

# **REQUEST FOR PROPOSAL: RELOCATION PAYMENT CLEARINGHOUSE**

## **Expanding Flexible Use of the 3.7 to 4.2 GHz Band, GN Docket No. 18-122**

### **I. Overview**

This request for proposal (“RFP”) provides important information for entities that wish to act as the neutral, independent Clearinghouse responsible for managing the collection, payment, and auditing of relocation funds received from entrants that will benefit from the relocation of incumbent licensees in the 3.7-4.0 GHz band in accordance with the procedures set forth in the Federal Communications Commission’s (“Commission”) *Report and Order and Order of Proposed Modification* (“*Report and Order*”) regarding the 3.7-4.2 GHz band (“C-band”).<sup>1</sup>

In its *Report and Order* the Commission established procedures to reform the use of the C-band to make a portion of it available for flexible use, including 5G, throughout the contiguous United States via a public auction (“Auction 107”). Stakeholders are required to clear existing services from the lower 300 megahertz of the C-band (3.7-4.0 GHz) for flexible use by repacking existing satellite operations into the upper 200 megahertz of the band (4.0-4.2 GHz) and reserving a 20 megahertz guard band (3.98-4.0 GHz) between incumbent satellite operations and the new flexible use operations.<sup>2</sup> Entities that are issued overlay licenses for use of the 3.7-3.98 GHz frequencies will be required to reimburse incumbent operators, including fixed service operators, for reasonable expenses incurred to vacate in compliance with the deadlines set out in the *Report and Order*.

The Commission also invited a committee of stakeholders in the C-band proceeding to select, based on certain criteria, a neutral, independent Relocation Payment Clearinghouse (“Clearinghouse”) that will collect and distribute relocation and accelerated relocation payments, audit incoming and outgoing invoices, and address cost disputes among parties. The Commission also instructed the search committee to notify the Commission of its choice of Clearinghouse, after which the Wireless Telecommunications Bureau (“Bureau”) will solicit public comment on the selected entity and issue a final order announcing whether the selected entity meets the relevant criteria set forth in the *Report and Order*.<sup>3</sup>

The *Report and Order* establishes the following key dates related to relocation of incumbent operations in the C-band:

- July 31, 2020 – Clearinghouse selection deadline
- December 8, 2020 – Bidding begins in Auction 107
- December 5, 2021 – Phase I Deadline (if acceleration elected)
- December 5, 2023 – Phase II Deadline (if acceleration elected)

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<sup>1</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, FCC 20-22 (rel. Mar. 3, 2020) (“*Report and Order*”).

<sup>2</sup> *See id.* ¶ 4.

<sup>3</sup> *See id.* ¶¶ 279-80.

- December 5, 2025 – Relocation Deadline

## II. Clearinghouse Selection Criteria

Any existing or newly-formed entity interested in serving as the Clearinghouse to oversee the cost-related aspects of the transition in a fair, transparent manner must meet the following requirements:

- *Neutrality and Independence.* The entity must be neutral and independent, with no conflicts of interest on the part of the organization or its officers, directors, employees, contractors, or significant subcontractors. More specifically, the entity must have no financial interests in, and the entity’s board members must be independent of, incumbent space station operators, incumbent earth station operators, content companies that distribute programming using the C-band, wireless operators, fixed service operators, any entity that may seek to acquire flexible-use licenses, or any entity that may seek to manufacture or market equipment in the C-band. The entity’s board members, officers, directors, employees, and/or contractors should have no financial or organizational conflicts of interest.<sup>4</sup>
- *Financial, Accounting, Auditing, and Industry Expertise.* The entity must be able to demonstrate that it has or will hire a consultant with the requisite expertise to perform the duties required of the Clearinghouse, including, but not limited to, collecting and distributing relocation and accelerated relocation payments, auditing incoming and outgoing invoices, and mediating cost disputes. The entity must demonstrate expertise in satellite communications technology and economics, financial, accounting and auditing, as well as video and audio programming service and technology, including with respect to the broadcasting and cable television distribution industries. The entity must also be familiar with the *Report and Order* and all applicable Commission rules, policies, and procedures.
- *Best Practices and Operational Standards.* In administering the transition in its role as Clearinghouse, the entity must be able to (1) engage in strategic planning and adopt goals and metrics to evaluate its performance, (2) adopt internal controls for its operations, (3) utilize enterprise risk management practices, (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds, and (5) adequately separate any dispute resolution function from other operational functions. The entity must also be able to create written procedures for its operations, using the

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<sup>4</sup> “Organizational conflicts of interest” means that because of other activities or relationships with other entities, the Clearinghouse, its contractors, or significant subcontractors are unable or potentially unable to render impartial services, assistance or advice; the Clearinghouse’s objectivity in performing its function is or might be otherwise impaired; or the Clearinghouse might gain an unfair competitive advantage. “Personal conflict of interest” means a situation in which an employee, officer, or director of the Clearinghouse, the Clearinghouse’s contractors or significant subcontractors has a financial interest, personal activity, or relationship that could impair that person’s ability to act impartially and in the best interest of the transition when performing their assigned role, or is engaged in self-dealing.

