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 THE C-BAND ALLIANCE

Jennifer D. Hindin
Kathryne C. Dickerson
Henry Gola
Jeremy J. Broggi
Wiley Rein LLP
1776 K St NW
Washington, DC 20006
Its Attorneys

Bill Tolpegin
C-BAND ALLIANCE
900 17th Street, NW
Suite 300
Washington, DC 20006

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REPLY COMMENTS OF THE C-BAND ALLIANCE

I. INTRODUCTION AND SUMMARY.

The Federal Communications Commission initiated this proceeding to identify potential opportunities for new terrestrial mobile use of mid-band spectrum between 3.7-4.2 GHz—a 500 MHz block known as the C-band.[1] Nearly every party agrees that authorization of terrestrial mobile use in some portion of the C-band is desirable. The difficulty, as the Commission has recognized, is that "several distinct" fixed satellite service ("FSS") "companies make non-exclusive, non-rivalrous use of the spectrum" pursuant to FCC authorizations.[2] "With property rights assigned to FSS operators," how may the Commission lawfully "recover an efficient amount of a public good which is no longer efficiently allocated?"[3] The C-Band Alliance—a coalition

[1] *See In re Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order & NPRM, GN Docket No. 18-122, 33 FCC Rcd. 6915 ¶ 1 (rel. July 13, 2018) (FCC 18-91) ("NPRM").

[2] *Id.* ¶ 61.

[3] *Id.*

formed by all four FSS companies that transmit service to the continental United States ("CONUS")—voluntarily came forward with an expeditious, free-market solution that respects the property rights assigned under the Communications Act and deals equitably with all parties who rely upon C-band service.

The Public Notice sought additional, targeted comments regarding the legal rights of the current users of the C-band, the scope of the Commission's power to modify those rights, and the legality of alternative procedures such as an incentive auction.[4] In its response, the C-Band Alliance showed how the text, structure, history, and purpose of the Communications Act demonstrate that receipt of an FCC license (or an equivalent market access authorization) guarantees a right of interference protection for service transmissions.[5] The C-Band Alliance also showed how entities that do not transmit are not eligible for an FCC license.[6] These bedrock principles provide the foundation for answering all of the questions raised in the Public Notice and for responding to the comments received.

First, because the members of the C-Band Alliance hold valid FCC authorizations and because harmful interference from new terrestrial mobile operations in the C-band would obliterate their service transmissions to CONUS, the Commission may not unilaterally authorize new terrestrial mobile operations in the C-band. Fortunately, the members of the C-Band Alliance have proposed to solve this problem by coordinating their non-interference rights through voluntary agreements with terrestrial mobile operators.

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[4] *See International Bureau and Wireless Telecommunications Bureau Seek Focused Additional Comment in the 3.7 to 4.2 GHz Band Proceeding*, Public Notice, GN Docket No. 18-122, RM Docket Nos. 11791, 11778 (rel. May 3, 2019) (DA 19-385) ("Public Notice").

[5] Comments of the C-Band Alliance, GN Docket No. 18-122, at 5–10 (filed July 3, 2019) ("C-Band Alliance Public Notice Comments").

[6] *Id.* at 10–14; *see also id.* at 30–33.

Second, the so-called "small satellite operators" ("SSOs") concede that they lack service transmissions that could be harmed by any repurposing of the C-band in CONUS, and they do not dispute that they may lack the technical capability to provide viable service transmissions to CONUS. The "national treatment" obligation applicable to "like services and service suppliers" does not require the FCC to pretend that the non-CONUS services provided by the SSOs are somehow "like" the CONUS services provided by the members of the C-Band Alliance. And Section 316 does not require the FCC to obtain the consent of the SSOs before authorizing new terrestrial mobile operations in the C-band because the SSOs do not have service transmissions to CONUS that could be interfered with as a result of that change.

Third, because the Communications Act authorizes the Commission to license only transmitting facilities, the registrations obtained by some receive-only earth stations are not licenses and may not lawfully be considered such. To be sure, receive-only earth station operators may register their stations for interference protection. But that registration invokes only the non-interference rights possessed by space station operators. Accordingly, receive-only earth station registrations cannot prevent the FCC from effecting changes to the C-band without earth station operator consent. Moreover, because receive-only earth stations cannot be licensed under the Act, they cannot participate in an incentive auction.

Finally, several commenters regurgitate old arguments that are outside the scope of the Public Notice. These arguments are wrong on the merits for the reasons discussed in Section V.

II. THE COMMENTS CONFIRM THAT THE FCC MAY NOT ALTER UNILATERALLY THE NON-INTERFERENCE RIGHTS HELD BY MEMBERS OF THE C-BAND ALLIANCE.

The C-Band Alliance showed in its opening comments how authorizing new terrestrial mobile operations would constitute an unlawful basic and fundamental change to the

authorizations held by the members of the C-Band Alliance.[7] The comments received in response to the Public Notice confirm that analysis. No party disputes the rule that "the Commission's section 316 power to 'modif[y]' existing licenses does not enable it to fundamentally change those licenses."[8] Furthermore, all parties agree that the interference caused by authorizing terrestrial mobile operations in the C-band would wipe out FSS service transmissions to CONUS.[9] Because such interference would render meaningless the essential purpose of the licenses and market access authorizations held by the members of the C-Band Alliance, the FCC's authorization of that interference in any significant portion of the band would constitute an unlawful fundamental change.

Attempts by some parties to resist this obvious conclusion fall short. The Dynamic Spectrum Alliance asserts that the change would not qualify as fundamental if the FCC eliminated interference protection in only the lower 200 MHz of the C-band.[10] That analysis is flawed. The

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[7] *Id.* at 15–29.

[8] *Cellco P'ship v. FCC*, 700 F.3d 534, 543 (D.C. Cir. 2012); *see MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 228 (1994) (holding that statutory "authority to 'modify' does not contemplate fundamental changes"); *see also* C-Band Alliance Public Notice Comments, at 15–21.

