

**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
)	
International Bureau Releases Preliminary List Of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States)	IB Docket No. 20-205

**OPPOSITION TO APPLICATION FOR REVIEW OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby opposes the Application for Review submitted by ACA Connects – America’s Communications Association (ACA)² seeking review of the Wireless Telecommunications Bureau’s Public Notice setting lump sum payment amounts associated with relocation of incumbent earth stations in the 3.7 to 4.2 GHz band.³

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 ACA Connects – America’s Communications Association, Application for Review of the Public Notice of the Wireless Telecommunications Bureau Setting Lump-Sum Payment Amounts, GN Docket No. 18-122 (August 13, 2020) (Application for Review). ACA changed its name from the American Cable Association in March 2019, although it still represents cable operators.

³ Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections, Public Notice, GN Docket No. 18-122, IB Docket No. 20-205, DA 20-802 (July 30, 2020) (Public Notice).

The Commission's C-band proceeding is a serious matter, with wide-ranging ramifications for the public as well as earth station operators, programmers, satellite operators and new flexible use licensees. If the Commission is successful, it will make hundreds of megahertz of spectrum available for flexible use while preserving and protecting a content distribution ecosystem that serves hundreds of millions of Americans. If the Commission is not successful, there will be delays in clearing spectrum, and millions of Americans may suffer service disruptions that deprive them of news and entertainment programming they rely on today.

Yet somehow here comes ACA – which represents profitable cable companies – once again seeking handouts from the Commission. Remarkably, in the rulemaking stage of this proceeding and now in the implementation stage, ACA's primary focus has been and continues to be devising ways to line its members' pockets at the expense of other parties to the proceeding and the Commission's goal of repurposing spectrum. We urge the Commission to reject ACA's Application for Review, and firmly and finally reject these ongoing efforts at regulatory arbitrage.

II. ACA PRESENTS NO BASIS FOR REVIEW OF THE PUBLIC NOTICE

ACA contends⁴ that the Public Notice's determination to exclude the cost of integrated receivers/decoders (IRDs) from the lump sum payment available to eligible MVPD earth stations was arbitrary and capricious and contrary to the directives of the Commission's C-band Order.⁵ In fact, the record of this proceeding plainly demonstrates that the Public Notice reached the appropriate conclusion in determining that installation costs associated with IRDs

⁴ ACA Application for Review at 1.

⁵ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (C-band Order).

would be considered part of the lump sum payment, but that equipment costs associated with the IRDs themselves would not be. None of the arguments ACA presents are convincing.

First, ACA claims that the decision not to include IRD equipment costs in the lump sum payment is contrary to the C-band Order.⁶ In fact, the C-band Order directed the Wireless Telecommunications Bureau to include in the lump sum payment only the costs associated with relocating incumbent earth station operators, not costs associated with other aspects of relocation.⁷ Based on the record, the Bureau appropriately concluded that “the selection and purchase of compression equipment for these technology upgrades – such as integrated receivers/decoders and transcoders – are an integral part of the satellite operators’ nationwide transition process and, as such, they should be considered as part of the cost associated with the transition of satellite transponders.”⁸

In reaching this conclusion, the Bureau relied on extensive record evidence that everything about the IRD equipment choice – from the compression choice necessary to facilitate the transition to the ordering and distribution of specially-ordered IRDs – depends on decisions made by the programmers and the satellite operators, not MVPDs themselves.⁹ The Bureau stressed that “satellite operators, together with programmers, must be able to select and purchase compression equipment uniformly and on a nationwide basis – and to coordinate the technology upgrade process – to accomplish a successful transition.”¹⁰ The

⁶ Application for Review at 9.

⁷ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, ¶¶ 202-203 (2020) (C-band Order).

⁸ Public Notice at ¶ 17.

⁹ *Id.* See also Letter from Matthew S. DeINero to Marlene H. Dortch at 4, GN Docket No. 18-122 (July 6, 2020).

¹⁰ Public Notice at ¶ 18.

selection and purchase of IRDs is thus correctly categorized as a decision made at the *transmission* level, not at the level of individual MVPDs receiving the signal.

Second, ACA claims that the process by which the Bureau came to its conclusions regarding the categorization of IRD equipment costs was flawed. In particular, ACA claims that the Bureau relied on a third-party contractor (RKF) that conducted interviews with a number of stakeholders – but not ACA. Save for ACA’s plaintive sense of being excluded, it is unclear why RKF’s failure to interview ACA is of any practical or legal import.

