

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 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

**COMMENTS OF THE SMALL SATELLITE OPERATORS  
(ABS GLOBAL LTD., HISPASAT S.A. AND CLARO S.A.)**

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August 7, 2019

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## INTRODUCTION AND EXECUTIVE SUMMARY

The Small Satellite Operators appreciate the efforts of ACA Connects, Charter Communications, and the Competitive Carriers Association (together, the “ACA Connects Coalition” or “Coalition”) to advance an alternative proposal to repurpose C-band spectrum (the “Proposal”). Moreover, the SSOs share the Coalition’s policy objectives. But the quickest way between two points is often a straight line. And the Coalition’s current proposal is likely to be a long and winding road, when the Commission could be reaching the tail end of the process.

I. The SSOs agree that the C-band transition should quickly make significant amounts of spectrum available for 5G, while treating all stakeholders equitably. American consumers should not have to wait to access tomorrow’s networks, and all participants in the satellite C-band ecosystem will benefit from certainty over the future use of this spectrum. The transition also must respect the rights of existing licensees, as the Coalition correctly recognizes. All satellite operators with authorizations to transmit in the band have enforceable rights against impermissible interference, and the loss of those rights from repurposing the band requires reasonable compensation.<sup>1</sup> Moreover, the SSOs continue to believe that ESOs should be incentivized to complete the transition promptly, and that the nature of C-band licensing warrants providing taxpayers with significant compensation.<sup>2</sup>

II. It is just not clear, however, that the Proposal would actually advance these objectives. Perhaps most significantly, the Proposal would not clear a single megahertz of spectrum anywhere in the country until a new, fiber-optic nationwide video transport network

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<sup>1</sup> See Comments of the Small Satellite Operators (ABS Global Ltd., Hispasat S.A. and Claro S.A.) at 1, GN Docket No. 18-122, RM-11791, RM-11778 (filed July 3, 2019) (“SSO July Comments”).

<sup>2</sup> See, e.g., Reply Comments of the Small Satellite Operators at 5, GN Docket No. 18-122 (filed Dec. 11, 2018) (“SSO Reply Comments”); Letter from the SSOs to the FCC, GN Docket No. 18-122 (filed Dec. 18, 2018); Letter from the SSOs to the FCC, GN Docket No. 18-122 (filed Mar. 25, 2018).

has been constructed, tested, and connects every existing provider of content to every existing operator of a C-band receive earth station. But fiber deployment is costly, time-consuming, and fraught with uncertainty, even when it is done on a much smaller scale. And while the Coalition has made an admirable effort to address *some* of the variables that determine the time and cost of wireline network construction, other critical factors remain unassessed, and little has been done to test the sensitivity of the Coalition’s model to real-world conditions.

Even with a perfect model, tremendous risks to the project would remain. These risks are compounded by the “one-to-many” model of satellite delivery, which means that just a few points of failure in the construction of a terrestrial replacement network could delay a successful band-clearing. Put simply, while fiber deployment may be a useful long-term policy objective, as a prerequisite to even a partial repurposing it is likely to enormously delay the transition to 5G for the band.

The Proposal’s auction mechanisms also raise more questions than they answer. Under a traditional auction format, the Coalition fails to explain how incumbent licensees would be compensated for “lost revenues” or their “cost of capital,” or how “incentive payments” beyond these amounts would be determined. As a result, the reasonableness of the approach—and its lawfulness of the approach under Section 316 and FCC precedent—cannot yet be determined. Along the same lines, the Proposal waffles on which licensees will be eligible for compensation. Likewise, the Coalition offers barely a sketch of the incentive auction it proposes. While the SSOs remain open to any lawful, transparent, efficient, and fair auction process, the Coalition has not adequately described the procedure it has in mind.

## **I. THE SSOs SHARE THE CORE OBJECTIVES OF THE ACA CONNECTS COALITION.**

The Coalition frames its proposal as a “win-win” that can free up a significant swath of C-band spectrum for 5G “in a quick timeframe,” while also “mak[ing] whole all incumbents” and treating other stakeholders, including American taxpayers, fairly.<sup>3</sup> The SSOs share all of these goals, and agree that they should drive Commission action here.