[9] *See, e.g.*, Comments of the Small Satellite Operators (ABS Global Ltd., Hispasat S.A. and Claro S.A.), GN Docket No. 18-122, at 28 (filed July 3, 2019) ("SSO Public Notice Comments") (explaining terrestrial mobile "deployments will make it virtually impossible for satellite signals to be received free from harmful interference"); Comments of T-Mobile USA, Inc., GN Docket No. 18-122, at 3 (filed July 3, 2019) ("T-Mobile Public Notice Comments") (acknowledging "new, flexible-use terrestrial operations … could cause harmful interference" to reception of FSS signals); Comments of National Public Radio, GN Docket No. 18-122, at 2 (filed July 3, 2019) ("NPR Public Notice Comments") ("low-power satellite-to-earth station C-band downlinks … are particularly susceptible to interference"); *see also* C-Band Alliance Public Notice Comments, at 16 n.52 (collecting additional record citations). No party argues that FSS signals could overpower signals from terrestrial mobile operations. *See, e.g.*, T-Mobile Public Notice Comments, at 4 (acknowledging "inference [sic] to terrestrial mobile operations from satellite transmissions either in-band on [sic] in adjacent spectrum is highly unlikely").

[10] *See* Comments of the Dynamic Spectrum Alliance, GN Docket No. 18-122, at 11, 15–18 (filed July 3, 2019) ("Dynamic Spectrum Alliance Public Notice Comments").

Supreme Court held that the FCC exceeded its modification authority when it eliminated a tariff-filing requirement for a significant portion of the long-distance telecommunications market because "an elimination of the crucial provision of the statute for 40% of a major sector of the industry is much too extensive to be considered a 'modification.'"[11] The same reasoning would apply here. If the FCC authorized new terrestrial mobile operations in the lower 200 MHz of the C-band, that action would eliminate interference protection for FSS service transmissions in 40% of the band. The members of the C-Band Alliance would be unable to "provide essentially the same services" "under very similar terms"[12] without first making "widespread changes in … satellites, transponders, and frequencies … as traffic loading is rearranged to compress existing services into a narrower range of frequencies."[13] Such massive change to the authorizations held by the members of the C-Band Alliance is much too extensive to be considered a mere "modification."

The Open Technology Institute at New America suggests that the Commission could comply with Section 316 by providing the members of the C-Band Alliance with "comparable facilities."[14] But the "comparable facilities" construct makes no sense with regard to FSS operators because no party has identified any available band with propagation characteristics comparable to C-band spectrum. That failure is unsurprising because, as many customers of C-band service have

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[11] *MCI Telecomms. Corp.*, 512 U.S. at 231.

[12] *Cmty. Television, Inc. v. FCC*, 216 F.3d 1133, 1141 (D.C. Cir. 2000).

[13] Comments of the C-Band Alliance, GN Docket No. 18-122, at 53 (filed Oct. 29, 2018) ("C-Band Alliance Comments").

[14] Comments of the Open Technology Institute at New America, GN Docket No. 18-122, at 15–17 (filed July 3, 2019) ("Open Technology Institute at New America Public Notice Comments"); *see also* Dynamic Spectrum Alliance Public Notice Comments, at 16–17.

explained, the C-band "provides unparalleled levels of flexibility and dependability that cannot be equaled by any other means of video distribution."[15]

T-Mobile tries to evade Section 316 altogether. The company contends that the Commission would "not be required to exercise its authority under Section 316 with respect to authorizations held by satellite operators in order to enable terrestrial use of the C-band" because satellite operators could "continue to transmit using all 500 megahertz of C-band spectrum" even though their signal could no longer be received.[16] That argument, which T-Mobile has made before, fares no better for its repetition here.[17] It "has long been established" by Supreme Court and D.C. Circuit precedent that "an existing licensee" "raises a legally cognizable issue under section 316" where it alleges "that a new grant may create objectionable electrical interference" to its service transmissions.[18] T-Mobile's argument fails to deal with this unbroken line of authority and, if adopted by the Commission, would invite reversal.

As the C-Band Alliance has explained, Section 316, correctly understood, can support only one conclusion—the FCC may not authorize new terrestrial mobile operations in any significant

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[15] Comments of BYU Broadcasting, GN Docket No. 18-122, at 13 (filed July 3, 2019) ("BYU Broadcasting Public Notice Comments"); *see, e.g.*, Comments of Comcast Corporation and NBCUniversal Media, LLC, GN Docket No. 18-122, at 5 (filed Oct. 29, 2018) ("the C-band is the most suitable for point-to-multipoint video distribution"); Letter from John Scaggs, CEO, Way Media, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 2–3 (filed Apr. 16, 2019) (explaining how, during hurricane Michael, "[o]ur C-band satellite feed was essential and critical" to providing "information on where to find water, food, shelter" and explaining how fiber and Ku-band services proved unworkable under these conditions); *see also* Comments of the Satellite Industry Association, GN Docket No. 18-122, at 17–18 (filed July 3, 2019) ("SIA Public Notice Comments").

[16] *See* T-Mobile Public Notice Comments, at 4–5; *see also* Public Notice, at 4.

[17] *See* Letter from Russell H. Fox, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 8 (filed Apr. 11, 2019).

[18] *W. Broad. Co. v. FCC*, 674 F.2d 44, 49–50 (D.C. Cir. 1982) (reversing and remanding FCC licensing decision); *see also* C-Band Alliance Public Notice Comments, at 18–19 (collecting additional authorities).

portion of the C-band without first obtaining the cooperation of the members of the C-Band Alliance. Fortunately, the members of the C-Band Alliance have proposed to waive their non-interference rights through voluntary agreements with terrestrial mobile operators.[19] Moreover, as explained in Sections III and IV below, the Commission need not obtain the consent of the rent-seeking SSOs, nor of unlicensed receive-only earth station registrants.

III. THE COMMENTS CONFIRM THAT THE FCC MAY MODIFY THE NON-INTERFERENCE RIGHTS OF THE "SMALL SATELLITE OPERATORS."

A. Authorizing New Terrestrial Mobile Operations In The C-Band Would Not Work An Unlawful "Fundamental Change" To The Authorizations Held By The SSOs.