Government Accountability Office's Green Book as a guide in satisfying such requirements.

- *Privacy and Data Security.* The entity must already have in place or be able to adopt robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition. This includes: (1) making real time disclosures as to the content and timing of communications among auction participants; (2) complying with all applicable laws and Federal government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act, National Institute of Standards and Technology publications, and Office of Management and Budget Guidance; and (3) hiring an independent third-party firm to audit and verify, on an annual basis, the entity's compliance with privacy and information security requirements and to provide recommendations based on any audit findings, to correct any negative audit findings and adopt any additional best practices suggested by the auditor, and to report the results to the Bureau.

### **III. Clearinghouse Role and Duties**

#### **A. Duties Pertaining to the Clearinghouse's Ongoing Operations**

The Clearinghouse will:

- Operate in a fair and transparent manner.
- Remain financially sound and bonded or insured against financial improprieties during the term of operation.
- Collect from all incumbent space station operators and all incumbent earth station operators a showing of their relocation costs for the transition and a demonstration of those costs' reasonableness or, in the case of incumbent earth station operators, an election of lump-sum payments to be established by the Bureau for various classes of earth station operators.
- Review reimbursement requests to determine whether the costs submitted for reimbursement are reasonable and comply with the requirements adopted in the *Report and Order*, with specific reference to the definition of "reasonable" set out in paragraph 194 of the *Report and Order*. The costs that are reflected in the Cost Catalog issued by the Bureau will be presumed to be reasonable. Costs submitted for reimbursement in excess of the ranges in the Cost Catalog, or for equipment or activities not in the Cost Catalog, along with accompanying documentation, shall also be considered by the Clearinghouse to determine whether they are reasonable and eligible for reimbursement in accordance with the *Report and Order*.
- Develop a process to provide parties an opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.
- Apportion costs among overlay licensees as directed by the *Report and Order*.

- Place all funds collected for reimbursement in a reputable financial institution and invest such funds only in U.S. Treasury bonds.
- Distribute payments for compensable costs to eligible incumbent space station operators, incumbent earth station operators, incumbent fixed service operators and appropriate surrogates of those parties that incur compensable costs.
- Develop a process to provide parties an opportunity to track the progress of their reimbursement claims, and check the status of their reimbursement payments.
- Establish and administer the reimbursement fund into which flexible-use licensees shall pay their share of the initial estimated relocation payments and from which the Clearinghouse shall draw to pay approved, invoiced claims and lump-sum payments.
- Calculate the overlay licensees' share of estimated costs for a six-month period and provide overlay licensees with the amounts they owe at least 30 days before each subsequent six-month deadline.
- Pay approved reimbursement claims within 30 days of invoice submission so long as funding is available.
- Provide flexible-use licensees with 30 days' notice of the additional shares they must contribute to the reimbursement fund, if the reimbursement fund has insufficient funds to pay approved claims before a six-month replenishment.
- Provide the Bureau upon request estimates of the average costs of transitioning various classes of incumbent earth stations to aid the Bureau's determination of lump sum payments for each such class of stations.
- Distribute lump sum payments to eligible incumbent earth station operators in the amounts determined by and in the manner prescribed by the Bureau.
- Serve as administrator in a function similar to a special master in a judicial proceeding in order to: (1) mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or (2) refer the disputant parties to alternative dispute resolution fora.
- To minimize the need for referral of disputes to the Bureau, and for other purposes, seek advance guidance from the Bureau, as appropriate, when resolving matters where interpretation of the *Report and Order* is required.
- File quarterly progress reports in such detail as the Bureau may require. The quarterly progress reports must account for all funds spent to transition the C-band, including the Clearinghouse's own expenses (including salaries and fees paid to law firms, technical and engineering experts, accounting firms, and other consultants, as well as billing rates for all staff and third-party consultants). In addition, the quarterly progress reports shall include descriptions of any disputes and the manner in which they were resolved.
- Provide additional information to the Bureau or the Commission's Office of Managing Director ("OMD") upon the Bureau or OMD's request.

