August 11, 2020

Legal Memorandum

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# \*\* C-BAND UPDATE \*\*

# [Particulars of Lump Sum Reimbursement Option FINALIZED; Final List of Incumbent Earth Stations Issued; Comment Period Set for Preliminary Relocation Clearinghouse and Coordinator Selections](#_FCC_Expands_Unlicensed)

We write today with further updates regarding what’s going on with the C-band—and what broadcasters need to be aware of with respect to the FCC’s C-band proceeding. As you’ll recall, the C-band—which many broadcasters use for the reception of programming—is the swath of spectrum between 3.7 and 4.2 GHz, a large portion of which the Commission will make available via a public auction for new terrestrial wireless uses; the Commission also intends to preserve the continued operation of existing fixed satellite services (“FSS”) during and after the C-band’s transition.

Below, we first give a quick summary of important upcoming deadlines regarding the C‑band so you can understand what is going on—and when. (Among other things, the Commission has now finalized the cost categories and lump sum election options for earth stations that qualify for reimbursement, and set an August 31, 2020, deadline for making such lump sum elections.) Then, we discuss in greater detail what each deadline means for broadcasters.

*Upcoming Deadlines*. Below this list of dates and brief descriptions you’ll find further discussion to help provide more context to the activities and obligations referenced in the deadline bullet points.

* As soon as possible: Review the final list of “incumbent” earth station licensees/registrants (the “[Incumbent List](https://docs.fcc.gov/public/attachments/DA-20-823A2.pdf)”)—i.e., those licensees/registrants who will be eligible for reimbursement related to the relocation of their earth stations—that was recently released by the FCC’s International Bureau. The Incumbent List was finalized after broadcaster and stakeholder comment on a preliminary version that was released in early July. Accordingly, if you submitted comments on the preliminary list, you may wish to promptly review the final Incumbent List to ensure that any corrections you sought are, in fact, included in the updated List.
* August 14, 2020: By this date, space station operators (“SSOs”) must file with the FCC their updated transition plans (the “Transition Plans”), which will set forth the specifics of how each SSO intends to transition relevant earth stations. Those Transition Plans should include revisions that SSOs have made in response to broadcaster and other stakeholder comments (which were due in mid-July) submitted in response to the SSOs’ previously released draft transition plans.
* August 18, 2020: On this date, comments are due on the initial selection of the entities that will make up (1) the Relocation Payment Clearinghouse (which clearinghouse will be responsible for reviewing reimbursement expenses for reasonableness, among other things), and (2) the Relocation Coordinator (who will be responsible for scheduling the specifics of the C-band transition, among other things).
* August 28, 2020: On this date, reply comments are due on the initial selection of the entities that will make up (1) the Relocation Payment Clearinghouse and (2) the Relocation Coordinator.
* August 31, 2020: This is the deadline by which broadcasters must elect “lump sum” reimbursement, rather than reimbursement for actual, reasonably incurred relocation expenses, if they choose to elect the “lump sum” option.
* September 2, 2020: This is the deadline for any broadcaster with a pending application to register an earth station in “red light status” (i.e., the status given when an application is not grantable due to an outstanding debt owed to the Commission) to make full payment, or arrange full payment, of their outstanding debt to the Commission.

*C-Band Background*. As you may recall, back in March the FCC adopted a lengthy [Report and Order of Proposed Modification](https://docs.fcc.gov/public/attachments/FCC-20-22A1.pdf) (the “Order”) aiming to make available through a public auction the lower 280 megahertz of the C-band. The C-band’s incumbent users (i.e., existing SSOs, earth station registrants/licensees, etc.) will be repacked into a smaller swath of the remaining spectrum—the upper 200 megahertz of the band. The last, remaining 20 megahertz in the middle (from 3.98–4.0 GHz) will serve as a “guard band.” The lower 280 megahertz of the band that the FCC expects to “clear” through the public auction will be available for flexible use, including 5G service.

The Order set a deadline to clear the 280 MHz of C-band spectrum by December 2025, and it also offered SSOs the opportunity to vacate their incumbent positions in the C-band on an accelerated timeline (i.e., before 2025)—in exchange for accelerated payments associated with having to relocate. All eligible SSOs (Eutelsat, Intelsat, SES, Star One, and Telesat) timely elected to conduct an accelerated relocation.

Although various entities initially sought to block the Order both at the FCC and in the D.C. Circuit Court of Appeals, all requests to put a pause on the transition have thus far been denied. A legal challenge to the Order remains pending at the D.C. Circuit Court of Appeals, but it is unlikely that challenge will be resolved in the next several months (oral argument won’t be heard until October 28, 2020, and any decision is likely to be rendered some time afterward).