The C-Band Alliance has explained how the SSOs' lack of C-band service transmissions to CONUS means that any authorization of new terrestrial mobile operations in CONUS C-Band spectrum cannot effect a fundamental change to the market access authorizations the SSOs possess and cannot violate their enforceable rights.[20]

If the Commission were to authorize new terrestrial mobile operations in CONUS, the members of the C-Band Alliance would lose interference protection for existing service transmissions and be required to make extensive and costly changes to their existing satellite networks.[21] The SSOs, by contrast, have no service transmissions to CONUS to protect and thus no network changes to undertake. The SSOs could continue to provide the same non-CONUS

[19] C-Band Alliance Public Notice Comments, at 27–29; *see also, e.g.*, C-Band Alliance Comments; Reply Comments of the C-Band Alliance, GN Docket No. 18-122 (filed Dec. 7, 2018).

[20] C-Band Alliance Public Notice Comments, at 24; *see also id.* at 21–27; *accord* Comments of Verizon, GN Docket No. 18-122, at 14–15 (filed July 3, 2019) ("Verizon Public Notice Comments").

[21] *See* C-Band Alliance Public Notice Comments, at 5 n.13 and accompanying text, *supra*.

service transmissions to the same non-CONUS customers in the exact same manner. That is not a fundamental change.

In addition, the SSOs' alleged harm would be, at most, speculative. Because the SSOs do not now provide service transmissions to CONUS, any potential injury would depend on an argument that the SSOs intend to provide service transmissions to CONUS at some unidentified point in the future. But such an argument, as the C-Band Alliance has shown, is belied both by the record in this proceeding and the facts on the ground.[22] Moreover, because the SSOs appear to lack, in many cases, the technical capability for providing viable service transmissions to CONUS—a charge they do not dispute—the SSOs' claim of potential future injury may actually be worse than speculative, bordering on the impossible.[23] Such tenuous and tendentious claims are not cognizable.[24]

There is no way that the authorization of new terrestrial mobile operations in CONUS could violate an enforceable right belonging to the SSOs or effect a fundamental change in their market access authorizations.

B. Authorizing New Terrestrial Mobile Operations In The C-Band Would Not Violate The Principle Of National Treatment With Regard To The SSOs.

In their comments responding to the Public Notice, the SSOs again concede that they lack any service transmissions that could be harmed by the repurposing of the C-band. And they again fail to dispute that their satellites, in many cases, lack the capability to provide viable service transmissions to CONUS. Instead, the SSOs stake their entire argument on a misunderstanding of

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[22] *See id.* at 25.

[23] *See id.* at 22–24 (collecting and explaining SSO coverage maps).

[24] *See, e.g.*, *AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154, 1160 (D.C. Cir. 2000) (holding FCC not required to hear "speculative" interference claim under Section 316); *see also* C-Band Alliance Public Notice Comments, at 24–25 nn.85–87 (collecting additional authorities).

the "national treatment" obligation established by the World Trade Organization Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement").[25]

The WTO Basic Telecom Agreement was concluded under the framework established by the World Trade Organization General Agreement on Trade in Service ("GATS").[26] The "national treatment" principle embodied in the WTO Basic Telecom Agreement is established by GATS Article XVII:

> In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[27]

The FCC has described GATS Article XVII as "a nondiscrimination rule that requires a WTO Member to treat *like* services and service suppliers from other WTO Members no less favorably than it treats its own services and service suppliers."[28] Although the GATS itself "does not provide any clear standard of likeness between services and service suppliers of one Member and those of another,"[29] the United States takes the view that a determination of whether services are "like" must be made "on a case-by-case basis" and only after examining "all relevant evidence."[30]

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[25] *See* SSO Public Notice Comments, at 8–16.

[26] *See In re Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic & Int'l Satellite Serv. in the United States*, Report & Order, 12 FCC Rcd. 24094 ¶¶ 19–27 (1997) (FCC 97-399) ("*DISCO II Order*").

[27] General Agreement on Trade in Services art. XVII, ¶ 1, Apr. 14, 1994, 1869 U.N.T.S. 183; *see also id.* art. II; *DISCO II Order* ¶¶ 19–27.

[28] *DISCO II Order* ¶ 22 (emphasis added).

[29] Wei Wang, *On the Relationship Between Market Access and National Treatment Under the GATS*, 46 Int'l Law. 1045, 1048 (2012).

[30] *See, e.g.*, Third Participant Submission of the United States of America, *Argentina – Measures Relating to Trade in Goods and Services*, ¶¶ 17–18, DS453/AB-2015-8 (Nov. 19, 2015), https://ustr.gov/sites/default/files/enforcement/DS/US.3rd.Ptcpt.Sub.Fin.pdf.

The members of the C-Band Alliance and the SSOs do not provide "like services" and are not like "service suppliers." The members of the C-Band Alliance—including members with U.S. licenses and members with U.S. market access—have used their FCC authorizations to provide service transmissions that benefit the nearly 120 million American households that receive programming content over the C-band. The SSOs, by contrast, have elected to focus their services on Africa and South America.[31] Moreover, the beams from their satellites, in many cases, do not reach CONUS at all.[32] In other cases, the look angle to the orbital position is so extreme that the provision of reliable service is highly impracticable as a technical matter.[33] In view of these limitations, it is hardly surprising that the SSOs have been unable to obtain a single U.S. customer or earn a single cent of U.S. revenue despite having held U.S. market access authorizations for years (and in one case, over a decade). The national treatment obligation embodied in the WTO Basic Telecom Agreement does not require the FCC to pretend otherwise.

The free-market solution proposed by the C-Band Alliance is fully consistent with national treatment. It would allow all satellite operators serving CONUS—including those with U.S. licenses and those with U.S. market access—to negotiate private agreements to forego interference protection and facilitate 5G deployment. Thus, under the proposal advocated by the C-Band Alliance, "like services and suppliers" with market access would be provided "treatment no less favourable" than U.S. licensees.

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[31] *See* C-Band Alliance Public Notice Comments, at 22–24 (collecting and explaining SSO coverage maps).

