

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective August 8, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-Reference, Indian lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

James B. Gulliford,

Regional Administrator, Region 7.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 74 and 78

[ET Docket No. 98-206; FCC 03-25]

Fixed Satellite and Terrestrial Systems in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses the Petitions for Reconsideration from Skybridge L.L.C. ("Skybridge"); and Hughes Communications, Inc., Hughes Communications Galaxy, Inc. and Hughes Network Systems, a division of Hughes Electronics Corporation ("Hughes") filed in response to the *First Report and Order and Further Notice of Proposed Rule Making* ("First R&O"). The proceeding addresses a request by Skybridge to allow non-geostationary orbit ("NGSO") fixed satellite services ("FSS") to share various frequencies in the Ku-Band with existing geostationary orbit ("GSO") satellite services and terrestrial services. Our action herein addresses aspects of the Skybridge Reconsideration Petition relating to NGSO FSS sharing with terrestrial services and Federal Government operations, as well as the Hughes Reconsideration Petition relating to our radio frequency ("RF") safety rules requiring warning labels and recommending professional installation for NGSO FSS subscriber antennas.

DATES: Effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order*, ET Docket No. 98-206, FCC 03-25, adopted February 3, 2003, and released February 11, 2003. The full text of this Commission decision is available on the Commission's Internet site at <http://www.fcc.gov>. It is available for inspection and copying during normal

business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of the Second Memorandum Opinion and Order

1. In the *Second Memorandum Opinion and Order*, the Commission granted Skybridge's request and amended our rules to allow, under certain conditions, NGSO FSS Earth-to-space ("uplink") operations in the 13.15-13.2125 GHz portion of the 12.75-13.25 GHz band. In making the change the Commission concludes that NGSO FSS can implement measures to protect incumbent broadcast auxiliary service ("BAS") and cable television relay service ("CARS") mobile pickup operations from harmful interference.

2. The Commission grants Skybridge's request and states that power flux density ("PFD") limits for NGSO FSS in the 10.7-11.7 GHz band are sufficient to protect services in the band without the need for individual coordination. This ensures incumbent services are protected against harmful interference without creating an unnecessary burden on NGSO FSS licensees.

3. The Commission granted Skybridge's request and amended the rules to clarify the definition of NGSO FSS earth station gateways to limit use only for NGSO FSS backbone support.

4. The Commission granted Skybridge's request and adopted the Telecommunications Union's ("ITU") effective isotropically radiated power ("EIRP") limit on federal radiolocation operations in the 13.75-14.0 GHz band, and permits NGSO FSS operations to claim protection from these radiolocation operations.

5. The Commission denied Skybridge's request, maintains the EIRP density limit to protect against interference to the National Aeronautics and Space Administration ("NASA") tracking data and relay satellite system ("TDRSS") operations across the 10 megahertz of the 13.77-13.78 GHz band, and denies the request to restrict this protection to only 6 megahertz.

6. The Commission denied Skybridge's request to require NGSO FSS licensees and radio astronomy service ("RAS") entities to use the

protection levels and calculation methods in the ITU's Article 29. The Commission maintained the requirement in footnote US355 that NGSO FSS licensees in the 10.7–11.7 GHz band coordinate with RAS entities to reach "mutually acceptable agreements." This flexible approach will allow the use of Article 29 procedures or any other procedure deemed appropriate by the interested parties.

7. The Commission denied Hughes's Petition to revisit language in the *First Report and Order*, 16 FCC Rcd 4096, December 8, 2000, 66 FR 7607, January 24, 2001, recommending professional installation of two-way NGSO FSS antennas. The Commission continues to find that the language is neither overly broad nor unnecessary, and is harmonious with the language of other NGSO FSS decisions.

Final Regulatory Flexibility Analysis

8. The Regulatory Flexibility Act (RFA)¹ requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

9. The Commission has adopted technical rules to facilitate spectrum sharing between new NGSO FSS systems in the Ku band and existing services in this spectrum. Wherein we grant in part Skybridge's requests for reconsideration, we modify these rules to further these goals. We acknowledge that as the radio spectrum is increasingly used, it becomes more difficult to accommodate all requests for access to the radio spectrum, however, this action applies existing frequency coordination procedures to NGSO FSS systems sharing spectrum with fixed services. However, frequency coordination should ensure that new operations of either service will protect existing operations and have access to spectrum if it is technically possible.

10. In considering the Skybridge's request for NGSO FSS access to the 13.15–13.2125 GHz band, the Commission considered the impact on terrestrial operations granting such a request might have. Further, the Commission adopted rules that carefully weigh the complexity of sharing with mobile BAS/CARS operations could impose against the need for minimal measures to accommodate sharing in bands increasingly congested by co-primary satellite and terrestrial use.