Little more needs to be said at this point in this proceeding regarding the need for a solution that repurposes spectrum for 5G quickly, efficiently, and without needless risk. Members of the Commission have urged an expeditious transition,<sup>4</sup> as have Members of Congress<sup>5</sup> and numerous commenters.<sup>6</sup> Of course, these efficiencies must be achieved responsibly and with minimal disruption to incumbent licensees and to American consumers—and cooperation from all stakeholders will be necessary to make this happen. Moreover, the sooner the band-clearing occurs, the sooner certainty will be restored for satellite use of this band, and the sooner satellite operators can resume normal planning.<sup>7</sup> Thus, when evaluating C-band proposals, the Commission must recognize that time truly is of the essence.

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<sup>3</sup> Letter from Ross Lieberman, Senior VP, Government Affairs, ACA Connects to Marlene H. Dortch, Secretary, FCC, at 3 (July 2, 2019) (“ACA Connects Coalition Proposal”).

<sup>4</sup> *E.g.*, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd. 6915, Statement of Commissioner O’Rielly at 7011 (2018) (stating that “the reallocation needs to happen fairly quickly”); *Id.* at 7014, Statement of Commissioner Carr (arguing that clearing the C-band “could provide the quickest path” to providing more spectrum).

<sup>5</sup> *E.g.*, Letter from Senator Roger Wicker and Senator John Thune to Ajit Pai, Chairman, FCC, at 1 (May 10, 2019) (“[W]e urge the Commission to act quickly to make spectrum available in the 3.7 GHz to 4.2 GHz band available for 5G.”).

<sup>6</sup> *E.g.*, Comments of C-Band Alliance at 35, GN Docket No. 18-122 (filed July 3, 2019) (agreeing with the Commission that “speed to the market” is of crucial public interest); Comments of Charter Communications, Inc. at 11, GN Docket No. 18-122 (filed July 3, 2019) (affirming the need to meet the goal of repurposing C-band “as quickly and efficiently as possible”). *See also* Comments of the Small Satellite Operators at 8, GN Docket No. 18-122 (filed Oct. 29, 2018) (“SSO Comments”).

<sup>7</sup> *See, e.g.*, SSO Comments at 8 (“In addition to promoting U.S. leadership in 5G, completing the band-clearing process quickly will provide satellite operators with the certainty they need to do business in the United States.”).

The SSOs also agree with the ACA Connects Coalition that any plan the Commission adopts must “consider[] the needs of *all* stakeholders.”<sup>8</sup> The SSOs have strenuously argued for months now that this is the key to a successful transition.<sup>9</sup>

First, satellite operators with authorization to transmit in the band have enforceable rights against impermissible interference, and the loss of those rights from repurposing the band for 5G requires reasonable compensation.<sup>10</sup> As the Competitive Carriers Association, a member of the ACA Connects Coalition explains, that means *all* authorized satellite operators in the band—and not just the self-chosen members of the C-Band Alliance (“CBA”)—must receive an appropriate share of reallocation proceeds.<sup>11</sup> Just like CBA members, the SSOs “have incurred the high fixed cost of launching and operating satellites with lengthy mission lifecycles in reliance on prior grants of access to the U.S. market,”<sup>12</sup> and should not be excluded from meaningful participation in the repurposing based on self-serving, arbitrary criteria the CBA created. In short, the SSOs agree that fair compensation for all “incumbent satellite operators” is a foundational element of any viable repurposing plan.<sup>13</sup>

Second, ESOs must be compensated fairly as well. And that is so regardless of whether they are licensees for purposes of Section 309(j).<sup>14</sup> ESOs “have made substantial investments in

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<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *E.g.*, Letter from Scott Blake Harris and V. Shiva Goel, Counsel to the Small Satellite Operators, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, RM-11791, RM-11778, at 1 (filed Mar. 25, 2019) (“SSO Mar. 25, 2019 Letter”) (it is “common sense” that “*all* C-band stakeholders—satellite operators, earth station owners, and taxpayers alike—must have their interests recognized for the proposed repurposing of this spectrum to succeed on the timeline desired”).

<sup>10</sup> *See, e.g.*, SSO July Comments at 1.