[32] *See id.*

[33] *See id.*

IV. THE COMMENTS CONFIRM THAT RECEIVE-ONLY EARTH STATIONS CANNOT POSSESS INDEPENDENT NON-INTERFERENCE RIGHTS.

A. The Limitations On The FCC's Modification Authority Do Not Apply To Receive-Only Earth Station Registrations.

The Commission has long made clear that "receive-only earth station registrations …. are … no[t] station licenses"[34] and that receive-only earth station operators cannot obtain FCC licenses because "receive-only earth stations do not transmit."[35] That longstanding position, as the C-Band Alliance has shown, is confirmed by the text, structure, history, and purpose of the Communications Act.[36] It follows that the limitations on the FCC's modification authority—which applies to a "license"[37]—cannot apply to receive-only earth station registrations.[38]

Some commenters contend that Section 316 limits the FCC's modification authority with respect to receive-only earth stations because the registrations some have obtained are licenses by another name.[39] Their principal statutory argument is that even though a receive-only earth station,

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[34] *In re Comprehensive Review of Licensing & Operating Rules for Satellite Servs.*, Second Report & Order, 30 FCC Rcd. 14713 ¶ 306 (2015) (FCC 15-167) ("*2015 Satellite Order*"); *accord 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 Procedures for Satellite Commc'ns Servs.*, First Report & Order, 6 FCC Rcd. 2806 ¶ 4 (1991) (FCC 91-136) ("*1991 Satellite Order*") ("registration … eliminate[s] the issuance of a formal license").

[35] *In re Regulation of Domestic Receive-Only Satellite Earth Stations*, First Report & Order, 74 F.C.C.2d 205 ¶ 31 (1979) (FCC 79-665) ("*1979 Satellite Order*").

[36] *See* C-Band Alliance Public Notice Comments, at 5–14, 30–33; *accord* SIA Public Notice Comments, at 3–10.

[37] 47 U.S.C. § 316(a)(1).

[38] *See* C-Band Alliance Public Notice Comments, at 15 n.48; *accord* Comments of the Wireless Internet Service Providers Assocation, GN Docket No. 18-122, at 8–9 (filed July 3, 2019) ("WISPA Public Notice Comments").

[39] *See* Comments of ACA Connects – America's Communications Association, GN Docket No. 18-122, at 5–6 (filed July 3, 2019) ("ACA Connects Public Notice Comments"); Comments of Charter Communications, Inc., GN Docket No. 18-122, at 4 (filed July 3, 2019) ("Charter Public Notice Comments"); Comments of the Competitive Carriers Association, GN Docket No. 18-122,

by definition, cannot transmit service, the station is "an 'apparatus' that is 'incidental' to a satellite operator's transmissions" and therefore may be deemed to engage in "transmission."[40] The Commission, however, has rejected that "unreasonable" construction of the statute since 1979, when it held: "While it might be argued that receiving facilities are incidental to radio transmission, 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 earth stations."[41]

The Commission's reasoning is even more compelling today. The Wireless Internet Service Providers Association reports that "hundreds of millions" of receivers have been deployed over the last four decades.[42] If the entities and individuals operating those receivers were suddenly deemed "licensees," that decision would affect "huge swaths of spectrum" and render future auctions "virtually unworkable."[43] The Commission should reject the invitation to exchange its longstanding and correct construction of the Act for an interpretation that is unreasonable.[44]

Some of the same commenters mistakenly argue that the Commission's many satellite orders addressing receive-only earth stations do not mean what they plainly say—*i.e.*, that

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at 28 (filed July 3, 2019) ("CCA Public Notice Comments"); NPR Public Notice Comments, at 4–5; BYU Broadcasting Public Notice Comments, at 6–10.

[40] Charter Public Notice Comments, at 4 (citing 47 U.S.C. § 153(57)); *see also, e.g.*, CCA Public Notice Comments, at 28 (same).

[41] *1979 Satellite Order* ¶ 31.

[42] WISPA Public Notice Comments, at 13.

[43] *Id.*

[44] *See Kisor v. Wilkie*, No. 18-15, 2019 WL 2605554, at *8 (U.S. June 26, 2019) ("[U]nder *Chevron*, the agency's reading must fall 'within the bounds of reasonable interpretation.' And let there be no mistake: That is a requirement an agency can fail." (citation omitted)); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016) (holding "regulation does not receive *Chevron* deference" where its inconsistency with a "longstanding earlier position results in a rule that cannot carry the force of law").

"receive-only earth station registrations …. are … no[t] station licenses"[45] because "receive-only earth stations do not transmit" service.[46] According to these commenters, the true meaning of the Commission's many satellite orders can be discerned from a legal memorandum released in 1970.[47] There, the FCC described "non-Government satellite and earth station facilities" as "facilities used for interstate communication or transmission of energy by radio" and concluded that "the Commission has legal power to authorize any nongovernmental entity to establish and operate domestic communication satellite facilities."[48] But that 1970 memorandum, which accompanied a decision expanding the availability of satellite communication to certain nongovernmental entities, did not purport to hold that the Communications Act requires passive receivers to obtain an FCC license. When the FCC addressed *that* question squarely for the first time nine years later, it held that the "licensing of receive-only earth stations is *not* mandated by the Act."[49] And it has affirmed that position ever since.[50]

Nor are these commenters helped by their observation that the Commission established, in 1979, an "optional" or "voluntary license" program by which receive-only earth stations could

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[45] *See In re Comprehensive Review of Licensing & Operating Rules for Satellite Servs.*, Second Report & Order, 30 FCC Rcd. 14713 ¶ 306 (2015) (FCC 15-167); *see also 1991 Satellite Order*.

[46] *1979 Satellite Order* ¶ 31.

[47] *See* CCA Public Notice Comments, at 28 n.95; ACA Connects Public Notice Comments, at 5; Charter Public Notice Comments, at 4–5; NPR Public Notice Comments, at 4–5.

[48] *See In re Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities*, Report & Order, 22 F.C.C.2d 86, Appendix C ¶¶ 1, 3 (1970) (FCC 70-306) ("*1970 Satellite Order*") (parenthetical omitted).

