

regulatory compliance requirements for efficiency, unnecessary duplication and implications for the delivery of high quality, appropriate legal services." LSC Strategic Directions 2000—2005, page 8.

Pursuant to this directive, LSC, through its Board of Directors' Operations and Regulations Committee, which provides overall direction on LSC regulatory policy and establishes priorities for LSC rulemaking activities, is in the process of conducting a thorough review of LSC's regulations. With this notice, LSC is soliciting public input for the consideration of the Committee and the Board in pursuit of this task.<sup>1</sup>

**Victor M. Fortuno,**

*General Counsel and Vice President for Legal Affairs.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 101

[IB Docket No. 00-203; FCC-00-369]

#### Partial Band Licensing and Loading Standards for Earth Stations in the FSS That Share Spectrum With Terrestrial Services, Blanket Licensing for Small Aperture Terminals in the C-Band, Routine Licensing of 3.7 Meter Transmit and Receive Stations at C-Band, and Deployment of Geostationary-Orbit FSS Earth Stations in the Shared Portion of the Ka-Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes rules that will promote more efficient use and sharing of the radio spectrum between FSS earth stations and terrestrial fixed service stations by requiring the showing of actual or planned use of the spectrum when access to that spectrum is denied to potential new users. The proposed rules also promote efficient sharing of spectrum by requiring the use of previously agreed interference

analysis models during subsequent frequency coordinations. In addition, they are designed to provide wider access to electronic commerce in underserved rural areas of America by facilitating the deployment of small antenna terminals in C-band satellite networks under a single authorization, with prior frequency coordination. Finally, this document seeks comment on how to facilitate the deployment of GSO FSS earth stations without individual site-by-site licensing in the portion of the Ka-band that is shared with terrestrial fixed services.

**DATES:** Submit comments on or before January 8, 2001. Submit reply comments on or before February 9, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Edward R. Jacobs, Planning & Negotiations Division, International Bureau. (202) 418-0624 or via electronic mail: [ejacobs@fcc.gov](mailto:ejacobs@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 00-203, adopted October 13, 2000 and released October 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) 445 12th Street SW., Washington, DC and may also be purchased from the Commission copy contractor, International Transcription Services (ITS), Inc., (202) 857-3800, 1231 20th Street, N.W., Washington, D.C. 20036.

#### Summary of the Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking, the Commission considers a series of filings concerning the application of our part 25 rules to Fixed-Satellite Service (FSS) earth stations in bands shared on a primary basis with the terrestrial Fixed Service (FS). Specifically, Onsat Network Communications, Inc. (Onsat) petitions for a declaratory order that our part 25 rules permit the licensing, under a single authorization, of small aperture terminal satellite earth station networks in the C-band (3700-4200 MHz and 5925-6425 MHz). These C-band small aperture terminal earth station networks, or CSATs, are technically similar to the very small aperture terminal earth station networks, or VSATs, currently deployed in the Ku-band (11.7-12.2 GHz and 14.0-14.5 GHz). The Fixed Wireless Communications Coalition (FWCC) petitions for a declaratory ruling regarding partial-band licensing of FSS earth stations and a rulemaking to amend part 25 of the Commission's

rules to set loading requirements. Hughes Network Systems (Hughes) seeks consideration of its proposal to deploy geostationary orbit FSS earth stations in the shared portion of the Ka-band (17.7-19.7 GHz and 27.5-29.5 GHz). We address all but Onsat's petition for waiver of § 25.212(d) of the Commission's rules regarding routine licensing of 3.7 meter transmit and receive earth stations at C-band. Specifically, we deny Onsat's petition for declaratory order, but propose to amend our rules to permit the licensing, under a single authorization and with prior coordination, of a limited class of small aperture terminal earth station networks in the C-band to communicate with geostationary satellites. We will issue a separate licensing decision on the specific application for the Onsat system that Onsat filed several months after its Petition for Declaratory Order. We deny FWCC's request for a declaratory ruling requiring partial-band licensing of FSS earth stations. We propose, however, to adopt rules directed at addressing FWCC's concerns about effective and equitable use of spectrum in bands shared by the FS and FSS. Finally, we seek comment on, and alternatives to, the recent *ex parte* pleading filed by Hughes in the *18 GHz Proceeding*, concerning the proposed deployment of earth stations for geostationary satellite orbit (GSO) FSS systems in the shared portion of the Ka-band without individual site-by-site licensing.

