

**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	)	RM-11791
Modernize Parts 25 and 101 of the	)	
Commission’s Rule 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,	)	RM-11778
Inc., Request for Modified Coordination	)	
Procedures in Band Shared Between the	)	
Fixed Service and the Fixed Satellite Service	)	
	)	

**REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.**

Charter Communications, Inc. (“Charter”) files these reply comments in response to the Commission’s May 3, 2019 Public Notice.<sup>1</sup> As Charter explained in its initial comments, receive-only earth station registrants are licensees as set forth in the Communications Act (“Act”).<sup>2</sup> Because C-Band earth station operators are licensees, they are eligible for compensation under the Commission’s established *Emerging Technologies* framework.<sup>3</sup> Charter therefore called on the Commission to maximize the amount of 3.7-4.2 GHz (“C-Band”)

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<sup>1</sup> See *International Bureau and Wireless Telecommunications Bureau Seek Focused Additional Comment In 3.7-4.2 GHz Band Proceeding*, Public Notice, GN Docket No. 18-122, DA 19-385 (rel. May 3, 2019).

<sup>2</sup> See Comments of Charter Communications, Inc. at 4-7, GN Docket No. 18-122 (July 3, 2019) (“Charter Comments”).

<sup>3</sup> See *id.* at 7-10.

spectrum that is made available for 5G use by compensating receive-only earth station operators for their costs to relocate from the band, including the costs of transitioning to fiber-based delivery.<sup>4</sup>

Like Charter, most commenters recognize that receive-only earth station registrants are licensees based on both the plain language of the Act and Commission precedent.<sup>5</sup> As ACA Connects – America’s Communications Association (“ACA Connects”), the Competitive Carriers Association (“CCA”), and National Public Radio, Inc. (“NPR”) indicate, the Act defines a license as an “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,”<sup>6</sup> and in turn defines the “transmission of energy by radio” to include “both such transmission and all instrumentalities, facilities, and services incidental to such transmission.”<sup>7</sup> Earth stations are, at a minimum, “incidental” (if not necessary) to such transmissions, as the act of transmission has no real benefit without a receiver.<sup>8</sup> It is also the case that the Commission’s power to regulate earth stations “is ancillary to [its] other regulatory responsibilities to maximize effective use of satellite communications,”

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<sup>4</sup> See *id.* at 7-10.

<sup>5</sup> See, e.g., Comments of ACA Connects – America’s Communications Association at 4-9, GN Docket No. 18-122 (July 3, 2019) (“ACA Comments”); Comments of BYU Broadcasting at 6-8, GN Docket No. 18-122 (July 3, 2019) (“BYU Comments”); Comments of Competitive Carriers Association at 27-29, GN Docket No. 18-122 (July 3, 2019) (“CCA Comments”); Supplemental Comments of PSSI Global Services, LLC at 2-3, GN Docket No. 18-122 (July 5, 2019); Comments of T-Mobile USA, Inc. at 6, GN Docket No. 18-122 (July 3, 2019); Comments of National Public Radio, Inc. at 3-4, GN Docket No. 18-122 (July 3, 2019) (“NPR Comments”).

<sup>6</sup> 47 U.S.C. § 153(49); see also ACA Comments at 7; CCA Comments at 27-28; NPR Comments at 6; BYU Comments at 6-7.

<sup>7</sup> 47 U.S.C. § 153(57); see also ACA Comments at 7-8; CCA Comments at 28; NPR Comments at 6; BYU Comments at 6-7.

<sup>8</sup> See ACA Comments at 8; CCA Comments at 29.

and it has been the Commission’s policy to “exercise [its] administrative discretion under the spectrum regulation provisions of Title III.”<sup>9</sup> Accordingly, the Commission must find that receive-only earth station registrants are licensees “by whatever name the instrument may be designated by the Commission.”<sup>10</sup>

Unsurprisingly, the C-Band Alliance and a handful of other commenters contend that receive-only earth station registrations are in fact not licenses under the Act.<sup>11</sup> But their arguments focus on a narrow reading of the Act and Commission precedent, thus ignoring other governing language. For instance, while receive-only earth stations may not transmit signals themselves, as the C-Band Alliance and Verizon argue,<sup>12</sup> they are “incidental” to such transmission and therefore squarely fit within the definition of a license under the plain meaning of the Act. These commenters also incorrectly suggest that Commission precedent does not support such an interpretation.<sup>13</sup> In particular, the C-Band Alliance, Verizon, and the Wireless Internet Service Providers Association all claim that the *1979 Deregulation Order*<sup>14</sup> and the *1991 Streamlining Order*<sup>15</sup> demonstrate that the Commission “conceived of [receive-only earth

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<sup>9</sup> *In re Regulation of Domestic Receive-Only Satellite Earth Stations*, First Report and Order, 74 FCC 2d 205, 217-218 ¶ 31 (1979) (“*1979 Deregulation Order*”); see also Charter Comments at 6-7.

