5G deployment.[49] And as the Commission has long recognized, accommodating incumbent operators, including via reimbursement of relocation costs, helps to ensure the continuity of existing services while "foster[ing] [the] introduction of new services and devices."[50]

Congress has expressed its strong support for the same objectives, including by directing the Commission to explore ways to make additional spectrum available for new technologies and to maintain America's leadership in the future of communications technology.[51] Moreover, a

---

[48] *See The FCC's 5G FAST Plan*, FCC, https://www.fcc.gov/5G (last visited July 18, 2019).

[49] *See NPRM* ¶¶ 3-5 ("Mid-band spectrum is well-suited for next generation wireless broadband services due to the combination of favorable propagation characteristics (compared to high bands) and the opportunity for additional channel re-use (as compared to low bands)"); *see also* Charter Comments at 2-3 ("[T]he Commission must maximize the amount of C-Band spectrum that is made available for 5G use, particularly in light of China's reallocation of 500 megahertz of mid-band spectrum for 5G.").

[50] *See 1993 Order* ¶ 4.

[51] RAY BAUM'S Act of 2018, Pub. L. No. 115-141, § 605, 132 Stat. 348, 1100.

process featuring accommodation for and participation by registered earth station operators would further the interests embodied in Section 309(j)(3) of the Act, which directs the Commission to consider "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays" while "avoid[ing] … unjust enrichment through the methods employed to award uses of" spectrum.[52]

Critically, the Commission cannot achieve its paramount objective of making C-Band spectrum available for terrestrial 5G operations without providing adequate compensation to receive-only earth station registrants. Settled precedent makes clear that the Commission must address incumbent operators' investment-backed reliance-based interests as part of any modifications to the band.[53] Even commenters unwilling to concede that receive-only earth station registrants may be properly considered "licensees" for present purposes recognize the legitimacy of such reliance interests[54]—and for good reason, given that the Commission, "in adopting the receive-only earth station registration program, … provided that 'a registration program will afford the same protection from interference as would a license issued under [its] former [licensing] procedure.'"[55] And the Commission recently reaffirmed its dedication to this principle when it announced a temporary freeze on applications for earth station authorizations so that it could "evaluate the existing earth station usage of C-Band satellites," including the risk

---

[52] 47 U.S.C. § 309(j)(3)(A), (C).

[53] *See, e.g.*, *Mobile Commc'ns Corp. of Am. v. FCC*, 77 F.3d 1399, 1407 (D.C. Cir. 1996) (remanding to the Commission to properly consider a party's reliance concerns); *see also supra* at 7-8 (discussing earth station operators' reliance interests); SSO Comments at 17.

[54] *See, e.g.*, Comments of the Dynamic Spectrum Alliance, GN Docket No. 18-122, at 12 (July 3, 2019); Comments of the Open Technology Institute at New America, GN Docket No. 18-122, at 17-18 (July 3, 2019).

[55] *See Public Notice* at 5-6 (quoting *1991 Order* ¶ 7).

of harmful interference associated with "increasing the intensity of terrestrial use of the band."[56] Failing to account for such interests at this stage would undermine incumbent operators' ability to rely on Commission assurances of protection for authorized users of other bands.

For these reasons, commenters overwhelmingly agree that receive-only earth station registrants are entitled to some measure of compensation.[57] Even the CBA concedes that the costs associated with repacking the C-Band, including those borne by receive-only earth station operators, will need to be reimbursed,[58] and has pledged to do so if its market-based auction proposal is adopted.[59] Commission direction and oversight of the process will ensure that compensation for registered earth station operators is sufficient and that recourse to Commission enforcement processes is available in the event of any disputes. In all events, no matter what type of assignment regime the Commission adopts in repurposing the C-Band for terrestrial wireless use, the public interest will be advanced by a transparent process that fairly compensates receive-only earth station registrants.

CONCLUSION

For the foregoing reasons, Comcast urges the Commission to maintain interference protection for registered receive-only earth station operations as terrestrial uses increase, and to

---

[56] *See NPRM* ¶¶ 16-25.

[57] *See, e.g.*, Charter Comments at 7-10; NPR Comments at 5-8; ACA Comments at 9-15; CCA Comments at 17, 33-34; BYU Comments at 10-13; T-Mobile Comments at 7-9.

[58] *See* CBA Comments at 27-28.

[59] *Id.*

ensure that such entities are adequately compensated in order to facilitate the efficient repurposing and repacking of the C-Band.

Respectfully submitted,

COMCAST CORPORATION &
NBCUNIVERSAL MEDIA, LLC

/s/ Kathryn A. Zachem
Kathryn A. Zachem
David M. Don
Brian M. Josef
Regulatory Affairs,
Comcast Corporation

Francis M. Buono
Ryan G. Wallach
Legal Regulatory Affairs,
Comcast Corporation

Margaret Tobey
Regulatory Affairs, NBCUniversal

COMCAST NBCUNIVERSAL
300 New Jersey Avenue, N.W.
Suite 700
Washington, D.C. 20001

July 18, 2019