*Relocation Reimbursement Generally.* The Order recognizes that successfully transitioning/relocating all registered earth stations operating in the C-band will be no small feat; according to the Order, there are approximately 20,000 such earth stations in the contiguous United States!

Each broadcast licensee with qualifying, incumbent earth stations (more on incumbency immediately below) will have a choice when it comes to reimbursement of their reasonable C-band relocation costs: each licensee can either choose to receive its “actual reasonable relocation costs” incurred as a result of relocating each of its incumbent earth stations, or, instead, each licensee can elect to receive a “lump sum” amount that reflects the average, estimated cost of relocating all of its incumbent registered/licensed C-band dishes.

*Final List of Incumbent Earth Stations.* As a threshold matter (and as you likely recall), back in mid-July, the FCC released a preliminary list of approximately 17,000 “incumbent” registered/licensed C-band earth stations in the contiguous United States that the Commission believed to be eligible for reimbursement of reasonable relocation costs incurred in the forthcoming C-band transition. Broadcasters (and other affected stakeholders) then had approximately 10 days in which to review the list for accuracy and to submit proposed corrections and comments.

After reviewing the submissions received regarding the preliminary list, the International Bureau has now released the final [Incumbent List](https://docs.fcc.gov/public/attachments/DA-20-823A2.xls) and an accompanying [Public Notice](https://docs.fcc.gov/public/attachments/DA-20-823A1.pdf). The Incumbent List should contain all corrections submitted by broadcasters (and other affected stakeholders) in response to the preliminary list; accordingly, if you submitted any such corrections you should review the Incumbent List soon to verify that those corrections were made and that the List reflects updated, accurate information. You may also wish to review the Incumbent List to ensure that any of your earth stations which you believe qualify for relocation reimbursement remain on the Incumbent List. Finally, you may also wish to review the Incumbent List to ensure that none of your earth stations are listed in “red light” status—i.e., that the application to register your earth station is not currently ineligible to be granted because you owe some outstanding debt to the Commission (or, at least, because the Commission believes you owe it money). If you do have an earth station in “red light” status, you only have until **September 2, 2020**, to make full payment, or arrange full payment, of the outstanding debt, or else the Bureau will dismiss the pending application, and your earth station will not be eligible for incumbent status.

*Final Cost Catalog: Potential Expenses and Estimated Costs for Incumbent Earth Stations to Successfully Relocate.* The Order makes clear that incumbent earth station registrants/licensees will be eligible to be reimbursed for the “reasonable costs” they incur in transitioning (including limited amounts of so-called “soft” costs, such as engineering and legal expenditures). After soliciting comments on a preliminary cost catalog several months ago, the FCC has now released a final “cost category schedule of potential expenses and estimated costs” (the “[Cost Catalog](https://docs.fcc.gov/public/attachments/DA-20-802A2.pdf)”). The Cost Catalog sets forth—among other things—descriptions of and value ranges for potential expenses and estimated costs that incumbent earth station operators may incur as part of the transition. Although the Cost Catalog is intended to be fairly comprehensive, the Public Notice announcing the release of the Cost Catalog (the “[Reimbursement Public Notice](https://docs.fcc.gov/public/attachments/DA-20-802A1.pdf)”) makes clear that the Cost Catalog is not an exhaustive list of all cost categories eligible for reimbursement; costs not listed in the Cost Catalog that earth station registrants/licensees nonetheless incur as part of the transition may be eligible for reimbursement, subject to an adequate demonstration by the party seeking reimbursement that such costs “are reasonable and necessary for [a] specific transition.” Accordingly, you may wish to review the Cost Catalog’s various categories to determine if you expect to incur costs not listed in the Cost Catalog and, if so, you may wish to consult with your communications counsel regarding possible reimbursement for such costs. (Please note that unless specified otherwise in the Cost Catalog, each listed cost category is on a “per unit” basis—i.e., per earth station antenna or per earth station dish.)

*Final Lump Sum Payment Categories: Options and Election Process.*As noted above, incumbent earth station licensees/registrants have the opportunity to either (1) select particularized reimbursement for their reasonable relocation expenses or, instead, (2) elect lump sum payment based on Commission-established estimated average costs for transitioning earth stations. This section discusses the latter, lump sum option.

After soliciting stakeholder comments back in mid-July, the Commission has now finalized the various lump sum categories into which incumbent earth stations will fall; the categories appear in Section E of the Cost Catalog. For broadcasters’ purposes, there are effectively six categories into which an earth station might fall, differing largely based on the type of antenna used for the earth station. Lump sum amounts range from $3,060 for temporary-fixed earth station antennas (for example, those used on satellite news gathering trucks), to $51,840 for multi-beam earth station antennas with five or more beams.