2. *The FWCC Petitions.* On May 5, 1999, FWCC filed a Request for Declaratory Ruling and Petition for Rulemaking (together, "FWCC Petitions") asking the Commission to impose various conditions on FSS earth stations in bands that are shared on a co-primary basis with FS operations. FWCC's Petitions reference the following bands: 3700-4200, 5925-6425 and 6425-7125 MHz and 10.7-11.7, 12.7-13.25, 17.7-19.7, and 27.5-29.5 GHz. The Fixed-Satellite Service is a radiocommunication service between earth stations at given positions, when one or more satellites are used; the FSS also may include feeder links for other space radiocommunication services. The terrestrial fixed service (FS) is a radiocommunication service between fixed points. FWCC states that its proposals seek to maximize efficient use of the radio spectrum for both satellite and point-to-point terrestrial fixed operations.

3. FWCC avers that, while parts 25 and 101 of the Commission's rules provide for sharing on a co-primary basis in certain radio spectrum bands by the FSS and FS, in reality sharing has

<sup>1</sup> This task is not related to the work of the newly chartered Commission which is examining the impacts of certain legal restrictions on persons eligible for LSC-funded legal assistance. That effort, being undertaken pursuant to Board of Directors Resolution 2000-009, is focused on the effects of certain legal restrictions on LSC recipients' ability to provide equal access to justice to low income persons. The regulations review is, instead, focused on comprehensive review of LSC's regulations to support the development of a regulatory agenda for 2001.

not occurred on an equitable basis. Rather, FWCC contends that, in actual practice, band sharing has been on terms disadvantageous to the FS. FWCC alleges that satellite earth station operators receive preferential access to shared spectrum because: (1) The Commission licenses earth stations for the entire allocated band and with no loading requirements, while point-to-point terrestrial operations are limited to frequencies actually needed and are subject to stringent spectrum efficiency requirements, and (2) the Commission licenses earth stations for all azimuths and thus earth stations can deny coordination to terrestrial stations. Thus, FWCC requests a declaratory ruling that would require FSS operators to demonstrate "actual need" for the spectrum requested at the time of licensing. Specifically, FWCC proposes that the Commission change its policy of authorizing earth stations to use the entire pertinent frequency bands and instead require that an FSS earth station using spectrum shared with point-to-point terrestrial services be licensed to use no more than twice the amount of spectrum for which it is able to demonstrate "actual need." FWCC also includes a parallel request for a rule that would require FSS earth station applicants to show demonstrated need for the spectrum they seek.

4. FWCC also petitions, pursuant to § 1.401 of the Commission's rules, for amendments to part 25 of the Commission's rules that would require FSS earth stations licensed for more than minimal amounts of spectrum shared with FS operators to meet minimum loading standards. Further, FWCC proposes to require all FSS earth stations to accept interference from new terrestrial facilities on the same basis as they accept any interference in the initial coordination. FWCC states that the objective of these rule changes would be the adoption of spectrum management standards that would achieve in practice the "co-equal" sharing specified in parts 25 and 101 of the Commission's rules.

5. Numerous satellite and earth station licensees, users of these services, and industry associations representing the satellite industry oppose the FWCC Petitions. The Fixed Point-to-Point Section of the Wireless Communications Division of the Telecommunications Industry Association (TIA FS/WCD) filed reply comments supporting FWCC's requests.

6. Upon review of the record, we conclude that FWCC raises issues meriting further consideration. We propose specific rules to address the concerns of the Fixed Service

community, and we seek comment as to whether the evolving requirements of both satellite and terrestrial systems necessitate a further revision of our current policies and rules to ensure efficient and equitable use of the radio spectrum in bands shared on a co-primary basis by the FSS and FS. We seek comment on the extent of the FS and FSS sharing problem and propose rules on the issues of loading and interference coordination. On the issue of demonstrating actual need, we deny FWCC's request for a declaratory ruling and its parallel request to amend § 25.130 of the Commission's rules to limit the amount of spectrum the Commission would license to FSS earth stations to no more than twice the amount of spectrum for which the licensee has demonstrated "actual need." We do, however, incorporate into the proposed rules the related concept of a "demonstrated use" requirement triggered by the denial by an FSS operator of an FS applicant's request to coordinate spectrum. We believe that this proposal is a more effective and equitable approach for addressing the concerns FWCC has raised in its pleadings.