<sup>10</sup> CCA Comments at 29 (quoting 47 U.S.C. § 153(49)); see also BYU Comments at 6.

<sup>11</sup> See, e.g., Comments of the C-Band Alliance at 10-14, GN Docket No. 18-122 (July 3, 2019) (“CBA Comments”); Comments of Dynamic Spectrum Alliance at 12-15, GN Docket No. 18-122 (July 3, 2019); Comments of Google LLC on Interference Protection Rights at 6-7, GN Docket No. 18-122 (July 3, 2019); Comments of Verizon at 5-8, GN Docket No. 18-122 (July 3, 2019) (“Verizon Comments”); Comments of The Wireless Internet Service Providers Association at 3-5, GN Docket No. 18-122 (July 3, 2019) (“WISPA Comments”).

<sup>12</sup> See CBA Comments at 11; Verizon Comments at 6.

<sup>13</sup> See, e.g., CBA Comments at 12-13; Verizon Comments at 6-8; WISPA Comments at 3-5.

<sup>14</sup> See *1979 Deregulation Order*.

<sup>15</sup> See *In re Amendment of Part 25 of the Commission’s Rules & Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings & to Revise Application Processing*

station operator rights] as much more limited in scope than license rights under Title III of the Act.”<sup>16</sup> However, neither the Commission’s actions in the *1991 Streamlining Order* nor any other order could be interpreted as removing receive-only earth station operators’ status as licensees.<sup>17</sup> If it could, this “would have been a ‘fundamental change’ to the rights of the previous formal licensees,” thus triggering certain procedures required by the Act as it would have “amounted to a license modification and even revocation.”<sup>18</sup>

In fact, these prior orders clearly demonstrate that the Commission amended its licensing regime for receive-only earth station operators for the sole reason of “reduc[ing] regulatory burdens on station operators.”<sup>19</sup> This streamlining approach was “never intended to demote them or downgrade their status as licensees.”<sup>20</sup> Indeed, “[t]he change from licenses to registration was intended only to streamline the process for receiving the rights as well as to make registration optional.”<sup>21</sup> This understanding also is supported by the Commission’s intentional effort to ensure that the information needed to apply for a registration remained identical to that “required for a license application.”<sup>22</sup>

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*Procedures for Satellite Commc’ns Servs.*, First Report and Order, 6 FCC Rcd 2806 (1991) (“*1991 Streamlining Order*”).

<sup>16</sup> WISPA Comments at 4; *see also* CBA Comments at 12 (“[T]he Commission has made perfectly clear that these ‘receive-only earth station registrations . . . are . . . no[t] station licenses’ that would entitle the holder to independent non-interference rights.” (citation omitted) (alterations in original)); Verizon Comments at 6 (“Longstanding Commission precedent upholds the conclusion that receive-only earth station licenses and registrations are not licenses as defined in the Communications Act.”).

<sup>17</sup> *See* ACA Comments at 7.

<sup>18</sup> *See id.*

<sup>19</sup> ACA Comments at 5; *see also* Charter Comments at 4-6.

<sup>20</sup> ACA Comments at 5.

<sup>21</sup> NPR Comments at 4.

<sup>22</sup> ACA Comments at 6 (quoting *1991 Streamlining Order*, 6 FCC Rcd at 2806-07 ¶ 4).