The deadline for broadcasters to elect the lump sum reimbursement option is **August 31, 2020**. Accordingly, we suggest expeditiously reviewing and comparing the Cost Catalog’s lump sum categories against the particularized transition costs you believe your incumbent earth stations will incur, so that you can determine which reimbursement option appears to be most advantageous for your particular relocation situation. When doing so, you should consider the fact that broadcasters cannot treat their dishes “piecemeal,” which is to say that a lump sum reimbursement election must encompass all of each earth station operator’s dishes in the contiguous United States. Also, note that SSOs’ revised Transition Plans are currently due by August 14, 2020, meaning that by that date broadcasters should have a better sense of the scope of the SSOs’ proposed transitions (and therefore the particularized expenses the SSOs believe each earth station licensee/registrant is likely to incur as result of the transition). Finally, you should also note that lump sum elections are **irrevocable** (meaning that those who elect lump sum reimbursement must accept the risk that the amount will be inadequate to cover all subsequently incurred, actual relocation costs), and by electing lump sum reimbursement you—rather than the SSOs—assume full responsibility for transitioning your earth stations and doing so by all applicable transition deadlines.

To the extent that upon review you determine that lump sum election will be most beneficial for you and your incumbent earth stations, the Reimbursement Public Notice provides specific instructions for the manner in which you must make your lump sum election. In particular, you must file your election in the International Bureau’s Docket No. 20-205 and, as part of that filing, certify various information regarding your incumbent earth stations (including the antenna type, class of earth station, and applicable lump sum category for each of your incumbent earth stations). **All told, the Reimbursement Public Notice indicates that you must make nearly 20 certifications for a single earth station—please carefully review the certification requirements set forth in the Reimbursement Public Notice and speak to your communications counsel with any questions.** As a final note, all certifications will be subject to verification to prevent reimbursement waste, fraud, and abuse, so you also must ensure that all information you present in the certifications is accurate.

On the other hand, to the extent that upon review you determine that reimbursement of your actual reasonable relocation costs will be most beneficial for you and your incumbent earth stations, you do not need to take any further action at this time. You will instead be eligible going forward to submit to the Relocation Payment Clearinghouse the actual reasonable relocation costs you incur. We will provide more information on that process in a future legal memorandum.

*Reimbursement Clearinghouse and Coordinator*. As a final note, the Commission has announced that by August 18, 2020, it will accept comments—and by August 28, 2020, it will accept reply comments—regarding the initial selection of the entities that will make up (1) the [Relocation Payment Clearinghouse](https://docs.fcc.gov/public/attachments/DA-20-828A1.pdf) (which will be responsible for reviewing reimbursement submissions for reasonableness, among other things), and (2) the [Relocation Coordinator](https://docs.fcc.gov/public/attachments/DA-20-827A1.pdf) (who will be responsible for scheduling the specifics of the transition, among other things). An accounting firm (CohnReznick) and two subcontractors, a law firm (Squire Patton Boggs (US) LLP) and a satellite and communications engineering firm (Intellicom Technologies, Inc.), have been preliminarily selected to serve as the Clearinghouse; an audit, tax, and consulting firm (RSM US LLP) has been preliminarily selected to serve as the Relocation Coordinator. Each entity must satisfy various criteria established by the Order to qualify for appointment, and the comment period outlined above is intended to give all interested parties the chance to weigh in on whether the preliminary selectees satisfy those established criteria.

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*Tim Nelson, Editor*

[BROOKS, PIERCE, McLENDON,](http://www.brookspierce.com/)

[HUMPHREY & LEONARD, L.L.P.](http://www.brookspierce.com/)

[Mark J. Prak](mailto:mprak@brookspierce.com)   
[Marcus W. Trathen](mailto:mtrathen@brookspierce.com)  
[David Kushner](mailto:dkushner@brookspierce.com)  
[Coe W. Ramsey](mailto:cramsey@brookspierce.com)  
[Stephen Hartzell](mailto:shartzell@brookspierce.com)

[Julia C. Ambrose](mailto:jambrose@brookspierce.com)

[Elizabeth E. Spainhour](mailto:espainhour@brookspierce.com)

[J. Benjamin Davis](mailto:bdavis@brookspierce.com)

[Timothy G. Nelson](mailto:tnelson@brookspierce.com)

[Patrick Cross](mailto:pcross@brookspierce.com)

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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