[49] *1979 Satellite Order* ¶ 31 (emphasis added).

[50] *See, e.g.*, *2015 Satellite Order* ¶ 306 ("receive-only earth station registrations … are neither construction permits nor station licenses"); *In re Amendment of the Commission's Space Station Licensing Rules & Policies*, Second Report & Order and Declaratory Order, 18 FCC Rcd. 12507 ¶ 21 (2003) (FCC 03-128) ("we do not need a licensing procedure for routine receive-only earth stations to prevent them from causing harmful interference, because such receive-only operations cannot cause unacceptable interference") (citing *1979 Satellite Order* ¶ 31).

ensure that they receive the benefit of the interference protection owed to FSS service transmission.[51] As the C-Band Alliance and other commenters have explained, earth stations are the specific locations at which interference is "felt" or becomes noticeable because interference to the FSS space station transmission is only measurable on the ground. Thus, in light of the fact that FSS historically has shared the C-band with fixed service ("FS"), it makes sense to allow receive-only earth stations to register their location with the Commission and thereby to preclude the authorization of an FS deployment that could interfere with FSS service transmissions.[52] However, the FCC has made perfectly clear from the very beginning that the interference protection available under this program was derived from the non-interference right inherent in the mandatory license required by the Communications Act. That is why, in 1979, the Commission relied expressly upon its "ancillary" authority to create the receive-only earth station registration program;[53] if it had "express authority" to regulate receive-only earth stations, there would have been no need to justify the voluntary license program as "reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities" to regulate transmission.[54]

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[51] *1979 Satellite Order* ¶¶ 31–34; *cf.* Charter Public Notice Comments, at 4–7.

[52] *See* C-Band Alliance Public Notice Comments, at 12–14; SIA Public Notice Comments, at 12–13; Comments of Google LLC, GN Docket No. 18-122, at 5–6 (filed July 3, 2019) ("Google Public Notice Comments"); *accord In re Deregulation of Domestic Receive-Only Satellite Earth Stations*, Second Report & Order, 104 F.C.C.2d 348 ¶ 3 (1986) (FCC 86-133) ("Our receive-only earth station licensing program is a voluntary one. It is … the means for protecting proposed earth station sites from interference caused by terrestrial point-to-point microwave transmitters.").

[53] *1979 Satellite Order* ¶ 31.

[54] *See Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010); *see also* SIA Public Notice Comments, at 7 (explaining FCC reliance on ancillary authority); WISPA Public Notice Comments, at 3–5 (same).

The FCC removed any potential source of confusion when, in 1991, it restyled the "optional licensing procedure" as a voluntary "registration program."[55] The Commission at that time assured worried receive-only earth station operators that "a registration program will afford the same protection from interference as would a license issued under our former procedure."[56] But that statement did not, as Charter contends, imply that the registrations would somehow confer independent non-interference rights.[57] It simply reflected the reality that the source of the interference protection afforded to receive-only earth station operators under the voluntary registration program would be the same as it had been under the voluntary license program—the mandatory licenses held by the FSS operators.[58]

In sum, and as many commenters in the proceeding recognize, there is no credible argument that receive-only earth station registrations are licenses by another name.[59] It follows that the limitations on the FCC's modification authority imposed by Section 316 do not apply to receive-only earth station registrations.

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[55] *1991 Satellite Order* ¶ 4.

[56] *See id.* ¶ 7.

[57] *See* Charter Public Notice Comments, at 5–6; *see also* BYU Broadcasting Public Notice Comments, at 7.

[58] After the market access program was established, such interference protection could also be derived in appropriate circumstances from the market access authorizations obtained by FSS operators. *See generally In re Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic & Int'l Satellite Serv. in the United States*, First Order on Reconsideration, 15 FCC Rcd. 7207 ¶¶ 8–20 (1999) (FCC 99-325) ("*DISCO II First Reconsideration Order*").

[59] *See, e.g.,* Dynamic Spectrum Alliance Public Notice Comments, at 12; Google Public Notice Comments, at 6–7; Open Technology Institute at New America Public Notice Comments, at 17–20; SIA Public Notice Comments, at 7–8; SSO Public Notice Comments, at 4, 23–34; Verizon Public Notice Comments, at 2; WISPA Public Notice Comments, at 3–5.

B. The FCC's Section 309(j)(8)(G) Authority Limits Participation In Any Incentive Auction To "Licensees" With "Competing" "Spectrum Usage Rights."

Section 309(j)(8)(G)(i) authorizes the Commission to "encourage a *licensee* to relinquish voluntarily some or all of its licensed spectrum usage rights" by sharing with such licensee a portion of the proceeds from a reverse auction.[60] Because, as explained in Section IV.A., receive-only earth stations cannot be licensed, it follows that receive-only earth station operators are not "licensees" with "licensed spectrum usage rights," and thus that they may not participate in a Section 309(j) incentive auction.[61]

National Public Radio alone appears to suggest that the term "licensee" might have a different meaning under Section 309(j) than under the rest of Title III.[62] That argument is belied by Section 3's declaration that its definitions apply to the "chapter."[63] There is no merit to the suggestion that the definition of a Section 309(j) licensee might be different than that of any other Title III licensee.

The definition of "licensee" is not the only statutory language that prohibits receive-only earth station operators from participating in a Section 309(j) incentive auction. Section 309(j)(8)(G)(ii) expressly limits participation to situations where "at least two *competing* licensees" are eligible to participate in a reverse auction.[64] But that situation cannot exist in the C-band, where "several distinct companies make non-exclusive, non-rivalrous use of the

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[60] 47 U.S.C. § 309(j)(8)(G)(i); *see also id.* § 309(j)(8)(G)(ii).

[61] *See* C-Band Alliance Public Notice Comments, at 30–33; *accord* Verizon Public Notice Comments, at 4–11.

[62] NPR Public Notice Comments, at 5–6.

[63] *See* 47 U.S.C. § 153 ("For the purposes of this chapter…").