<sup>11</sup> Comments of Competitive Carriers Association at 31, GN Docket No. 18-122, RM-11791, RM-11778 (filed July 3, 2019) (“CCA July Comments”) (noting that the SSOs are “similarly situated” to CBA members and “hold essentially the same rights”).

<sup>12</sup> *Id.* at 32.

<sup>13</sup> ACA Connects Coalition Proposal at 3.

<sup>14</sup> *See* 47 U.S.C. § 309(j).

reliance on their FCC authorizations,” and their cooperation is critical to a seamless transition and the mitigation of litigation risk.<sup>15</sup> While the merits of the ACA Connects Coalition’s proposed mechanism for ESO compensation requires further analysis, the Commission can and should provide ESOs with meaningful, sensibly structured financial incentives to cooperate in the transition of the band.<sup>16</sup>

Third, taxpayers have a direct interest in this proceeding and should receive a reasonable share of the proceeds from repurposing the band.<sup>17</sup> The SSOs applaud the ACA Connects Coalition for proposing that a substantial sum is paid into the U.S. Treasury.<sup>18</sup>

## **II. THE ACA CONNECTS COALITION PROPOSAL IS NOVEL AND COMPLEX—AND RAISES SIGNIFICANT QUESTIONS THAT MUST BE ADDRESSED ON THE RECORD.**

Although the SSOs share many of the goals of the ACA Connects Coalition, the Proposal raises a number of questions about timing, feasibility, and the Commission’s legal authority.

### **A. Fiber deployment should not delay 5G deployment.**

The SSOs have no issue with the Coalition’s proposal to use reallocation proceeds to finance a network that benefits C-band users. In fact, the SSOs have advocated consistently for ESOs to receive cash compensation in amounts that would provide substantial flexibility to explore long-term alternatives, including fiber, based on the needs of each operator.<sup>19</sup> The SSOs remain concerned, however, that the ACA Connects Coalition Proposal effectively conditions *any* transition in *any* part of the band on the successful completion of an ambitious nationwide fiber deployment project. Because fiber builds are notoriously difficult to complete—let alone

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<sup>15</sup> SSO Mar. 25, 2019 Letter at 5-6; *see also* SSO July Comments at 16-17.

<sup>16</sup> *See* SSO July Comments at 17-18.

<sup>17</sup> *See id.* at 18-19; SSO Mar. 25, 2019 Letter at 7-9.

<sup>18</sup> *See* ACA Connects Coalition Proposal at 2.

<sup>19</sup> *See generally* SSO Reply Comments; SSO Dec. 18, 2018 Ex Parte; SSO July Comments.

on time, on budget, and at the scale proposed—a complex proposal of this kind could seriously delay use of the band for 5G.

The Proposal observes that the largest consumers of C-band capacity are Multichannel Video Programming Distributors (“MVPDs”), and assumes that many MVPDs are likely to operate C-band earth stations in proximity to fiber networks.<sup>20</sup> It thus proposes to free up spectrum by transitioning these MVPDs to the lower portion of the C-band, transitioning non-MVPDs to the upper portion of the band, and, after constructing a new, nationwide video transport network spanning hundreds of thousands of fiber route miles, clearing the band of MVPDs once they switch to fiber.<sup>21</sup> The architecture for the nationwide video transport network would be relatively complex, as it would be designed to replace the one-to-many topology of a satellite network. A long-haul network would interconnect dozens of data centers all across the country, while local transport would connect each data center to earth stations clustered at the cable headend.<sup>22</sup> Hundreds, or perhaps thousands, of fiber rings would interconnect earth stations in each such cluster.<sup>23</sup>

The Coalition assumes that MVPDs and programmers will be able to establish the long-haul network component primarily through the acquisition of indefeasible rights of use (IRUs) over existing dark fiber.<sup>24</sup> However, it concedes that significant amounts of new middle- and last-mile fiber construction will be necessary to complete the remaining two components of the

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<sup>20</sup> ACA Connects Coalition Proposal at 2.

<sup>21</sup> See Letter from Pantelis Michalopoulos, Counsel for ACA Connects, to Marlene H. Dortch, Secretary, FCC GN Docket 18-122, Attachment at 20-25 (filed July 9, 2019) (“Cartesian Study”).