7. In particular, we propose to amend § 25.203 of the Commission's rules to require an FSS earth station that has been licensed to operate in C- or Ku-band shared frequencies for 24 months or longer to demonstrate, in response to the denial of a request of an FS applicant to coordinate spectrum, that the FSS earth station denying coordination is using, has recently used, or has imminent plans to use the requested spectrum. If the FSS earth station licensee cannot make such a demonstration during the coordination, then the FS station may be successfully coordinated and the FSS earth station must not cause unacceptable interference to, nor is it protected from interference from, the FS station on that spectrum in the future. We propose to exempt from the rule those FSS earth stations that are licensed for 40 MHz or less of bandwidth in each direction. At the same time, we propose to amend § 101.141 of the Commission's rules to shorten the loading period for FS licensees in the C- and Ku-bands from 30 to 24 months. Modification of the part 25 and 101 rules in this manner would give both the FSS and FS licensees a comparable period of time in which to put their spectrum to use before it is susceptible to re-licensing to others. We ask for comment as to whether these part 25 and 101 rules should apply in other bands where the

FSS and FS share spectrum on a co-primary basis.

8. We also propose to amend parts 25 and 101 to require that an FSS earth station or FS licensee accepting a particular interference analysis model in order to coordinate successfully the location of its station must accept use of the same model in subsequent coordinations. We propose that these rule changes to parts 25 and 101 would apply across all frequency bands where the services share a primary service allocation. Further, we propose to amend part 25 such that, if a C- or Ku-band FSS earth station licensee, during coordination, accepts a level of interference along a set of azimuths recognized to be below normally permissible interference objectives, the licensee may not subsequently claim protection from interference from future FS applicants on those same frequencies within that same set of azimuths. We ask for comment as to whether this part 25 rule should apply at other bands where the FS and FSS share frequencies on a co-primary basis. We further propose that these amended rules would apply to all FSS earth stations and FS stations upon the effective date of the Report and Order in this proceeding.

9. *The Onsat Petition.* On September 10, 1999, Onsat filed a Petition for Declaratory Order that § 25.115(c) of the Commission's rules permits the licensing of Very Small Aperture Terminal (VSAT) satellite earth station networks, under a single authorization and with prior coordination, in the C-band. In the same filing, Onsat petitioned for a waiver to permit routine licensing of its proposed earth stations, which would have an antenna diameter smaller than those allowed to be routinely licensed under our existing rules. We will evaluate Onsat's particular antenna size waiver request in a separate licensing order. We expect to consider later, in an earth station streamlining proceeding, the more general issues of what antenna sizes and power densities may be licensed routinely under this rule. Onsat advocates such licensing of technically identical remote earth station terminals to permit operators to configure their C-band systems quickly without the expense and administrative effort involved in licensing individual earth stations. In support of its petition, Onsat contends that its proposal would further Commission objectives with regard to universal service and deregulation.

10. In its petition Onsat argues that small aperture terminal earth station technology is less expensive and more flexible than are other types of satellite technology, and that these types of earth

stations can be coordinated easily to prevent interference with terrestrial and satellite operations in the C-band. Onsat proposes that, if granted a license for an earth station system consisting of a hub station and a specified number of technically identical remote earth stations, it would submit to the Commission a frequency coordination report for each station before placing it into operation.

11. FWCC initially opposed Onsat's petition on the ground that Onsat's proposed service would further exacerbate FS/FSS frequency coordination difficulties in the C-band, incorporating by reference a copy of its Petitions and arguing that the Commission should not act on Onsat's requests unless and until we acted favorably on FWCC's Petitions. FWCC later withdrew its opposition after Onsat agreed to modify its petition to limit both the amount of C-band spectrum its proposed system would use and the number of geostationary satellite orbital positions toward which its remote earth stations would be directed.