[64] 47 U.S.C. § 309(j)(8)(G)(ii) (emphasis added).

spectrum."[65] Moreover, even if receive-only earth station registrants were incorrectly deemed "licensees," they could not participate in an incentive auction because, as Professor Milgrom's economic analysis demonstrates, receive-only earth station use of the spectrum does not compete with FSS use of the spectrum.[66]

Only T-Mobile takes the absurd position that space stations and receive-only earth stations possess "competing" spectrum usage rights.[67] According to T-Mobile, "the C-band can be cleared if *either* satellite space station operators or earth station operators as a group agree to relinquish their spectrum usage rights."[68] But that contention, plainly, is false. Even if receive-only earth station operators were "licensees" (which they are not), and even if their spectrum usage made them "competing licensees" (which it could not), a decision by every receive-only earth station to vacate the C-band could not extinguish the rights of FSS operators.[69] That circumstance is also

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[65] NPRM ¶ 61.

[66] Letter from Paul Milgrom, Chairman, Auctionomics, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (Mar. 6, 2019) (explaining competition only results among bidders who supply economic substitutes), filed as attachment to Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Mar. 7, 2019); *see also* C-Band Alliance Public Notice Comments, at 32, 34–36.

[67] *See* T-Mobile Public Notice Comments, at 10–12. All other commenters in this proceeding either expressly recognize that receive-only earth stations do not compete with space stations, *see, e.g.*, SSO Public Notice Comments, at 22–25 ("ESOs and satellite operators do not 'compete' in any sense of the term—and the nature of satellite operator and ESO rights make that point plain."); tacitly admit as much, *see, e.g.*, Comments of Raytheon Company, GN Docket No. 18-122, at 3 (filed July 3, 2019) (asserting the FCC "should look beyond any statutory *obligations*" and protect earth stations based upon "the equities"); or overlook this statutory requirement altogether, *see, e.g.*, NPR Public Notice Comments, at 7 (asserting a receive-only earth station may participate in an auction "even if a receive-only earth station were deemed not to constitute a 'licensee' for purposes of Section 309(j)(8)(G)").

[68] T-Mobile Public Notice Comments, at 11.

[69] *See* C-Band Alliance Public Notice Comments, at 29–37.

highly unlikely given that FSS operators themselves operate over 100 C-band antennas in CONUS. T-Mobile's proposal is a non-starter.

C. The C-Band Alliance Is Committed To Paying Receive-Only Earth Station Relocation Costs.

The C-Band Alliance agrees with the SSOs that receive-only earth station registrants should be fully compensated for their relocation costs.[70] To that end, the C-Band Alliance publicly (and repeatedly) has committed to paying those costs.[71] In binding commitment letters sent to customers, members of the C-Band Alliance pledged to "earmark an amount equal to 120% of the estimated spectrum clearing costs" to pay receive-only earth station expenses related to the migration of a portion of the C-band from FSS to terrestrial 5G use.[72] These funds would be maintained in an independently-audited escrow account and paid-out "[w]ithin 30 days of [a receive-only earth station operator or third party vendor] submitting documentation" of a covered cost. Additionally, members of the C-Band Alliance have committed to establishing a "completion fund" to cover any clearing expenses incurred by receive-only earth station operators after proceeds from the proposed market-based mechanism are distributed to the members of the C-

[70] *See* SSO Public Notice Comments, at 17 (asserting that "recogniz[ing] the relocation costs that ESOs will have to incur" is "good spectrum management policy"). However, as further explained herein, the C-Band Alliance does not agree with the SSOs that receive-only earth station operators are entitled to payments exceeding relocation costs.

[71] *See, e.g.,* Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019); Letter from Bill Tolpegin, Chief Executive Officer, C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed May 21, 2019).

[72] Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019); *cf. Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 82 F.R. 51417, MB Docket No. 16-306, GN Docket No. 12-268 (rel. Oct. 16, 2017) (DA 17-1015) (announcing an initial allocation giving "commercial stations and MVPDs access to approximately 52 percent of their currently estimated and verified [spectrum repack] costs….").

Band Alliance. The completion fund would contain segregated funds from which receive-only earth station operators could draw for a period of three years.[73]

In addition to reimbursements for relocation costs, the SSOs also assert that receive-only earth stations should "receive a meaningful incentive payment conditioned on their prompt relocation to other spectrum."[74] Again, as explained in Section IV.B. above and in the comments of the C-Band Alliance, the Commission lacks statutory authority to induce receive-only earth stations to leave the C-band by offering them incentive payments, whether such payments derive from an incentive auction or some other mechanism.[75] The Commission's ancillary authority cannot fill the statutory gap because offering incentive payments to receive-only earth station operators as a means of clearing the C-band would be "inconsistent with" the non-interference rights held by the members of the C-Band Alliance, for the reasons explained in Section II.[76] The public interest also counsels against such payments because, among other reasons, an incentive auction that incorporated receive-only earth stations would be nearly impossible to implement

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[73] Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019).

[74] SSO Public Notice Comments, at 17.

[75] C-Band Alliance Public Notice Comments, at 29–34.

[76] *See* 47 U.S.C. §§ 154(i), 303(r). The SSOs' reliance upon *Mobile Commc'ns Corp. of Am. v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996), is misplaced. *See* SSO Public Notice Comments, at 18 n.69 (citing Letter from Scott Blake Harris, Counsel to the SSOs, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 18-122 (filed Mar. 25, 2019)). That case did not hold, as the SSOs' suggest, that the FCC may provide "meaningful financial incentives" to non-licensees who vacate spectrum. *See id.* at 18. It merely affirmed, as a proper exercise of the Commission's ancillary authority, a decision to require a PCS provider which had obtained a license through a pioneer's preference (rather than a comparative hearing) to pay for that license following Congress's establishment of the forward auction procedure. *See Mobile Commc'ns Corp.*, 77 F.3d at 1404–07. The case had nothing at all to do with incentive auctions—which were not authorized for almost another decade, *see* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6402, 125 Stat. 156 (2012)—nor did it have anything to do with any other type of incentive payment.

from a practical perspective given the sheer number of earth stations and Partial Economic Areas ("PEAs") involved.[77]

Moreover, the SSO's incentive payment proposal is contrary to established precedent, which instructs that passive receivers may be entitled to compensation for costs associated with transmitting stations' relocation but nothing beyond that. For example, in the context of the DTV transition, Congress established a program via which all passive receivers of broadcast service transmissions (*i.e.*, American households possessing television sets) were eligible for $40 coupons to be applied towards the cost of purchasing digital converter set-top boxes.[78] Such boxes were necessary for some consumers, including those with older-model television sets, to continue receiving over-the-air broadcast service transmissions once broadcasters switched from analog to digital transmissions. Thus, the boxes represented the "cost" to passive television receivers associated with broadcaster stations' transition to digital television service. Importantly, American consumers did not receive checks or any other payments as an "incentive" to purchase converter boxes.

