

**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
)	
Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz)	GN Docket No. 17-183
)	
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 NATIONAL ASSOCIATION OF BROADCASTERS**

December 11, 2018

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THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby replies to comments in response to the Commission's Notice of Proposed Rulemaking concerning expanded operations in the 3.7-4.2 GHz band (the C-band).² Initial comments in this proceeding

¹ The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, GN Docket No. 18-122, GN Docket No. 17-183, FCC 18-91 (July 13, 2018) (NPRM).

demonstrate the tremendous value of the C-band for content distribution to hundreds of millions of Americans across the United States and the lack of viable alternatives that can match the ubiquity and reliability of the C-band. Preserving a distribution system that allows content providers to realize the value of their programming investment is critical for the 5G ecosystem the Commission seeks to encourage.

Significant questions remain unanswered regarding how this distribution architecture can be protected while reallocating a portion of the C-band for mobile use, and the Commission should move forward in this proceeding only after those questions are fully and publicly addressed. Airy and unspecific commitments regarding the accommodation of current C-band users will not mollify American viewers and listeners when their favorite programming is interrupted.

Accordingly, NAB continues to urge the Commission to require a documented and transparent plan for transitioning current C-band users to a smaller portion of the band. Again, any adopted plan must be documented. It must be transparent. It should include an independent estimate of costs associated with the transition, as well as a schedule for the transition and a detailed technical description of what steps will be necessary to accommodate existing users. The Commission should require that this transition plan be fully-funded. The Commission should make compliance with this transition plan a condition of its order and any transfer of spectrum in this proceeding and should monitor and enforce the transition as it unfolds. Finally, the Commission should detail the penalties associated with non-compliance and develop a streamlined mechanism for enforcement.

The FCC should also foster long-term stability in the C-band by adding a new mobile allocation *only* to the portion of the C-band that it makes available in this proceeding, rather than across the entire C-band. Any other outcome would threaten the long-term viability of the

current content distribution architecture and discourage investment. As the Commission has learned over the last decade, its allocations rarely work as originally conceived. For example, the broadcast incentive auction yielded few serious participants and the spectrum will be underutilized compared to bold initial predictions. Finally, we urge the Commission to preserve flexibility in the band by allowing for expanded and new operations and maintaining its longstanding and successful full-band, full-arc licensing policy, and by not allowing shared use of a reduced C-band by fixed point-to-multipoint operations.

II. THE RECORD OF THIS PROCEEDING DEMONSTRATES THE VALUE OF THE C-BAND IN THE CONTENT ECOSYSTEM

Initial Comments in this proceeding describe the C-band as the principal distribution mechanism for some of the nation's most popular programming to over 120 million American television households, representing over 300 million people.³ The C-band is used to distribute entertainment programming, breaking news and live sports across the country, including parts of rural America that are unserved or underserved by fiber or other distribution options.⁴ The C-band is also used to deliver radio programming that reaches 95 percent of the U.S. population.⁵

³ Comments of the Content Companies at 1, GN Docket No. 18-122 (Oct. 29, 2018) (Content Company Comments).

⁴ Comments of Comcast Corporation and NBCUniversal Media, LLC at 3, GN Docket Nos. 18-122, 17-183 (Oct. 29, 2018); see also Comments of NCTA – The Internet & Television Association at 3-5, GN Docket No. 18-122 (Oct. 29, 2018).

⁵ Comments of National Public Radio, Inc. at 3, GN Docket No. 18-122 (Oct. 29, 2018) (NPR Comments).

There are simply no available options that can match the ubiquity and reliability of C-band spectrum.⁶ Alternative satellite spectrum, including the Ku-band, lacks the reliability of the C-band because it is susceptible to rain fade. Fiber is not universally available and, even in areas where it is available, does not provide the same reliability that C-band distribution offers.⁷ Forcing C-band users to adopt less reliable modes of distribution will result in increased service interruptions and higher costs. It does no good to run a “race to 5G” if the Commission pulls a hamstring out of the gate.

The ability of content creators to realize the value of their programming through a reliable nationwide distribution platform is critical to maintaining America’s leadership in the media and entertainment industry. This is a race we continue to win. Premium programming, which is made possible in part by the reliability of distribution the C-band ensures, is one of the key drivers of demand for mobile networks and services and is a key component of a successful 5G ecosystem. The Commission should tread carefully in making decisions that risk undermining the value of this programming in a rush to reallocate an arbitrary amount of spectrum.

III. A TRANSITION PLAN FOR C-BAND USERS MUST BE TRANSPARENT, FULLY-FUNDED AND ENFORCEABLE

The number of C-band users and the significant potential for consumer harm demand Commission oversight regardless of the mechanism the FCC chooses to reallocate C-band spectrum. The NPRM proposed the submission of a “Transition Facilitation Plan” in its discussion of a market-based approach. Such a plan would address both when spectrum

⁶ Comments of the Local Broadcasters at 3, GN Docket Nos. 18-122, 17-183 (Oct. 29, 2018) (Local Broadcasters Comments).