If RKF had been tasked with developing in secret and on its own the final catalog, with no opportunity for stakeholders to provide input, ACA might conceivably have a point. In reality, however, the Commission tasked RKF with developing a preliminary cost catalog that could then form the basis for public comment. The Bureau then provided not one but two opportunities for public comment. The Bureau first released the preliminary cost catalog and sought comment on appropriate classes of earth stations as well as specific costs that should ultimately be included in lump sum payment amounts.¹¹ ACA filed comments in response to that release.¹² The Bureau subsequently released a public notice regarding proposed lump sum payments.¹³ ACA again filed responsive comments.¹⁴ ACA subsequently filed at least nine

¹¹ *Wireless Telecommunications Bureau Seeks Comments on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, Public Notice, 35 FCC Rcd 4440 (2020).

¹² Comments of ACA Connects – America’s Communications Association on the Draft Cost Catalog and Lump Sum Categories and Amounts, GN Docket No. 18-122 (May 14, 2020).

¹³ *Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7-4.2 GHz Band Incumbent Earth Station Relocation*, Public Notice, 35 FCC Rcd 5628 (2020).

¹⁴ Comments of ACA Connects – America’s Communications Association, GN Docket No. 18-122 (June 15, 2020).

ex parte notices reflecting its advocacy in this proceeding.¹⁵ Setting aside ACA's heartbreak over not being individually consulted in the development of the first iteration of the cost catalog, it is plain that ACA has been afforded and has taken advantage of ample opportunities to make known its views regarding the composition and amount of lump sum payments.

III. ACA HAS PERSISTENTLY SOUGHT TO TREAT THE C-BAND PROCEEDING AS A BUSINESS OPPORTUNITY

We urge the Commission to evaluate the Application for Review in the full context of this proceeding. Beyond the factual and legal infirmities of its arguments, the Application for Review is merely the latest step in ACA's ongoing quest to transform a spectrum reallocation proceeding into a cash cow that will funnel funds from winning flexible use license bidders to ACA's members.

During the rulemaking stage, ACA proposed and advocated for an ill-conceived, self-interested scheme to convert programming distribution to MVPDs across the country from C-band satellite distribution to fiber distribution. ACA made little to no serious effort to address the significant logistical and legal complications associated with its proposal to create an unprecedented nationwide fiber distribution network. What was plain, however, was ACA's level of interest in compelling content providers to switch to fiber distribution in order to: (1)

¹⁵ See Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (June 25, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (June 30, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 1, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 2, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 7, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 17, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 21, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 27, 2020); Letter from Ross Lieberman to Marlene H. Dortch, GN Docket No. 18-122 (July 29, 2020).

ensure that ACA's members would be paid for fiber installation as part of the transition; (2) ensure that content providers would have to pay ACA's members for fiber distribution in lieu of C-band distribution; and (3) acquire long-term leverage to raise rates for such distribution by eliminating intermodal competition in the form of C-band delivery. In short, ACA sought to ensure that its members would be paid substantial sums to eliminate competition.

Having failed in its first effort to transform a spectrum reallocation proceeding into a regulatory ATM, ACA then pivoted to attempts to maximize the potential financial recovery for MVPD earth station operators electing the lump sum payment option in lieu of actual cost reimbursement. ACA naturally sought to ascribe to its members as many of the costs associated with the transition as possible in order to drive the lump sum payment figure higher.

Significantly, while the Bureau appropriately concluded that IRD equipment costs should not be included in MVPD lump sum payments, it did include costs associated with the installation of IRDs in those amounts. The additional lump sum payment – above and beyond the base payment - available to MVPDs per site for this work is \$47,598. In other words, the sole reason that ACA is asking the Commission to review this decision is that a payment of more than \$47,000 *for installation costs alone* is not enough to sate the financial appetites of ACA's members, who remain laser-focused on accumulating more funds from winning flexible use license bidders to line their pockets. While NAB certainly does not object to the determination of the installation amount, it would strain credulity to suggest that ACA's members are somehow being shortchanged by this already significant figure.

We urge the Commission to put an end to ACA's ongoing efforts to extract an even greater financial benefit from this process. As discussed above, the Bureau correctly concluded that IRD equipment choices are appropriately made at the satellite operator and


programmer level – and that this conclusion was important to ensuring an orderly and efficient transition that protects content distribution throughout the process. The goal of an orderly transition that protects viewers and listeners should remain the Commission’s primary focus – not creative accounting approaches to maximize payments to small cable operators.

IV. CONCLUSION

Broadcasters, programmers, satellite operators, and other stakeholders are about to undertake a complex transition that must be concluded in an ambitious timeframe. The Commission’s focus should remain on ensuring that this process unfolds in an orderly and efficient manner that preserves content distribution and protects American viewers and listeners – not on maximizing payments to ACA’s members. We urge the Commission to reject the Application for Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patrick McFadden, certify that on this 28th day of August, 2020, I have caused a true and correct copy of the foregoing to be served via electronic mail, upon:

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