12. We deny Onsat's petition for a declaratory order, but hereby propose rules that include the elements of the Onsat proposal. One of the Commission's chief goals is to foster wide access to electronic commerce and data through the Internet and other networks, particularly in underserved rural areas. We have sought to ensure that multiple service providers bring broadband access to all Americans. The service proposed by Onsat is an innovative means for bringing high-speed data services to rural Americans much more rapidly than might be accomplished by wireline or terrestrial wireless service. We propose to amend part 25 of the Commission's rules to allow the licensing, under a single authorization and with prior coordination, of C-band small aperture terminal earth station networks, which we will term "CSATs" to distinguish these small aperture terminal earth stations from the VSAT operations in the Ku-band.

13. At the same time, we note the concerns of the fixed wireless community that the C-band is congested and that authorization of CSATs could add to coordination difficulties between the FS and FSS. We therefore seek comment on those aspects of CSAT service that affect the concerns and issues raised by FWCC. We tentatively conclude that the limitations proposed by Onsat in its modified petition are appropriate limitations that can be applied generally to other prospective CSAT applicants. In a letter from its attorney, Onsat agrees to coordinate

only 20 MHz at three different orbital slots. Thus, we propose to limit CSAT networks to operations using no more than 20 MHz of C-band spectrum, and to limit their flexibility to three satellite locations within the visible geostationary satellite arc. We further request comment on whether our rules should limit this C-band service to rural areas, or, alternatively, whether our rules should permit CSAT network service wherever frequency coordination allows the installation of earth stations. Although certain characteristics of the proposed Onsat system are discussed in this NPRM, our focus is on generally-applicable policies, procedures and rules for the operation of this type of small aperture terminal system in the C-band. Because Onsat only recently filed an application to provide this service, we will decide the issue of whether to grant the request for the proposed Onsat system in a separate licensing order.

14. *The Hughes Ex Parte Letter.* We ask for comment on a recent *ex parte* pleading filed by Hughes in the *18 GHz Proceeding* (13 FCC Rcd 19923) concerning the proposed deployment of earth stations for geostationary satellite orbit (GSO) FSS systems in the shared portion of the Ka-band without individual site-by-site licensing. These shared bands are 18.3–18.58 GHz and 29.25–29.5 GHz. In the 18 GHz band, GSO FSS (downlink) and FS share portions of the band. In the 28 GHz band, GSO FSS (uplink) and NGSO MSS feeder links share portions of the band. Hughes contends that the Commission has the power to authorize GSO FSS earth stations under a "blanket" licensing approach in these shared bands. Hughes observes that GSO FSS earth stations would operate in the receive mode in the 18 GHz band and thus would not cause interference to terrestrial users sharing the band, but could receive harmful interference from FS transmissions operating in the band. Hughes urges the Commission to allow GSO FSS earth stations to receive signals in the 18 GHz shared band, with the option of registering for interference protection on a site-by-site basis in accordance with the coordination procedures of §§ 25.203 and 25.251 of the Commission's rules. Hughes also suggests that any fees for such registration must be "consumer-tolerant" (such as a single low charge for a batch of 1000 registrations, *e.g.*, \$295). In the 29.25–29.5 GHz band that is shared with MSS feeder links, Hughes contends that the provisions of § 25.258 of the Commission's rules that deal with intersystem coordination and sharing

between NGSO MSS feeder link stations and GSO FSS services are sufficient to allow the deployment of a large number of pre-coordinated GSO FSS earth stations under a single authorization.

15. We invite comment on whether such deployment of GSO FSS earth stations in both the 29.25–29.5 GHz and 18.3–18.58 GHz bands would be practicable. In particular, we seek comment on whether Hughes' request for an expedited and simplified licensing procedure for satellite user earth terminals at Ka-band would raise the same kinds of concerns that FWCC has presented in its instant filings. In this regard, we note that one of the fundamental tenets of the 18 GHz band segmentation plan was to separate services that would be widely deployed. We also seek comment on how deployment of a large number of FSS earth stations over the entire shared portions of the Ka-band, with specific site location information, would impact existing and future MSS feeder link operations. If deployment would be practicable, we ask how such a licensing procedure could be implemented to ensure that the requirements of both the satellite and terrestrial users would be met in the 18 GHz band. We invite comment on whether we should apply to the portion of the 18 GHz band shared by the FSS and FS each of the rules that we propose in this NPRM. We also invite comment on whether, if we were to allow deployment in the shared portion of the Ka-band of a large number of pre-coordinated GSO FSS earth stations under a single authorization, we should limit the earth stations to communications with only the specific satellites that are a part of a single satellite system. This limitation on the number of satellite locations would be similar to our proposal to limit the authorization of CSAT networks in the C-band to only three satellite locations. Further, we ask for general comment on the issue of registration fees and, specifically, on Hughes' proposal that any registration fees for interference protection should be in the range of \$295 for a batch of 1000 registrants. We also invite alternative proposals to achieve the objectives of the Hughes proposal, within the scope and overall objectives of this proceeding.

#### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. We request written public

comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines for comments on the Notice of Proposed Rulemaking provided above in paragraphs 103–106. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

*A. Need for, and Objectives of, the Proposed Rules*

We initiate this rulemaking proceeding to obtain comment and develop a record on certain proposals in frequency bands shared between the space and terrestrial fixed services, as well as to provide for the blanket licensing of small aperture antenna terminals in the C-band (CSATs). Specifically, this *NPRM* proposes to amend § 25.203 of the Commission's rules to require an earth station licensed for 36 months or longer to demonstrate, in response to a request of a terrestrial fixed service applicant to coordinate spectrum, that the earth station is using, has recently used, or has imminent plans to use the requested spectrum. Additionally, the item proposes to amend § 25.203 of the Commission's rules to require that an earth station licensee that accepted a particular interference analysis model in order to successfully coordinate location of its station must accept use of the same model in subsequent coordinations. Further, if an earth station licensee, during coordination, accepts a level of interference along a set of azimuths recognized to be below normally permissible interference objectives, the licensee may not subsequently claim protection from interference from future terrestrial fixed service applicants on those same frequencies within that same set of azimuths. With respect to licensing of CSATs in the C-band, we propose to amend § 25.115 of the Commission's rules to model CSAT licensing procedures on the streamlined procedure successfully used since 1992 for licensing small earth stations to GTE Spacenet in the C-band. Additionally, the proposed rule changes will require CSAT applicants in the C-band to complete frequency coordination for each individual earth station antenna, but will allow blanket licensing for a system of technically-identical earth stations so coordinated, with simplified reporting to the Commission. These proposals will facilitate the efficient and

equitable use of the shared radio spectrum by satellite and terrestrial fixed service operators through a modification of the coordination and licensing procedures for earth station licensees. These proposals will promote efficient use of the spectrum shared between the satellite and terrestrial services, and will allow the efficient introduction of new satellite technologies that will provide wide access to electronic commerce in underserved, rural areas of America.

*B. Legal Basis*

The proposed action is authorized under sections 1, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, and 303.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply*

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

1. Cable Services

The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast-satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

## 2. International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.

## 3. Fixed Satellite Transmit/Receive Earth Stations

Currently there are over 7500 authorized fixed satellite transmit/receive earth stations authorized for use in bands shared with the terrestrial fixed service. We do not request or collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

## 4. Mobile Satellite Earth Station Feeder Links

There are two licensees operating in spectrum shared with terrestrial fixed services. We do not request or collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

## 5. Space Stations (Geostationary)

Commission records reveal that there are six space station licensees licensed in spectrum shared on a co-primary basis with the terrestrial fixed service in the C- and Ku-bands. We do not request or collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

## 6. Space Stations (Non-Geostationary)

There are four Non-Geostationary Space Station licensees licensed in spectrum shared on a co-primary basis with the terrestrial fixed service in the C- and Ku-bands. We do not request or collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

## 7. Auxiliary, Special Broadcast and Other Program Distribution Services

This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833). These definitions provide that a small entity is one with either \$5.0 million or less in annual receipts for a radio broadcasting station or \$10.5 million in annual receipts for a TV station. 13 CFR 121.201, SIC CODES 4832 and 4833. There are currently 3,237 FM translators and boosters, 4913 TV translators. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

## 8. Microwave Services

Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are over 13,500 common carrier stations, and approximately 18,00 private operational fixed stations and broadcast auxiliary radio stations in the microwave services in spectrum that is potentially affected by this rulemaking. Additionally, these stations represent the following distinct licensees among the various radio services: LMDS (121), DEMS (2), Common Carrier Fixed (PTP and LTTS) (1028), Private Operational Fixed PTP (1511), and Fixed Broadcast Auxiliary (806). Inasmuch as the Commission has

not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. 13 CFR 121.201, SIC CODE 4812. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

## *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The Commission's existing part 25 rules on FSS operations contain reporting requirements for FSS systems, and we propose to modify these reporting requirements to eliminate duplicative costs of filing multiple applications for one particular type of service at C-band. In addition, we propose to add an annual reporting requirement to indicate the number of satellite earth stations actually brought into service. The proposed blanket licensing procedures do not affect small entities disproportionately and it is likely no additional outside professional skills are required to complete the annual report indicating the number of small antenna earth stations actually brought into service. We seek comment on these proposed changes.