Also, to be clear, if the C-Band Alliance's market-based proposal is adopted, receive-only earth station operators themselves will need to do very little to transition to the upper 300 MHz of C-band spectrum. The C-Band Alliance has already committed to "undertak[ing], manag[ing], and complet[ing] all necessary actions to effectuate" receive-only earth stations' migration following repurposing of a portion of the C-band for mobile terrestrial operations.[79] This includes

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[77] C-Band Alliance Public Notice Comments, at 34–36.

[78] *See* Digital Television Transition and Public Safety, Pub. Law 109-171, 120 Stat. 21, 24 (Feb. 8, 2006). According to NTIA, the entity charged with administering the coupon program, 34,879,122 coupons were ultimately redeemed. *See* https://www.ntia.doc.gov/legacy/dtvcoupon/reports/NTIA_DTVWeekly_120909.pdf.

[79] *See* Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019); Letter from Bill Tolpegin, Chief Executive

handling the technical aspects of transitioning to new transponders or satellites and installing new filters. In fact, the C-Band Alliance has already provided customers with customer-specific migration plans and timelines.[80]

V. THE EXTRANEOUS ARGUMENTS RAISED BY SOME COMMENTERS ARE WITHOUT MERIT AND OUTSIDE THE SCOPE OF THE PUBLIC NOTICE.

Several commenters regurgitate old arguments that are outside the scope of the "focused" and "targeted" questions asked by the Public Notice.[81] These arguments not only are unresponsive to the Public Notice, they are without merit for reasons the C-Band Alliance explained months ago.[82]

The Competitive Carriers Association argues the C-Band Alliance's proposal is unlawful because it would "modify" the licenses granted to FSS operators "to allow for the provision of terrestrial 5G services" and thereby exceed the Commission's authority under Section 316.[83] The Competitive Carriers Association is doubly mistaken. *First*, the C-Band Alliance has not proposed that the FCC modify eligible FSS licenses to authorize provision of terrestrial mobile services—AT&T has.[84] *Second*, AT&T's proposal would not exceed the FCC's modification authority

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Officer, C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed May 21, 2019).

[80] *See* Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019).

[81] Public Notice, at 1–2.

[82] *See, e.g.*, Letter from Jennifer Hindin, Counsel to the C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Feb. 6, 2019) ("C-Band Alliance Ex Parte").

[83] CCA Public Notice Comments, at 23.

[84] *Compare* C-Band Alliance Comments, at 29–32 (proposing FCC permit FSS operators to relinquish their non-interference rights in some portion of the band in exchange for payment from terrestrial mobile operators who would then obtain new initial licenses from the Commission) *with* Comments of AT&T Services, Inc., GN Docket No. 18-122, at 3 (filed July 3, 2019) ("AT&T Public Notice Comments") ("the Commission would begin by using its authority under section

because the change it proposes would not be "fundamental." Under AT&T's plan, eligible FSS operators would remain authorized to provide satellite services in the C-band, manage the transition of a portion of the band to terrestrial services[85] and avoid the massive interference problem identified by the C-Band Alliance.[86]

Some commenters argue that the approach favored by the C-Band Alliance violates a competitive bidding obligation imposed by Section 309(j)(1).[87] These commenters overlook the Commission's "broad authority under the Communications Act to 'consider the public interest in deciding whether to forgo an auction.'"[88] That authority stems from the plain language of Section 309(j)(1), which provides that "*[i]f*, consistent with the obligations described in [Section 309(j)](6)(E), mutually exclusive applications are accepted for any initial license or construction permit, *then*, ... the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding."[89] Section 309(j)(6)(E), in turn, provides that "[n]othing in

316 to modify the space station owners' licenses to create a partitioned authorization for flexible terrestrial use").

[85] *See* AT&T Public Notice Comments, at 2–7*; see also In re Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands,* Report & Order and Order of Proposed Modification, WT Docket No. 12-70 (rel. Dec. 17, 2012).

[86] *See* Section II, *supra*.

[87] 47 U.S.C. § 309(j)(1); *see* CCA Public Notice Comments, at 12–18; Open Technology Institute at New America Public Notice Comments, at 11–12; Dynamic Spectrum Alliance Public Notice Comments, at 7.

[88] *In re Serv. Rules for Advanced Wireless Servs. in the 2000-2020 MHz & 2180-2200 MHz Bands*, Order on Reconsideration, 33 FCC Rcd. 8435 (2018) (FCC 18-121) (quoting *M2Z Networks, Inc. v. FCC*, 558 F.3d 554, 563 (D.C. Cir. 2009)); *see also In re Improving Pub. Safety Commc'ns in the 800 MHz Band*, Report & Order, Fifth Report & Order, Fourth Memorandum Opinion & Order, and Order, 19 FCC Rcd. 14969, 15021 (2004) (FCC 04-168) ("section 309(j)(6)(E) gives the Commission broad authority to create or avoid mutual exclusivity in licensing, based on the Commission's assessment of the public interest").

