



August 28, 2019

*Via Electronic Filing*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Expanding Flexible Use of the 3.7-4.2 GHz Band, GN Docket No. 18-122, *Ex Parte* Filing

Dear Ms. Dortch:

We are writing to more fully address a question posed during an ex parte meeting on Monday, August 5, 2019, among Mike Riksen, Vice President for Policy & Representation, Michael Beach, Vice President for Distribution, Joni Lupovitz, Senior Director for Public Policy, and the undersigned, and the following Commission personnel: Barbara Pavon, Michael Ha, Julius Knapp, and Bahman Badipour of the Office of Engineering and Technology; Giulia McHenry, Evan Kwerel, and Paul Lafontaine of the Office of Economic Analysis; Jose Albuquerque and Kerry Murray of the International Bureau; and Blaise Scinto, Jeff Tignor, Matthew Pearl, Anna Gentry, Ken Baker, Becky Schwartz, Max Staloff, Paul Powell, Kamran Etemad, and Thomas Derenge of the Wireless Telecommunications Bureau. The meeting concerned the importance of the 3.7-4.2 GHz “C-band” spectrum to the Public Radio Satellite System (“PRSS”), which, in turn, enables public radio stations across the country to provide unparalleled public service to millions of Americans each day.

During the meeting, Commission staff inquired of NPR whether any Commission precedent supported requiring the reimbursement of a radiofrequency spectrum incumbents’ increased operational costs resulting from their relocation to other frequencies or other means of communication. In responding to the question, NPR wishes to point the Commission to multiple instances over more than two decades in which it required reimbursement of relocated spectrum incumbents for increased operating costs.

The Commission’s *Emerging Technologies* proceeding represents the appropriate starting point, particularly since the above-referenced proceeding similarly involves the potential reallocation of spectrum from its existing use to emerging mobile wireless services and the relocation of current spectrum incumbents providing public safety and other important services. In the *Emerging Technologies* proceeding, the Commission required emerging technology service providers to guarantee payment of all relocation costs of the spectrum incumbents forced to move, including “costs that the relocated fixed microwave licensee may incur as a result of operation in a different fixed microwave band or migration to other media.”<sup>1</sup>

The Commission’s reallocation efforts in the *Emerging Technologies* docket were successful and in the Balanced Budget Act of 1997, Congress gave the Commission general auction authority. In doing so, Congress affirmed the Commission’s authority to consider “the cost of relocating [spectrum incumbents] to other bands of frequencies or other means of communication” in making available bands of frequencies for competitive bidding.<sup>2</sup> As further discussed below, the Commission later codified this obligation, requiring compensation

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<sup>1</sup> *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886, 6890 (1992).

<sup>2</sup> See Pub. L. No. 105-33, 111 Stat. 251, 261 (1997).

“for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, and increased utility fees) for five years after relocation”<sup>3</sup> for microwave spectrum bands.

The Commission has repeatedly reinforced this basic principle in the ensuing years. Thus, when the Commission adopted provisions for the relocation of fixed microwaves services (“FMS”) licensees in spectrum bands that had been reallocated for mobile wireless use, the Commission required that FMS licensees be made whole.<sup>4</sup> Specifically, spectrum auction winners could negotiate to clear incumbent FMS licensees only by providing them with comparable facilities in terms of throughput and reliability, and if those comparable facilities were more expensive to operate, FMS incumbents were required to be reimbursed for increased operating costs.<sup>5</sup>

Similarly, in connection with the 800 MHz band reorganization, the Commission considered operating costs as reimbursable relocation costs. The Commission required that all incumbent licensees be relocated to comparable facilities and that comparable facilities must provide the same level of service as the incumbents’ existing facilities, specifically including operating costs.<sup>6</sup> The Commission also clarified that rebanding costs could, when appropriate, be higher than the minimum costs necessary to relocate the incumbent public safety licensees. As the Commission explained,

In the *800 MHz Report and Order*, the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. In that order, the Commission required Sprint to pay for relocation of all affected 800 MHz licensee systems to their new channel assignments, including the expense of retuning or replacing the licensee’s equipment as required. Sprint must provide each relocating licensee with “comparable facilities” on the new channel(s), and must provide for a seamless transition to enable licensee operations to continue without interruption during the relocation process.<sup>7</sup>

Furthermore, the Commission stated that “the assessment in any individual . . . negotiation of whether a cost is ‘reasonable and prudent’ may—and indeed should—take into account the overall goals of this proceeding, *not just the issue of minimum cost.*”<sup>8</sup>

The issue of reimbursement for operating costs was confirmed in cases where the Commission reviewed disputes between Sprint and public safety licensees. For example, the Commission reviewed a dispute between Mississippi State University (“MSU”) and Sprint regarding the appropriate method of rebanding MSU’s

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<sup>3</sup> 47 C.F.R. § 101.73(d).

<sup>4</sup> See generally *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Second Report and Order, 17 FCC Rcd 23193 (2002); *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315 (2000).

<sup>5</sup> 47 C.F.R. § 101.73(d).

<sup>6</sup> See, *e.g.*, *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, FCC 04-168, 19 FCC Rcd 14969, 15075-77 (2004).

<sup>7</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Memorandum Opinion and Order, 22 FCC Rcd 9818, 9818 (2007).

<sup>8</sup> *Id.* at 9820 (emphasis added).

system.<sup>9</sup> The parties disputed which rebanding method would best meet the Commission's comparable facilities standard.<sup>10</sup> The Commission rejected one proposed solution because it "would double the licensee's maintenance and repair costs" noting that "comparable operating cost is a factor in determining whether a licensee receives comparable facilities."<sup>11</sup>

Based on these precedents, we think it beyond reasonable dispute that receive-only earth stations forced to relocate to accommodate new terrestrial broadband services in the mid-band spectrum can and should be held harmless, including with respect to the increased costs of operation using alternative communications facilities. The Communications Act and the Commission's past decisions provide ample authority to require such cost allocation as part of the current spectrum allocation initiative. The longstanding and substantial federal investment in the PRSS, providing emergency alerting and other important public services to millions of Americans, compels it.

Please direct any questions you may have to the undersigned at 202.513.2050.

Sincerely,

*Gregory A. Lewis /s/*

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Deputy General Counsel

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Matthew Pearl  
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Becky Schwartz  
Max Staloff  
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<sup>9</sup> *Mississippi State University and Nextel Communications, Inc.*, WT Docket No. 02-55, Memorandum Opinion and Order, 28 FCC Rcd 11207 (2013).

<sup>10</sup> *Mississippi State University and Nextel Communications, Inc.*, 28 FCC Rcd at 11209.

<sup>11</sup> *Id.* at 11224; *id.* at 11224, n. 128.