- Perform any additional tasks as needed and assigned by the Bureau to ensure that the transition of the C-band proceeds smoothly and expeditiously.
- Meet relevant best practices and standards in its operation to ensure an effective and efficient transition. In administering the transition, the Clearinghouse shall: (1) engage in strategic planning and adopt goals and metrics to evaluate its performance; (2) adopt internal controls for its operations; (3) use accepted enterprise risk management best practices; (4) use best practices to protect against improper payments and to prevent fraud, waste and abuse in its handling of funds; and (5) adequately separate any dispute resolution function from other operational functions.
- Create written procedures for governing its operations, using the Government Accountability Office's Green Book to serve as a guide in satisfying such requirements.
- Provide OMD and the Bureau with an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse, by March 1 of each year.
- Adopt robust privacy and data security best practices in its operations and comply on an ongoing basis with all applicable laws and Federal government guidance on privacy and information security requirements. To ensure ongoing compliance, the Clearinghouse will be required to: (1) hire a third-party firm to independently audit and verify on an annual basis the Clearinghouse's compliance with privacy and information security requirements and to provide recommendations based on any audit findings; (2) develop a plan to correct any negative audit findings in a timely manner; (3) adopt any additional practices suggested by the auditor; and (4) report the results to the Bureau.

#### **B. Duties Specifically Pertaining to Auction 107**

To ensure a fair and level playing field for Auction 107 participants, beginning on the initial deadline for filing auction applications until the deadline for making post-auction down payments, the Clearinghouse must disclose in real-time the content, the timing of, and the parties to communications, if any, from or to applicants in Auction 107, as applicants are defined by the Commission's rule prohibiting certain auction-related communications.

#### **C. Compensation for Duties Performed**

Overlay licensees will each pay their proportionate share of expenses related to the Clearinghouse and Clearinghouse staff. The Clearinghouse shall include its own reasonable costs in the cost estimates it uses to collect payments from overlay licensees.

#### **D. Post-Relocation Deadline**

The Bureau may require the Clearinghouse to issue a special, audited report after the Relocation Deadline that identifies any issues that have not readily been referred to the Commission as well as what actions, if any, need to be taken for the Clearinghouse to complete its obligations (including the estimated costs and time frame for completing that work).

## **E. Suspension of Operations**

Upon completion of its duties, the Clearinghouse shall submit a request to wind down and suspend operations to the Bureau, which will issue a Public Notice upon receipt. If no material issues are raised within 15 days of the release of said Public Notice, the Bureau may grant the Clearinghouse's request to suspend operations on a specific date.

## **IV. Proposal Requirements**

Any entity interested in serving as the Clearinghouse should submit a business plan detailing how the entity would perform the Clearinghouse's functions, as described in the *Report and Order* and this RFP. As per the timeline set forth below, proposals received after June 29, 2020, will not be considered.

To enable the search committee to determine whether proposals meet the Selection Criteria enumerated above, each proposal at a minimum must include:

### *General Information:*

- The name and a description of the entity proposing to serve as the Clearinghouse.
- The name, address, telephone number, and signature of a contact person familiar with the proposal.

### *Neutrality and Independence:*

- A description of how the entity is and would remain impartial while serving as Clearinghouse, including how it has determined that it has no conflicts of interest and how it would prevent any such conflicts while serving as Clearinghouse.
- A detailed description of the transparency measures the entity would implement.

### *Financial, Accounting, Auditing, and Industry Expertise:*

- A description of the entity's experience in the communications industry and other qualifications.
- A description of the entity's financial, accounting and auditing expertise.
- A description of the extent to which the entity has prior experience managing funds, including the collection and distribution of payments.
- A description of the entity's familiarity with the *Report and Order* and applicable Commission rules.
- A list and description of the individuals and/or contractors that would collectively fulfill the Clearinghouse's obligations, including respected third parties with expertise in the satellite, broadcasting, and cable television distribution industries. CVs of relevant team leaders and experts should be included.
- A description of how the entity would resolve cost disputes consistent with paragraphs 268 and 269 of the *Report and Order* (e.g., disputes over whether a particular expense is reasonably reimbursable in light of the Commission's expressly stated goal of preserving

the content distribution ecosystem contained in the C-band during and after the transition), including (1) a description of any prior experience the entity has in resolving such disputes, (2) proposed procedures for mediating disputes within required time frames, and (3) how it will separate any dispute resolution function from other operational functions.

