

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Eligible Satellite Operator Transition Plans for the 3.7 to 4.2 GHz Band)	GN Docket No. 20-173
)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band)	GN Docket No. 18-122
)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby submits comments on the transition plans submitted by eligible satellite operators in accordance with Commission’s order expanding flexible use in the C-band.² NAB remains optimistic that this transition can be completed in a timely manner while protecting the content distribution ecosystem upon which hundreds of millions of Americans rely today. To achieve this goal, we urge the satellite operators to make certain limited modifications to their plans as described in more detail below. More broadly, we urge the Commission to continue to maintain an unwavering focus on the protection of content distribution. C-band spectrum will only be timely cleared for flexible

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 – 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (Order).

use if the Commission, satellite operators, programmers, and earth station users can ensure that content distribution is protected both during and after the transition.

II. ENSURING THE PROTECTION OF CONTENT DISTRIBUTION MUST REMAIN THE COMMISSION'S PRIORITY

The Commission has a straightforward goal in this proceeding: protecting and preserving a content distribution system that serves hundreds of millions of Americans while also clearing additional spectrum for flexible use. While that goal may be expressed in a single sentence, successful execution will prove challenging and complex. The best way for the Commission to ensure a successful and timely clearing is to avoid unnecessary complications and maintain active oversight of the transition.

In particular, the Commission should be wary of other stakeholders seeking to leverage this proceeding for financial benefits that ultimately have little to do with the Commission's primary goal in reorganizing the C-band. For example, the recent record of this proceeding reflects substantial efforts by some MVPDs to leverage the reallocation of C-band spectrum for their own financial benefit. In particular, some MVPDs have asked the Commission to include the cost of Integrated Receiver/Decoders (IRDs) in the lump sum payment available to MVPDs choosing to handle their own transition responsibilities or transition to other technologies.³ Not only is this inconsistent with standard practice in the industry, it also introduces unnecessary risk into this process in the event that MVPDs take the lump sum with visions of transitioning to fiber and then fail to complete work in time or encounter unexpected

³ See, e.g., Letter from Ross Lieberman, ACA Connects, to Marlene H. Dortch, FCC, GN Docket 18-122 (July 7, 2020); Letter from Barry Ohlson, Cox Enterprises, to Marlene H. Dortch, FCC, GN Docket 18-122 (July 6, 2020).

issues.⁴ The *only* reason this dispute has emerged is the efforts of some MVPDs to drive up lump sum payments because they see an opportunity to extract additional financial benefits from the C-band transition.

Again, the Commission’s goal is to preserve content distribution while clearing spectrum for flexible use, not to force future flexible use licensees to establish a slush fund that MVPDs can tap into in order to pay themselves to install fiber. The Commission’s order in this proceeding discusses the importance of avoiding “gold-plating” of facilities needed to effectuate the transition;⁵ the FCC should not hold transitioning earth stations to a higher standard than those electing lump sum payments.

III. CERTAIN ASPECTS OF THE TRANSITION PLANS REQUIRE CLARIFICATION OR ADJUSTMENT

A. The Transition Plans’ Cost Estimates Do Not Yet Reflect Specific Information

The SES and Intelsat transition plans include cost estimates for the transition, including costs for transitioning earth station users.⁶ These costs presumably include filters, antennas and other necessary equipment, as well as installation expenses. The costs are presented at a very high level of generality, with Intelsat estimating that “Customer Migration,

⁴ See Letter from Matthew S. DeI Nero, Covington (representing the Content Companies) to Marlene H. Dortch, FCC, GN Docket 18-122 (July 6, 2020).

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, ¶ 195 (2020).

⁶ Letter from Brian D. Weimer to Marlene H. Dortch, SES American Accelerated C-Band Transition Implementation Plan at 22, GN Docket Nos. 18-122, 20-173 (June 19, 2020) (SES Transition Plan); Letter from Michelle V. Bryan to Marlene H. Dortch, Intelsat Clearing Transition Plan at 51, GN Docket Nos. 18-122, 20-173 (June 19, 2020) (Intelsat Transition Plan).

Compression and Repacking Costs” are \$400 million,⁷ and SES estimating that “Filters and LNBS” will cost \$100 million and “Antennas” will cost \$22 million.⁸

We take at face value the representation that these estimates are set forth in good faith and based on the best information currently available to the satellite operators. NAB knows that the satellite operators have been working with their programmer customers to develop accurate information concerning affiliates. Unfortunately, although the FCC recently released a preliminary list of incumbent earth stations, no stakeholder in this proceeding yet has a complete and accurate understanding of which earth stations are or are not registered. We hope that Intelsat and SES will update these estimates as more information becomes available.

More broadly, however, we caution that these estimates appear to be based on generalities about average costs and best estimates concerning the number of earth station users. Individual earth station users may have particular needs or issues that are not accounted for in these estimates. Ultimately, the specific obligations of the satellite operators, and the associated costs, for completing any individual earth station transition must be determined entirely on a case by case basis. By way of example, not all earth stations will have the same size dish, and not all earth stations will have extra space available for new installations. There will undoubtedly be significant complications for some, hopefully small, number of earth station users.

The Commission has made clear that new flexible use licensees, “will be responsible for the entire allowed costs of relocation—even to the extent that those costs exceed the

⁷ Intelsat Transition Plan at 51.

⁸ SES Transition Plan at 22.

estimated range of costs.”⁹ Potential bidders in the auction should understand that individual earth station circumstances and costs will vary, in some instances dramatically, and new overlay licensees will bear the entire costs of the relocation regardless of whether those costs exceed the estimates set forth in the transition plans.

B. The Transition Plans Should Reflect Flexibility in Scheduling

The satellite operators opting into the accelerated transition in this proceeding face a significantly complex and challenging relocation that will require cooperation and coordination with other stakeholders, including programmers and individual earth station operators. The Order in this proceeding provides that, “When a space station operator takes responsibility, its associated incumbent earth station operators need only facilitate the space station operator’s completion of that earth station’s relocation, for example, by helping with scheduling, providing access to facilities, and confirming the work performed.”¹⁰ NAB’s members are eager to have this transition completed successfully and will of course fully cooperate with satellite operators in this regard.

However, the Commission and the satellite operators must be aware that individual broadcast stations will have competing priorities and unexpected complications or delays. The transition plans must account for potential schedule changes and build in some level of flexibility for individual earth station outreach and installation. Most critically, in no event should scheduling challenges be viewed as an excuse for the satellite operators to avoid their obligations to transition services and earth station users.

⁹ Order at ¶ 205.

¹⁰ *Id.* at ¶ 292.

IV. CONCLUSION

We appreciate the opportunity to comment on the initial transition plans submitted by the satellite operators. NAB and its members look forward to continuing to work with stakeholders and the Commission to ensure a successful transition that frees up additional spectrum for flexible use while protecting viewers and listeners.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

Rick Kaplan
Patrick McFadden
Alison Neplokh
Robert Weller

July 13, 2020