11. Regarding sharing between NGSO FSS systems and broadcast auxiliary ("BAS") operations, the *Report and Order* stated that the Commission will adopt some form of geographic protection areas for terrestrial operations in those bands used by NGSO FSS gateway earth stations. These protection areas will be further defined in a future proceeding, but are intended to facilitate the growth of terrestrial operations, while not unnecessarily hindering the deployment of NGSO FSS systems. Further, to ensure BAS operations in all areas can continue to operate unencumbered by new NGSO FSS systems, this *Second Memorandum Opinion and Order* reinforces efforts to minimize impacts on BAS/CARS entities by retaining the four channels at 13.15–13.2125 GHz for exclusive co-primary BAS/CARS use in 50 km areas around major TV markets and by requiring NGSO FSS operations observe power limits to ensure continued operations outside those select areas.

List of Subjects

47 CFR Part 2

Radio, Television.

47 CFR Part 25

Satellites.

47 CFR Part 74

Television.

47 CFR Part 78

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, 74, and 78 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

- 2. Amend § 2.106, the Table of Frequency Allocations as follows:
 - a. In the list of Non-Government (NG) footnotes, footnote NG53 is revised.
 - b. In the list of United States (US) footnotes, footnote US356 is revised.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

United States (US) Footnotes

* * * * *

US356 In the band 13.75–14 GHz, an earth station in the fixed-satellite service shall have a minimum antenna diameter of 4.5 m and the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW. In addition the e.i.r.p., averaged over one second, radiated by a station in the radiolocation service shall not exceed 59 dBW. Receiving space stations in the fixed-satellite service shall not claim protection from radiolocation transmitting stations operating in accordance with the United States Table of Frequency Allocations. ITU Radio Regulation No. 5.43A does not apply.

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Non-Federal Government (NG) Footnotes

* * * * *

NG53 The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

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PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.201 is amended by revising the introductory text and paragraph 2 of the definition for *NGSO FSS gateway earth station* to read as follows:

§ 25.201 Definitions.

* * * * *

NGSO FSS gateway earth station. A gateway earth station is an earth station complex consisting of multiple interconnecting earth station antennas supporting the communication routing and switching functions of a non-geostationary satellite orbit fixed-satellite service (NGSO FSS) system as a whole. A gateway earth station in the NGSO FSS:

* * * * *

(2) Shall not be for the exclusive use of any customer.

* * * * *

■ 5. Section 25.202 is amended by revising the table and footnotes in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

Space-to-earth (GHz)	Earth-to-space (GHz)
3.7–4.2 ¹	5.925–6.425 ¹
10.7–10.95 ^{1, 12}	12.75–13.25 ^{1, 12, 14}
10.95–11.2 ^{1, 2, 12} ..	13.75–14 ^{4, 12}
11.2–11.45 ^{1, 12}	14–14.2 ⁵
11.45–11.7 ^{1, 2, 12} ..	14.2–14.5
11.7–12.2 ³	17.3–17.8 ⁹
12.2–12.7 ¹³	27.5–29.5 ¹
18.3–18.58 ^{1, 10}	29.5–30
18.58–18.8 ^{6, 10, 11}	48.2–50.2
18.8–19.3 ^{7, 10}	
19.3–19.7 ^{8, 10}	
19.7–20.2 ¹⁰	
37.6–38.6	
40–41	

¹ This band is shared coequally with terrestrial radiocommunication services.

² Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; i.e., other than domestic systems.

³ Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

⁴ This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

⁵ In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

⁶ The band 18.58–18.8 GHz is shared coequally with existing terrestrial radiocommunication systems until June 8, 2010.

⁷ The band 18.8–19.3 GHz is shared coequally with terrestrial radiocommunication services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared coequally with existing terrestrial radiocommunication systems.

⁸ The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

⁹ The use of the band 17.3–17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

¹⁰ This band is shared co-equally with the Federal Government fixed-satellite service.

¹¹ The band 18.6–18.8 GHz is shared coequally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

¹² Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

¹³ Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

¹⁴ Use of this band by NGSO FSS gateway earth station uplink operations is subject to the provisions of § 2.106 NG53.

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PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

■ 6. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 7. Section 74.602 is amended by revising footnote 2 following the table in paragraph (a) introductory text to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

² The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink

transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

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PART 78—CABLE TELEVISION RELAY SERVICE

■ 8. The authority for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 9. Sections 78.18 is amended by revising paragraphs (l) and (m) to read as follows:

§ 78.18 Frequency assignments.

* * * * *

(l) The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

(m) CARS stations may be authorized for use of the band from 13.20 to 13.25 GHz on a secondary basis to Television Broadcast Auxiliary Stations. CARS stations are also secondary to NGSO FSS gateway earth station uplink operations. Any CARS application seeking authorization for use of the 13.20 to 13.25 GHz band must demonstrate that the applicant has

exhausted all spectrum available to it in the 12.70 to 13.20 GHz band.
Applications for use of this band must

specify whether the channels are 6 MHz, 12.5 MHz, or 25 MHz wide and

give the upper and lower boundaries and the polarization for each channel.

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