*Best Practices and Operational Standards:*

- Information regarding financial data, including business plans, regarding start-up funds and ongoing costs sufficient to demonstrate the entity would remain solvent throughout the transition period.
- A proposal for the Clearinghouse's anticipated total expenses (including salaries and fees paid to law firms, accounting firms, technical and engineering experts, and other consultants, as well as billing rates for all staff and third-party consultants).
- A detailed description of accounting methods that would be used to administer the Clearinghouse.
- A detailed description of best practices that would be employed to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds.
- A proposal for establishing goals and metrics for assessing the entity's performance as Clearinghouse.
- A description of the entity's experience with enterprise risk management practices.
- A description of the extent to which the entity has experience with creating written procedures using the Government Accountability Office's Green Book.

*Privacy and Data Security:*

- A description of how the entity intends to address concerns about the confidentiality, privacy, and data security of information submitted to it, consistent with paragraph 277 of the *Report and Order*, and a description of data security and privacy measures the entity would take to safeguard such submitted information, including off-site data back-up facilities; measures to ensure continuity of access to the information in the event the entity's operations are interrupted; and measures to safeguard the information against unauthorized access.
- A description of the extent to which the entity has experience with ensuring compliance with Federal privacy and information security requirements, including the Federal Information Security Management Act, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

*Other Information:*

- An assessment of how long it would take the entity to become operational as the Clearinghouse.

- An assessment of how many days it would take the entity to notify overlay licensees of a payment obligation.
- A description of how the Clearinghouse would calculate estimates for the average costs of transitioning incumbent earth stations of various classes if requested to aid the Bureau's determination of a lump sum payments for each such class of stations.
- A discussion of any other matters the entity believes are relevant to the search committee under the *Report and Order*.

The search committee will evaluate the proposals by balancing the Clearinghouse Selection Criteria specified in the Commission's rules and this RFP, focusing in particular on the entity's qualifications, plans for operation, and time required to become operational, and an overall assessment of the details of each entity and its proposal. Once selected, the Clearinghouse must operate in accordance with the *Report and Order* and the Commission's rules.

## **V. Selection Timeline**

- June 1, 2020 – Search committee issues RFP
- June 8, 2020 – Deadline for entity to submit questions to the search committee
- June 19, 2020 – Target date for the search committee to respond to questions
- June 29, 2020 – Deadline for entities to file proposals with the search committee
- June 30-July 13, 2020 – Committee reviews RFP responses and meets with qualified potential vendors as necessary
- July 31, 2020 – Deadline for selection of the Clearinghouse by the search committee
- August 14, 2020 – Deadline for selection of the Clearinghouse by the reduced search committee, in the event that the search committee fails to select a Clearinghouse and to notify the Commission by July 31, 2020

The search committee will base its decision on the information provided and inform the Bureau accordingly. The entity selected by the search committee and found by the Bureau to have satisfied the criteria in the Order will enter into individual contracts with each eligible space station operator that elects accelerated relocation and thereby voluntarily commits to paying the administrative costs of the Clearinghouse until the Commission awards licenses to the winning bidders in the auction. A form contract will be provided to the selected entity for use with each eligible electing satellite operator to ensure that each agreement shall include terms substantially identical to each other. Once licenses are awarded, the Clearinghouse will enter into separate contracts with the overlay licensees.

## **VI. Filing Instructions, Questions and Comments Submission, and Contact Person**

### **A. Filing Instructions**

Submissions must be filed electronically. Submissions may be shared with employees of each stakeholder organization as well as companies that are members of ACA Connects, CCA, CTIA, NAB, NCTA and WISPA, as well as Federal Communications Commission staff. Entities submitting proposals may identify portions of their submissions that should be treated as

confidential. Confidential information will only be made available to the two representatives designated as members of the stakeholder committee by each stakeholder, as well as relevant FCC staff. If any portion of the submission will be designated as confidential, please submit a redacted version in addition to the full submission.

Submissions should be emailed to [CbandClearinghouse@gmail.com](mailto:CbandClearinghouse@gmail.com) and addressed to the Clearinghouse Selection Committee. The Clearinghouse will respond by email to confirm receipt. If an applicant does not receive an email, please contact Danielle Piñeres or Jen Oberhausen at the email or telephone number below.

Should an applicant wish to implement additional security measures in submitting its proposal, please contact Danielle Piñeres or Jen Oberhausen at the email or telephone number below in advance of the submission deadline.

#### **B. Questions and Comments Submission**

Entities may submit questions and/or comments regarding the substance of the RFP by sending an email to [CbandClearinghouse@gmail.com](mailto:CbandClearinghouse@gmail.com).

#### **C. Contact Person**

For further information or general inquiries, contact:

Danielle Piñeres  
Vice President & Associate General Counsel  
NCTA – The Internet & Television Association  
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Or

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202-736-3235