## *E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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 or reporting requirements under the rule for 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 small entities.

This NPRM solicits comment on alternatives for more efficient spectrum sharing between satellite earth stations and terrestrial fixed service stations, as well as comment on licensing of small aperture antennas at C-band. This item should positively impact both large and small businesses by providing a more efficient and less economically burdensome coordination and licensing procedure for terrestrial fixed stations in spectrum shared with satellite services.

Additionally, the proposed licensing service rules provide for consolidation of licensing for small antenna earth stations and minor reporting requirements to indicate the number of satellite earth stations brought into service.

*F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

**Ordering Clauses**

Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this *Notice of Proposed Rulemaking* is hereby *adopted*. FWCC's Request for Declaratory Ruling is *denied*. Onsat's Petition for Declaratory Order is *denied*.

The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief, Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 25*

Communications common carriers, Communications, Radio, Satellites, Telecommunications.

*47 CFR Part 101*

Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Proposed Rule Changes**

For the reasons set forth in the preamble, parts 25 and 101 of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

**PART 25—SATELLITE COMMUNICATIONS**

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

2. Section 25.115 is amended by redesignating paragraph (c) as (c)(1) and by adding a new paragraph (c)(2) to read as follows:

**§ 25.115 Application for earth station authorizations.**

\* \* \* \* \*

(c) \* \* \*

(2) Large Networks of Small Antennas operating in the 4/6 GHz frequency bands with U.S.-licensed or non-U.S. licensed satellites for domestic services. Applications to license small antenna network systems operating in the 4/6 GHz frequency band shall be filed electronically on FCC Form 312, Main Form and Schedule B.

(i) An initial lead application providing a detailed overview of the complete network shall be filed. Such lead applications shall fully identify the scope and nature of the service to be provided, as well as the complete technical details of each representative type of small antenna (less than 4.5 meters) that will operate within the network. Such lead applications shall not be licensed unless they identify no more than three discrete geostationary satellites to be accessed, identify a maximum of 20 MHz of spectrum to be used for communication channels, and identify the maximum number of earth station sites, the amount of frequency bandwidth sought, and the general geographic area in which each type of small antenna will operate.

(ii) Following the issuance of a license for the initial lead application, the licensee shall notify the Commission of the complete technical parameters of each individual earth station site before that site is brought into operation under the lead authorization. Full frequency coordination of each individual site shall be completed prior to filing Commission notification and conducted in accordance with § 25.203. Such notification shall be done by electronic filing and shall be consistent with the technical parameters of Schedule B of FCC Form 312. These individual site notifications will be routinely processed. Operation of each individual site may commence if no comments are received within a 30-day period after public notice of the licensee's notification filing. Continuance of operation for the duration of the lead license term of each individual site shall be dependent upon successful completion of the normal public notice process. If any objections are received to the newly added remote stations, the licensee shall not operate those particular stations until the coordination dispute is resolved and the licensee informs the Commission of the resolution. Each CSAT licensee shall provide the Commission an annually updated list of all operational earth stations in its system. The annual list also shall include a list of all earth stations planned for the next 12 months but not yet built, a list of all earth stations deactivated during the year, and

a report of any changes in satellite location applicable to the CSAT network.