⁷ Content Company Comments at 3-4.

would be made available for wireless use and the steps needed to ensure that protected earth stations continue to receive content.⁸

The C-Band Alliance expressed skepticism over the submission of a “Transition Facilitation Plan” in its initial comments, asserting that this would “divert resources to a needless administrative exercise and delay implementation.”⁹ While NAB expresses no view on the timing for making spectrum available, the C-Band Alliance’s “customer commitment” to maintaining service in the C-band is entirely inadequate,¹⁰ and the Commission cannot responsibly rely on unsupported, unspecific promises to establish a transition plan for existing C-band users. Accepting such a voluntary “commitment” would be akin to the Commission accepting guarantees that the broadcast spectrum incentive auction would raise \$84 billion. A detailed transition plan addressing the steps necessary to protect existing C-band operations is an indispensable component of this proceeding. Whether it adopts a market-based approach for reallocation or another proposal, the Commission should require a transition plan that is transparent, fully-funded and enforceable. NAB addresses each of these considerations below.

Transparency

The Commission should require submission of a transition plan documenting how existing C-band users will be accommodated in a reduced band. This plan should include:

⁸ NPRM at ¶¶ 79-80.

⁹ Comments of the C-Band Alliance at 23, GN Docket Nos. 18-122, 17-183 (Oct. 29, 2018) (Alliance Comments).

¹⁰ *Id.* at Exhibit 1.

- Detailed technical analysis regarding filtering or other technical solutions that existing C-band users will need to employ, including testing results for such filters;
- A schedule for production and installation of filters or other technical solutions;
- Details regarding additional satellites that will be needed to increase capacity if necessary to maintain service;
- A schedule for production and launch of those satellites; and
- An independent estimate of all costs associated with accommodating existing C-band users, including increased operating costs.

The plan should be forward-looking; it should address the ability to allow for increased capacity in the future to accommodate 4K or other advanced programming as well as the potential for increased operating costs if satellite operator capacity is diminished – or the plan should demonstrate that capacity will not be diminished. To the extent satellite operators have concerns over a public plan revealing proprietary satellite loading information, they can redact such information before publicly filing a transition plan with the Commission.

This plan should reflect input from C-band users themselves. The Commission need not introduce significant delays in this proceeding, but it must not prioritize expediency over all other public interest considerations. Stakeholders must have a reasonable opportunity to review the plan to ensure that the Commission is able to make an informed decision. Most importantly, the Commission itself should review and approve the transition plan.

Funding

Any transition plan should be fully-funded and should protect C-band users from changes in the financial condition of the party the Commission makes responsible for transitioning C-band users. NAB continues to urge the Commission to require a transition plan

to include an independent estimate of transition costs. The FCC should require the party responsible for funding the transition to secure its obligation through an irrevocable instrument in the amount of that independent estimate. Critically, however, the obligation of the party responsible for funding the transition should not be capped. The post-incentive auction repacking of television stations demonstrates the potential fallibility of initial estimates. The Commission should require that C-band users' transition costs be fully-funded even if they exceed the initial cost estimate.

Enforceability

The Commission should make compliance with the transition plan a condition of its order in this proceeding and a specific and enforceable condition of any transfer of spectrum. The FCC should review and approve a transition plan and adopt periodic reporting requirements to ensure that the transition remains on schedule. Under no circumstances should the FCC delegate its responsibility to supervise a successful transition to a private actor. The stability of the content distribution ecosystem on which over hundreds of millions of Americans rely is too important to rely solely on the stated good intentions of any party.

IV. THE COMMISSION SHOULD PROMOTE STABILITY IN THE C-BAND GOING FORWARD

The critical importance of the unique capabilities of the C-band, on which viewers and listeners rely today, will not diminish in the foreseeable future. It is unlikely that viable substitutes for the C-band will emerge in the near term that can provide the 99.999 percent reliability and ubiquitous coverage American households rely on today. Accordingly, the Commission should strive to promote long-term stability and certainty in continued C-band operations as it considers how to reallocate a portion of the band for mobile use and how much to reallocate.

A. The Commission Should Allow Flexibility for New Operations

NAB agrees with commenters urging the Commission not to freeze C-band operations in place by prohibiting applications for new earth stations in new locations.¹¹ The demand for C-band operations is not static, and constraints on future expanded operations could unintentionally curtail the future delivery of advanced video services and content.¹² Block Communications, Inc., Gray Television, Inc. and Meredith Corporation (the “Local Broadcasters”) demonstrate a variety of circumstances under which broadcasters may need to add new C-band dishes, including mergers, the construction of new studios or expanded facilities and tower moves necessitated by the post-auction repack of television stations.¹³ Prohibiting the addition of new earth stations or the moving of existing earth stations would foreclose the possibility of pro-consumer moves and expansions, or moves necessary to preserve existing programming.