<sup>22</sup> *Id.* at 20.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 21.



network, especially with the redundancy required by C-band customers.<sup>25</sup> Nevertheless, the Coalition predicts that all work will be completed in time for 5G licenses to be assigned within 1.5 years in urban markets, 3 years in suburban markets, and 5-7 years in rural markets.<sup>26</sup>

Yet even if one ignores the effort needed to obtain IRUs, handle interconnection, and move satellite traffic, building many thousands of miles of new fiber would take much longer than the Coalition says. To deploy fiber facilities, each MVPD and content provider would need to identify a ready, willing, and able wireline carrier. This alone could take months. Once identified, the selected carrier would need to begin the long, uncertain, and costly process of deploying physical network infrastructure, which could take months to years to complete depending on local conditions. For example, in many parts of the country, especially urban markets, the carrier will need to run new fiber underground.<sup>27</sup> Before digging into the streets, however, the carrier will need to identify safe and suitable sites for trenching,<sup>28</sup> often in consultation with local utilities,<sup>29</sup> and assemble a nearby inventory of materials and team of engineers, fiber technicians, and construction professionals.<sup>30</sup> Once the project actually begins,

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 11.

<sup>27</sup> *Id.* at 22. See, e.g., *Connect America Fund*, Report and Order, 29 FCC Rcd. 3964 ¶ 64 (Wireline Comp. Bur. rel. Apr. 22, 2014) (“2014 CACM Report and Order”) (adopting engineering assumptions and inputs for the Connect America Cost Model); FCC, CONNECT AMERICA FUND COST MODEL (rel. Apr. 11, 2014), <https://docs.fcc.gov/public/attachments/DOC-326628A1.pdf> (“CACM Methodology”) (modeling the cost of “building an efficient” fiber broadband network for use in administering the universal service high-cost program); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 16978 ¶ 205 (2003) (“2003 UNE Order”); *Unbundling Access to Network Elements*, 20 FCC Rcd. 2533 ¶ 150 (2005) (“TRRO Order”); *Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd. 8622 ¶ 84 (2010).

<sup>28</sup> *CACM Methodology* at 70.

<sup>29</sup> See, e.g., *Use of N11 Codes & Other Abbreviated Dialing Arrangements*, 20 FCC Rcd. 5539 (2005) (discussing “state One Call notification systems for providing advance notice of excavation activities to underground facility operators”).

<sup>30</sup> *CACM Methodology* at 66 (discussing labor needs for “EF&I,” or engineering, furnish and install).

the time and costs associated with the dig can multiply quickly and in unpredictable ways. Indeed, geological conditions often emerge as a driving factor behind time and cost; perhaps unsurprisingly, trenching and boring in soft soil tends to be much easier than it is through cobblestone or solid rock.<sup>31</sup> Yet these conditions may be difficult to discover in advance in all locations where new construction may be necessary. In fact, an expansive engineering survey that attempts to evaluate these issues could consume much of the 18 months allotted all by itself.<sup>32</sup>

Though less expensive per unit length, aerial fiber deployment generally is not an option in urban areas—and comes with its own installation risks. As the Commission recognized just last year, equipment on existing poles may need be moved, and poles may need to be reinforced or modified, and, in some cases, replaced.<sup>33</sup> In addition, regardless of whether the structure of the network plant is aerial, underground, or a combination of the two, new electronics, like multiplexers and network interface devices, will need to be procured and installed.<sup>34</sup> Moreover, existing equipment on the carrier’s area network may even require an upgrade, depending on the capacity in use to date and the amount that would be added to serve the new high-bandwidth video network.<sup>35</sup>

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<sup>31</sup> *Id.* at 24-25 (recognizing that “terrain characteristics,” including “rock hardness and soil type,” are drivers of network capex costs).

<sup>32</sup> *See Wireline Competition Bureau Announces Availability of Version 4.1 of the Connect America Fund Phase II Cost Model*, Public Notice, DA 14-394, 29 FCC Rcd. 3088 (Wireline Comp. Bur. rel. Mar. 21, 2014) (explaining that examining “rock hardness” and “soil composition” would be a “significant undertaking” and “result in an extended delay”).