\* \* \* \* \*

3. Section 25.134 is amended by:

- Revising the section heading,
- Redesignating paragraph (a) as (a)(1) and adding a heading,
- Adding a new paragraph (a)(2), and
- Adding a heading to paragraph (b) to read as follows:

**§ 25.134 Licensing provisions of Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.**

(a) \* \* \*

(1) *VSAT networks operating in the 12/14 GHz bands.* \* \* \*

(2) *Large Networks of Small Antennas operating in the 4/6 GHz frequency bands.* All applications for digital and/or analog operations will be routinely processed provided the network employs antennas that are 4.5 meter or larger in diameter, that are consistent with § 25.209, the power levels are consistent with § 25.211(d) and § 25.212(d), and frequency coordination has been satisfactorily completed. The use of smaller antennas or non-consistent power levels require the filing of an initial lead application (§ 25.115(c)(2)) that includes all technical analyses required to demonstrate operation on a non-interference basis or an affidavit from the satellite operator that such non-conforming operations have been successfully coordinated with any and all affected adjacent satellite operators.

(b) *VSAT networks operating in the 12/14 GHz bands.* \* \* \*

\* \* \* \* \*

4. Section 25.203 is amended by redesignating paragraphs (e) through (k) as (f) through (l) and by adding a new paragraph (e) to read as follows:

**§ 25.203 Choice of sites and frequencies.**

\* \* \* \* \*

(e) The following provisions shall apply to the coordination of a newly proposed terrestrial station with an existing or previously filed FSS earth station:

(1) When a terrestrial fixed service license applicant requests but is denied coordination in spectrum in the 3700–4200 MHz, 5925–6425 MHz, 6525–6875 MHz or 10.7–11.7 GHz band, a potentially affected earth station licensee must demonstrate to the frequency coordinator that it is actually using, has recently used, or has imminent plans to use the spectrum in question if the earth station licensee wishes, in the case of a receiving earth station, to be protected from interference from the new terrestrial

fixed station on that spectrum, or, in the case of a transmitting earth station, not to have to protect the new terrestrial station.

(i) If the earth station licensee cannot make such a demonstration during the coordination, then the terrestrial fixed station may be successfully coordinated and the earth station must not cause unacceptable interference to, nor is it protected from interference from, the terrestrial fixed station on that spectrum in the future. In demonstrating use of the spectrum that has been denied coordination, the earth station licensee shall:

(A) For recent use, identify the timeframes during which each satellite transponder frequency band was used within the past 24 months;

(B) For current use, identify each satellite transponder frequency band in use at the time of the coordination request; and

(C) For imminent use, certify the availability of some form of detailed information or planned use, *e.g.*, use to be initiated within the next six months and supported by contract(s) or other documentation.

(ii) If, however, the earth station has been licensed for less than twenty-four months, all of its licensed bandwidth will be considered in use for purposes of the coordination. Earth stations licensed for 40 MHz or less in each

direction would not be required to demonstrate use within any timeframe in order to retain protection for that spectrum.

(2) If an earth station licensee accepts a particular interference analysis model that employs certain interference mitigating factors, such as terrain or building blockage, in order to successfully coordinate its station with a terrestrial fixed station, then it must accept the use of that same model in subsequent coordinations.

(3) If an earth station applicant for spectrum in the 3700–4200 MHz, 5925–6425 MHz, 6525–6875 MHz or 10.7–11.7 GHz band, during its coordination, accepts a level of interference that is recognized to be below accepted interference objectives along a set of azimuths and elevation angles on part of the spectrum for which it is applying, and therefore insufficient to clear the interference case, then the earth station licensee is not entitled to protection from interference from future terrestrial fixed service applicants on those same frequencies within that same set of azimuths and elevation angles.

\* \* \* \* \*

## PART 101—FIXED MICROWAVE SERVICES

5. The authority citation for Part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

6. Section 101.103(d)(1) is amended by adding a sentence at the end of the paragraph to read as follows:

### § 101.103 Frequency coordination procedures.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* Additionally, if a fixed station licensee accepts a particular interference analysis model that employs certain interference mitigating factors, such as terrain or building blockage, in order to successfully coordinate its station with a fixed satellite service earth station in the 3700–4200 MHz, 5925–6425 MHz, 6525–6875 MHz or 10.7–11.7 GHz frequency band, then it must accept the use of that same model in subsequent coordinations.

\* \* \* \* \*

7. Section 101.141(a)(3) is amended by revising the first sentence of footnote 3 to the table to read as follows:

### § 101.141 Microwave modulation.

(a) \* \* \*

(3) \* \* \*

<sup>3</sup> This loading requirement must be met within 24 months of licensing. \* \* \*

\* \* \* \* \*

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