Freezing existing C-band operations would also curtail the ability of local broadcasters to add additional free, over-the-air programming to viewers by adding new networks not previously available in a particular market.¹⁴ Preserving the flexibility for new and expanded C-band operations is critical to maintaining a vibrant and dynamic content ecosystem that functions at the local level to deliver programming viewers and listeners rely on today.¹⁵

¹¹ Local Broadcasters Comments at 5.

¹² Comcast Comments at 7.

¹³ *Id.* at 5-7.

¹⁴ *Id.*

¹⁵ Comments of AT&T Services, Inc. at 13, GN Docket No. 18-122 (Oct. 29, 2018) (AT&T Comments).

B. The Commission Should Preserve Full-Band Full-Arc Licensing

NAB agrees with commenters urging the Commission to retain its longstanding and highly successful full-band, full-arc licensing policy. The flexibility this policy provides is crucial to ensuring the reliable distribution of content nationwide by allowing users to “quickly transition to alternative satellites or frequencies for both planned and unplanned events.”¹⁶ Elimination of the full-band, full-arc policy will severely undermine the utility of the C-band for existing users, making content distribution far less reliable and service disruptions for viewers and listeners far more common. The full-band, full-arc policy is “essential to assuring basic service continuity.”¹⁷

In the context of a proceeding where the Commission seeks to reallocate a substantial portion of the C-band, AT&T correctly notes that the Commission’s goal should be to preserve as much flexibility as possible in the remaining portion of the band. If the Commission makes it significantly harder for existing users to continue to operate in the C-band it will be undermining its ability to reallocate a portion of the band without disrupting the content distribution architecture on which hundreds of millions of Americans rely.

Preserving the full-band, full-arc licensing policy and providing C-band users with the flexibility they need to transition to new satellites or frequencies and to expand service offerings means that the Commission must not allow shared use of the remaining portion of the C-band with fixed point-to-multipoint operations. As AT&T states, service providers interested in providing point-to-multipoint service using C-band spectrum are free to seek to acquire that spectrum through the mechanism the FCC chooses for reallocation, whether that

¹⁶ Content Company Comments at 9.

¹⁷ NPR Comments at 2; see also Alliance Comments at 42.

is an FCC auction or a private sale.¹⁸ But the Commission should not complicate the already incredibly complex potential transition of existing C-band users to a smaller portion of the band by permitting shared operations in that smaller band.

C. The Commission Should Restrict a New Mobile Allocation to a Portion of the C-Band That Is Reallocated

The Commission should promote long-term stability in the C-band in this proceeding by adding a new allocation for mobile operations only in the portion of the C-band that is reallocated for mobile use. Adding a mobile allocation to the entire C-band will only create uncertainty surrounding the future of the band and discourage broadcasters and other C-band users from expanding their operations or offering new services to viewers and listeners. There is simply no need to make such a change at this time. If content providers are unsure they will be able to monetize their content via a reliable and ubiquitous distribution system, they may hesitate to move forward with new offerings, such as expanded 4K programming, while they wait to see if alternative distribution pipelines evolve. This outcome would hardly serve the public interest.

In the case of the broadcast spectrum incentive auction, the Commission initially added a mobile allocation to the entire UHF television band because it could not know in advance how much spectrum would be reallocated in the auction. Following the conclusion of the auction, the Commission modified the Table of Frequency Allocations to correspond to the results of the auction.¹⁹ In this case, the Commission need face no such uncertainty, and should match the modifications to the Table of Frequency Allocations at the outset. Once the

¹⁸ AT&T Comments at 14.

¹⁹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Order, 32 FCC Rcd 6916 (2017).

Commission has determined the appropriate amount of spectrum to reallocate in this proceeding, it should add a mobile allocation only to that portion of the C-band and preserve the remainder of the band for exclusive use by Fixed Satellite Service operations.

V. CONCLUSION

As the Commission considers how best to reallocate a portion of the C-band for mobile operations, it must also protect existing C-band users and the viewers and listeners they serve. Upending the content distribution architecture on which hundreds of millions of Americans rely will have disastrous and far-reaching consequences – including undermining the value of the content that helps drive demand for mobile services. Accordingly, the Commission should require a specific and detailed transition plan that is fully-funded and enforceable. It should also preserve the flexibility and capacity that makes C-band indispensable for content distribution and allow for future expansion in the band.

Respectfully submitted,

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