<sup>33</sup> *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 FCC Rcd. 7705 ¶¶ 6-7, 18 (2018).

<sup>34</sup> *CACM Methodology* at 20-22, 42-43; *2014 CACM Report and Order* ¶ 159 n.456.

<sup>35</sup> *CACM Methodology* at 80 (discussing how costs for certain network equipment depend on the “take rate”).

In addition to the physical deployment of network facilities, fiber construction also requires carriers to negotiate private and public rights-of-way, and to navigate byzantine local zoning and permitting processes. As recognized time and again by the Commission, these necessary steps are well-documented sources of delay that plague wireline network deployment, and easily could push the completion of even a well-designed, well-executed project by years.<sup>36</sup> It is no wonder, then, that when the Commission recently concluded that fiber deployment is generally feasible within a half mile, it referred to providers “with a nearby wireline network” within a half mile as “medium-term entrant[s]”—and defined “medium term” to mean “three to five years.”<sup>37</sup> Yet three to five years substantially exceeds the 18 months assumed for urban markets in the Proposal, and is not an acceptable timeframe for when the process of assigning 5G licenses should *begin*.

Perhaps most importantly, the issues described above affect small fiber builds, while the Coalition has proposed a massive, nationwide engineering and construction project coordinated among thousands of companies. Thus, whether project delays occur everywhere, in most places, or even just a few, they are bound to occur *somewhere* in each market. Moreover, because MVPDs use satellite services for one-to-many delivery, the inability of just one or two content providers to timely transition to fiber would require continued use of satellite C-band downlinks.<sup>38</sup> There is no obvious remedy that would allow a 5G transition to continue apace while the kinks are ironed out; without a fiber transport alternative, the Commission simply would be unable to clear surrounding spectrum.

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<sup>36</sup> *TRRO Order* ¶ 75; *2003 UNE Order* ¶ 304.

<sup>37</sup> *Business Data Services in an Internet Protocol Environment*, 32 FCC Rcd. 3459 ¶¶ 13, 15, 50 (2017).

<sup>38</sup> *See* Letter from C-Band Alliance to FCC, GN Docket No. 18-122, Attachment at 1-8 (filed July 2, 2019).

Against this backdrop, the Commission cannot accept a proposal under which a hotly anticipated spectrum transition will not even begin before a new, nationwide fiber network is constructed. At the very least, the Commission needs more information and more analysis explaining how the construction of hundreds of thousands of fiber route miles might proceed as quickly as predicted—and with the reliability necessary to ensure that the band is timely repurposed. Indeed, while the Coalition’s study arrives at an estimate of fiber route miles to be constructed and at a percentage of aerial versus underground construction, it does not appear to analyze permitting issues in each local jurisdiction, soil conditions, pole usage and conditions, crew and equipment availability, and the many other variables that will affect the time and cost of fiber construction. Nor does it include a sensitivity analysis exploring what might happen if the Proposal’s assumptions turn out to be wrong.

The country needs 5G spectrum, and the existing C-band ecosystem needs certainty. Thus, while the Proposal reflects both good faith and a great deal of thought, the Coalition has not nearly demonstrated that it would be worth the gamble.

**B. The mechanisms for clearing and repacking spectrum are unclear.**

The Proposal also raises a number of difficult questions regarding how its compensation mechanisms would result in an equitable and lawful path forward to clear C-band spectrum for 5G. As the SSOs and Coalition agree, the Commission must ensure that satellite operators are adequately compensated. It is also common ground among the majority of commenters in this proceeding that satellite operators have enforceable rights in the band that will be fundamentally altered by the introduction of terrestrial mobile operations and that, as a result, satellite operators should receive meaningful compensation.<sup>39</sup> It is likewise true, as CCA has argued, that “*all*

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<sup>39</sup> See, e.g., Reply Comments of the Small Satellite Operators (ABS Global Ltd., Hispasat S.A. and Claro S.A.) at 1-2, GN Docket No. 18-122, RM-11791, RM-11778 (filed July 18, 2019) (collecting comments on this point).