Even if the Commission determines that receive-only earth station registrants are not licensees under the Act, Charter urges the Commission to reaffirm its proposal to compensate earth station registrants for the costs of relocating their operations in order to clear the C-Band for 5G services,<sup>23</sup> and to protect any earth station operations that remain in the band.<sup>24</sup> Relocation reimbursement should include the transition of today's earth station operators to fiber distribution systems, which ACA Connects and others recently demonstrated could be accomplished in urban areas within 18 months, and in most areas within three years.<sup>25</sup> For the

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<sup>23</sup> See *In re Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, 6926-27 ¶ 29 (2018) (“*C-Band NPRM*”); see also, e.g., Charter Comments at 7-10; ACA Comments at 4 (“A portion of the proceeds from that auction should be earmarked to reimburse all incumbents for their transition costs, including the purchase of Indefeasible Rights of Use (‘IRU’) or new wavelength services in some cases and the construction of fiber in others, and to obtain and install equipment required for those earth station users who will migrate from C-band to fiber delivery.”); Reply Comments of ABS Global Ltd., Hispasat S.A., and Embratel Star One S.A. at 5, GN Docket No. 18-122 (Dec. 11, 2018) (“[C]ompensation to earth station operators for their direct and indirect relocation costs”); Comments of NCTA – The Internet & Television Association at 22-23, GN Docket No. 18-122 (Oct. 29, 2018) (“NCTA Comments”) (“[E]xisting C-band customers must be compensated for costs incurred as a result of efforts to accommodate new terrestrial wireless broadband operations in the band”); Comments of Microsoft Corporation at 11, GN Docket No. 18-122 (Oct. 29, 2018) (“Microsoft urges the Commission to establish a relocation fund to reimburse incumbent earth stations operators for reasonable relocation costs, including, but not limited to, new filters and the installation costs for such filter, and technical and engineering assistance”); Comments of Cumulus Media Inc. and Westwood One, LLC at 17-18, GN Docket No. 18-122 (Oct. 29, 2018) (“[T]he Commission must establish a compensation mechanism to reimburse all incumbent earth stations for all of the costs in accommodating the new wireless entrants to ensure that they will be made whole for the costs that they each would incur in any transition to a substitute or alternative spectrum”).

<sup>24</sup> See *C-Band NPRM*, 33 FCC Rcd at 6926 ¶ 27; see also *Int’l Bureau Announces Two-Week Extension of Filing Window for Earth Stations Currently Operating in 3.7-4.2 GHz Band*, Public Notice, GN Docket No. 18-122, 33 FCC Rcd 10,054 (2018) (extending the licensed or registered date of earth station operators from October 17, 2018 to October 31, 2018).

<sup>25</sup> See Letter from Pantelis Michalopoulos, Counsel for ACA Connects, to Marlene H. Dortch, Secretary, FCC, attachment at 2, GN Docket No. 18-122 (July 9, 2019) (“ACA Connects Fiber Clearing Letter”); see also Letter from Steve Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC at 3, GN Docket No. 18-122 (June 21, 2019) (“Fiber – both existing and new – can provide reliable delivery of content and can be deployed at a fraction of the value of the C-band spectrum.”) (“T-Mobile Fiber Delivery Letter”).

C-Band earth stations that remain in operation, any requirements must be sufficient to protect such stations from harmful interference.<sup>26</sup>

As Charter and others have explained, transitioning earth station operations to fiber will help maximize 5G utilization of this band, without adversely affecting services that currently utilize satellites in the C-Band.<sup>27</sup> Fiber offers earth station operators a comparable alternative that will allow them to provide their same services in terms of throughput, reliability, and operating costs as required by the *Emerging Technologies* framework.<sup>28</sup> Undertaking such action will also help bolster the deployment of fiber facilities in rural areas, thus laying a foundation of fiber networks that could enhance the public interest.<sup>29</sup>

## CONCLUSION

The Commission should affirm that receive-only earth station registrants are licensees under the Act. Even if the Commission does not find that such registrants are licensees, it should still adopt its proposal to compensate such operators for their relocation costs, including the costs of switching to a fiber-based delivery model. By compensating receive-only earth station operators, either as licensees or as registrants, the Commission will ensure that the maximum amount of C-Band spectrum is available for terrestrial use, and that 5G will be deployed in a quick and efficient manner.

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<sup>26</sup> NCTA Comments at 18 (“The Commission must take steps to ensure that existing users can continue to operate in the spectrum that remains available for their use without harmful interference.”).

<sup>27</sup> See Charter Comments at 7-10.

<sup>28</sup> See Charter Comments at 8-10; ACA Connects Fiber Clearing Letter attachment at 8-9; T-Mobile Fiber Delivery Letter at 3.

<sup>29</sup> See Charter Comments at 9; T-Mobile Fiber Delivery Letter at 2 (“Use of fiber as an alternative to satellite delivery of services would not only advance competitive 5G services, but it also offers the opportunity to expand fiber into currently unserved or underserved areas, potentially closing the digital divide and providing new economic opportunity in those locations.”).

Respectfully submitted,

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