[89] 47 U.S.C. § 309(j)(1) (emphasis added); *see also In re Use of Spectrum Bands Above 24 GHz for Mobile Radio Servs.*, Report & Order and FNPRM, 31 FCC Rcd. 8014 ¶ 244 (2016) (FCC 16-89) ("We explained in the NPRM that it would be in the public interest and consistent with our

[Section 309(j)], or in the use of competitive bidding, shall be construed to relieve the Commission of the obligation in the public interest to continue to use … negotiation … and other means in order to avoid mutual exclusivity."[90] Thus, as the C-Band Alliance has explained, the means contemplated by its proposal fit comfortably within the express language of the statute.[91]

The Competitive Carriers Association also claims that recognizing any private coordination agreements would result in an unlawful transfer of spectrum "ownership" rights to a private party.[92] That too is incorrect. *First*, under the proposal put forward by the C-Band Alliance, the United States Government would retain its ownership of, and its licensing authority over, the spectrum.[93] *Second*, the Competitive Carriers Association is mistaken when it equates recognition of a property interest with assignment of "ownership."[94] As every leaseholder knows, enjoyment of important property interests need not imply "ownership" of said property. In any

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statutory mandate to adopt a licensing scheme that allows the filing of mutually exclusive applications for licenses in the 28, 37, and 39 GHz bands which, *if accepted*, would be resolved through competitive bidding." (footnotes omitted) (emphasis added)); *In re Improving Pub. Safety Commc'ns in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, 15016 (2004) (FCC 04-168) ("The auction requirement of Section 309(j)(1) applies only when the Commission has accepted mutually exclusive applications for an initial license.").

[90] 47 U.S.C. § 309(j)(6)(E).

[91] *See* C-Band Alliance Ex Parte, at 2–3.

[92] CCA Public Notice Comments, at 12 (citing 47 U.S.C. § 301).

[93] *See, e.g.*, C-Band Alliance Ex Parte, at 6 ("Under the Market-Based Approach, the Commission would require as a condition of accepting an application for a spectrum license the completion of a negotiated spectrum clearing agreement. But all other aspects of the licensing determination—including, for example, the assessment of the applicant's 'citizenship, character, and financial, technical, and other qualifications . . . to operate the station'—would remain with the Commission. So too would the final authority to approve or deny the license.").

[94] CCA Public Notice Comments, at 12.

event, the Commission has already acknowledged in this proceeding the uncontroversial proposition that FSS operators have "property rights" in their licensed spectrum.[95]

Next, some commenters assert that the Commission must favor a Section 309(j) auction over any private coordination process because a Section 309(j) auction would reallocate the C-band in a manner that creates revenues for the U.S. Treasury.[96] That argument, however, is foreclosed by Section 309(j)(7), which provides that "the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection" when it "assign[s] a band of frequencies to a use."[97] Moreover, the C-Band Alliance's proposal is fully consistent with the objectives of Section 309(j)(3) because it would promote "economic opportunity and competition," "rapid deployment of new technologies," and "efficient and intensive use of the electromagnetic spectrum."[98] The argument is a red herring.

Finally, the Competitive Carriers Association erroneously argues that the proposal put forward by the C-Band Alliance would result in an unlawful subdelegation of authority to a private

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[95] NPRM ¶ 61; *accord In re Transforming the 2.5 GHz Band*, Report & Order, WT Docket No. 18-120, ¶¶ 32–35 (rel. July 11, 2019) (FCC 19-62) (eliminating leasing restrictions applicable to Educational Broadband Service licenses); *Alpine PCS, Inc. v. United States*, 128 Fed. Cl. 303, 309 (2016) (recognizing FCC license confers a property interest), *aff'd on other grounds*, 878 F.3d 1086 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct. 78 (2018); *see also In re Atl. Bus. and Cmty. Dev. Corp.*, 994 F.2d 1069, 1074 (3d Cir. 1993) ("The Communications Act itself seems to ... impl[y] the creation of rights akin to those created by a property interest limited only by the 'terms, conditions and periods of the license.'" (citation omitted)).

[96] *See* Dynamic Spectrum Alliance Public Notice Comments, at 8; *see also* CCA Public Notice Comments, at 10–11; Open Technology Institute at New America Public Notice Comments, at 7–9.

[97] 47 U.S.C. § 309(j)(7)(A); *see also id.* § 309(j)(7)(B).

[98] *Id.* § 309(j)(3)(A), (B), (D); *see also* C-Band Alliance Ex Parte, at 8.

party.[99] As the C-Band Alliance has already explained, that argument overlooks the fact that the FCC would not subdelegate any authority to the C-Band Alliance. Rather, the FCC would merely incorporate outside party input in making *its own decision* in a manner expressly authorized by Section 309(j)(6)(E).[100] That approach is not even close to unlawful subdelegation.[101]

[99] CCA Public Notice Comments, at 7–11, 24–26.

[100] C-Band Alliance Ex Parte, at 5–6.

[101] *See, e.g.*, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 567 (D.C. Cir. 2004) (recognizing "a federal agency entrusted with broad discretion to permit or forbid certain activities may condition its grant of permission on the decision of another entity … so long as there is a reasonable connection between the outside entity's decision and the federal agency's determination"); *accord La. Forestry Ass'n Inc. v. Sec'y U.S. Dep't of Labor*, 745 F.3d 653, 671–72 (3d Cir. 2014) (finding no unlawful subdelegation where agency relied on an "outside entity" without "abdicat[ing] its final reviewing authority" (citation omitted)).

VI. CONCLUSION

The Commission initiated this proceeding to identify potential opportunities for new terrestrial mobile use of C-band spectrum. Nearly every party agrees that authorization of terrestrial mobile in some portion of the C-band is desirable. The C-Band Alliance has proposed the only solution that respects existing property rights under the Communications Act and deals equitably with all parties who rely upon C-band service. The Commission should adopt the proposal of the C-Band Alliance.

Respectfully submitted,

By: /s/ Bill Tolpegin__
Bill Tolpegin
C-BAND ALLIANCE
900 17th Street, NW
Suite 300
Washington, DC 20006

Jennifer D. Hindin
Kathryne C. Dickerson
Henry Gola
Jeremy J. Broggi
Wiley Rein LLP
1776 K St NW
Washington, DC 20006

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