seven of the space-station operators hold essentially the same rights” in the band and should not be excluded from compensation for their investments in the band, as the C-Band Alliance has proposed.<sup>40</sup> The SSOs thus appreciate that the ACA Connects Coalition’s commitment to “mak[ing] whole all incumbents” in the band.<sup>41</sup>

The Proposal, however, remains vague about how the Coalition plans to deliver on that commitment. The Proposal refers variously to: (1) “reimbursement for lost revenue from the MVPD programming industry,”<sup>42</sup> (2) “reimbursement” for “costs” of repacking “non-MVPD earth station operators” to the upper portion of the band,<sup>43</sup> (3) “incentive payments” (under both the “traditional auction” and “incentive auction” approaches),<sup>44</sup> and (4) “make whole payments” (in the “incentive auction” approach).<sup>45</sup>

With respect to the “reimbursement” and “make whole” components, the Proposal provides few details regarding how these payments should be calculated, which makes it difficult to evaluate the fairness and legality of the Proposal. The Cartesian Study that ACA Connects has submitted provides little helpful clarification. It describes “Costs to Be Reimbursed” as including “[r]eimbursement” to “replace satellites reaching end of life” and to make up for “lost revenue.”<sup>46</sup> But how such amounts will be determined is never explained. Nor is it clear which real-life impairments the Proposal would endeavor to compensate.

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<sup>40</sup> CCA July Comments at 31 (emphasis added). There are in fact eight, not seven, such satellite operators, but CCA’s point holds true for all of them.

<sup>41</sup> ACA Connects Coalition Proposal at 3.

<sup>42</sup> *Id.* at 5

<sup>43</sup> *Id.* at 4-5.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 6.

<sup>46</sup> Cartesian Study at 12.

Significant questions exist with respect to the “incentive payments” components as well. In the “traditional auction” approach, the Proposal seems to contemplate that satellite operators—assuming that satellite operators are considered “existing operators and users”—would receive compensation “for their cost of capital based on their investments, or . . . incentive payments to the extent permitted by law.”<sup>47</sup> It is not clear what falls within the “cost of capital” bucket, or how the recipients and amounts of the “incentive payments” would be determined.

Similarly, pursuant to the “incentive auction” approach, the Proposal states that “satellite operators” would receive some “portion” of “incentive payments” for clearing the band, but the Proposal expressly admits uncertainty over “the magnitude of incentive payments that are necessary and appropriate to make to existing rights holders.”<sup>48</sup> Moreover, just as with T-Mobile’s plan, the Proposal seems to contemplate that satellite operators would be pitted against ESOs in the incentive auction, as the coalition members believe ESOs “have no less of a right to the spectrum than satellite operators do.”<sup>49</sup> It is difficult to figure out exactly what the ACA Connects Coalition is proposing with respect to incentive payments for satellite operators, yet there is just enough said about the proposal to cause legal concern.

Moreover, the Proposal on its face does not appear to guarantee that all satellite operators will actually receive compensation for their loss of valuable spectrum rights and their stranded investments. Those rights and compensable losses, as CCA has explained, are completely separate from “the presence or absence of service links to associated end points” for current customers.<sup>50</sup> Yet the Cartesian Study’s description of the “Stakeholder Groups” includes only

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<sup>47</sup> ACA Connects Proposal at 6.

<sup>48</sup> *Id.* at 6.

<sup>49</sup> *Id.*

<sup>50</sup> CCA July Comments at 31.

the four CBA members, and not the SSOs.<sup>51</sup> If the ACA Connects Coalition plans to include only the “self-selected CBA members,” the Proposal will be arbitrary and capricious for the exact reasons CCA advanced in opposition to the CBA proposal.<sup>52</sup> If not, the ACA Connects Coalition should explain how it will structure its compensation mechanisms in a way that will reasonably compensate *all* satellite operators.

On top of these concerns, there are significant unanswered questions regarding whether the Commission would have legal authority to carry out the auctions that the ACA Connects Coalition Proposal relies on to clear the band. The SSOs have consistently expressed support for the Commission’s ability to adopt a “market-based transition” or an “auction-based proposal,” assuming compliance with statute and Commission precedent.<sup>53</sup> That remains true. But whether the ACA Connects Coalition successfully threads the legal needle is at best unclear, just like most elements of its Proposal.

With respect to the “traditional auction,” the Proposal simply asserts that the Commission has “clear statutory authority to reallocate the C-band for terrestrial use and then award the resulting terrestrial licenses” through competitive bidding.<sup>54</sup> Without adequate incentive payments to incumbent licensees, however, that heavy-handed approach would simply assume away the limits under Section 316 on the Commission’s ability to fundamentally change the licenses of band incumbents.<sup>55</sup> And while the Proposal does contemplate incentive payments to satellite operators of some kind, it speaks only in generalities that are insufficient to determine

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<sup>51</sup> Cartesian Study at 37.

<sup>52</sup> CCA July Comments at 29-33.

<sup>53</sup> SSO Mar. 25, 2019 Letter at 12.

<sup>54</sup> ACA Connects Coalition Proposal at 5.

<sup>55</sup> *See, e.g.*, SSO July Comments at 27-28.

the lawfulness of the mechanism under consideration. Similarly, the Proposal says the incentive payments will be provided “to the extent permitted by law”—yet does not explain what payments would be “permitted by law” using the mechanisms proposed. Because statute, precedent, and spectrum management principles require compensating incumbent licensees for their loss of spectrum use rights,<sup>56</sup> the Commission must make sure that the transition mechanism selected provides a clear legal path forward for making the payments required.

With respect to the “incentive auction,” the Proposal appears to commit the same fundamental error as T-Mobile with respect to the Commission’s legal authority to hold an incentive auction under Section 309(j). The ACA Connects Coalition cites Section 309(j)(8)(G) in support of the Commission’s ability to “provide incentives to incumbents to clear spectrum,” and it appears that the Proposal includes ESOs alongside satellite operators as band incumbents.<sup>57</sup> But Section 309(j) authorizes incentive auctions only where “at least two *competing* licensees participate in the reverse auction.”<sup>58</sup> It is not clear from the Proposal whether the ACA Connects Coalition would include both satellite operators and ESOs in the “reverse auction”, as it appears only “satellite operators” would tender their rights “at progressively declining prices.”<sup>59</sup> Perhaps the Coalition has an idea how the Commission could structure a reverse auction that (1) complies with Section 309, (2) makes practical sense, and (3) ensures that ESOs receive a “portion of the incentive payments” that result from the auction.<sup>60</sup> But it is not clear from their submissions what that idea is. Significantly more detail

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<sup>56</sup> See, e.g., SSO July Comments at 10-16, 25-31; Letter from Scott Blake Harris, Counsel to the SSOs to Marlene H. Dortch, Secretary, FCC, at 2-5, GN Docket No. 18-122 (filed Feb. 21, 2019).

<sup>57</sup> ACA Connects Coalition Proposal at 6.

<sup>58</sup> 47 U.S.C. § 309(j)(8)(G)(ii)(II) (emphasis added).

<sup>59</sup> ACA Connects Coalition Proposal at 6.

<sup>60</sup> *Id.*



is needed in order to fully evaluate this proposal—and if the Commission is going to paint within the lines of its authority, broad-brush approaches will no longer do.

### CONCLUSION

The SSOs shares the objectives of the ACA Connects Coalition. Nevertheless, given the stakes of this proceeding and the complexity of the transition mechanism the Coalition has proposed, the Commission cannot seriously consider the Proposal unless its many gaps are addressed. **First**, the Commission should make sure that the reallocation of spectrum for 5G does not depend on the success of an ambitious and risky nationwide fiber deployment project. At the very least, the Coalition must provide a much more complete feasibility analysis for the new, nationwide video transport network that it proposes.

**Second**, the Coalition should provide more information about how its proposed auctions would work, whom they would compensate and for what, and the Commission's authority for providing the incentive payments necessary so that the Proposal would contribute to a stable licensing regime and pass legal muster under Section 316 and FCC reallocation precedent.

Respectfully submitted,

A handwritten signature in black ink that reads "SCOTT HARRIS". The signature is stylized with a large, sweeping "S" and a distinct "H".

Scott Blake Harris

V. Shiva Goel

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August 7, 2019