

flood insurance premiums to the NFIP commensurate with their flood risk.

**DATES:** 44 CFR 59.30(a) became effective on March 8, 2002. The amendments to Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61 became effective on June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Don Beaton, FEMA, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (facsimile) 202-646-4327, or e-mail [donald.beaton@dhs.gov](mailto:donald.beaton@dhs.gov); or Lois Forster, FEMA, Mitigation Division, (facsimile) 202-646-2577, or e-mail [lois.forster@dhs.gov](mailto:lois.forster@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The interim final rule published on March 8, 2002, at 67 FR 10631 amended 44 CFR 59.30 and Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61 to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedure as a condition of participating in the NFIP. An inspection procedure was established to help the communities of Monroe County and the Village of Islamorada verify that structures comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums to the NFIP commensurate with their flood risk.

The closing date for the submission of comments was June 6, 2002.

#### Comments on the Interim Final Rule

By the close of the comment period, FEMA received no comments on the interim final rule.

#### Adoption as Final Rule

Accordingly, the interim final rule to amend the NFIP regulations to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedures as a condition of joining the NFIP which was published at 67 FR 10631 on March 8, 2002, is adopted as a final rule without change.

#### National Environmental Policy Act

FEMA conducted an environmental review on the inspection procedure. You may obtain a copy of the Record of Environmental Review documenting the findings through FEMA's Web site at [www.FEMA.gov](http://www.FEMA.gov), or by writing to FEMA at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

#### Executive Order 12898, Environmental Justice

FEMA reviewed the inspection procedure under Executive Order 12898

and determined that the inspection procedure would not have a disproportionate adverse impact on low-income populations and minority populations. FEMA also determined that this action would have some adverse effects on low-income populations because some illegal enclosures are used as full-living units and the residents would have to find replacement housing. The effect would be caused by the residents' illegal activity, not by this regulatory action. FEMA determined, further, that there would be greater adverse health and safety impact on the affected low-income populations if they stayed in these illegally built ground level enclosures. The enclosures are located in flood hazard areas below the Base Flood Elevation where there is a significant risk of flooding.

#### Executive Order 12866, Regulatory Planning and Review

FEMA has reviewed the inspection procedure under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

FEMA found that the final rule is neither a significant regulatory action nor an economically significant rule under the Executive Order. OMB has not reviewed this rule under the principles of Executive Order 12866.

#### Executive Order 13132, Federalism

Executive Order 13132, Federalism, seeks to ensure that Executive agencies consider principles of federalism when developing new policies, and requires them to consult with State and local

officials when their actions may have federalism implications.

FEMA reviewed this final rule for federalism implications under Executive Order 13132 and determined that this final rule does not have federalism implications as defined in Executive Order 13132.

In addition to Monroe County, the Village of Islamorada, and the State of Florida, FEMA has consulted with the City of Marathon and will continue to consult and coordinate with the City of Marathon and any other area in Monroe County that incorporates and becomes eligible for the sale of flood insurance after January 1, 1999, that will participate in the inspection procedure.

#### Paperwork Reduction Act

FEMA submitted the information collection requirements to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under Control Number 3067-0275, OMB approved the information collection requirements. Now that FEMA is part of DHS, the Control Number is 1660-0045.

#### Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of subsections 2(a) and 2(b)(2) of Executive Order 12778.

The interim final rule published on March 8, 2002 at 67 FR 10631 is adopted as final without change.

Dated: October 7, 2003.

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 25

[IB Docket Nos. 02-34 and 02-54, FCC 03-102]

#### Satellite Licensing Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of August 27, 2003 (68 FR 51499), a document revising the procedures for issuing satellite licenses. Inadvertently, the effective date for §§ 25.137(d)(4), 25.164(c) through (e), and 25.165 was stated as September 11,

2003. This document stays these rules until October 27, 2003.

**DATES:** Effective October 14, 2003. Sections 25.137(d)(4), 25.164(c) through (e), and 25.165, published at 68 FR 51499 are stayed until October 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418-1539 or via the Internet at [steven.spaeth@fcc.gov](mailto:steven.spaeth@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission published a document in the **Federal Register** of August 27, 2003 (68 FR 51499), adopting §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, and adopting an effective date of September 11, 2003 for these provisions. This document stays these provisions until October 27, 2003.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR PART 25

[IB Docket 02-19; FCC 03-137]

#### Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission has adopted licensing and service rules for entities to provide Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band frequencies, specifically the 18.8-19.3 GHz and 28.35-29.1GHz frequency bands. Upon launch, these new systems will provide a variety of data, video and telephony services in Ka-Band frequencies to U.S. consumers, for communications in the United States and around the world.

**DATES:** Effective October 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418-0762 or via the Internet at [myoung@fcc.gov](mailto:myoung@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* in IB Docket No. 02-19, FCC 03-137, adopted June 18, 2003 and released July 9, 2003. The complete text of this *Report and Order* is available for

inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898 or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's Web site at <http://www.fcc.gov>.

### Summary of the Report and Order

1. The Federal Communications Commission has adopted sharing and service rules for the non-geostationary satellite orbit, fixed satellite service (NGSO FSS) in the Ka-Band frequencies. These systems will provide a variety of data, video and telephone services to U.S. consumers, for communications in the United States and around the world.

2. The Commission adopted an innovative sharing technique that can accommodate all pending applications for this service in the available frequency bands. The Commission calls this technique avoidance of in-line interference events. Under this technique, each applicant, once licensed, will be authorized to operate its system in the entire available service spectrum, so long as it avoids causing harmful interference to other NGSO FSS systems.

3. The Commission anticipates that there will be predictable instances when the space station of one NGSO FSS system and the earth station of another system are arranged in a perfect line of communication, an occurrence called an in-line interference event. The sharing technique allows and encourages the two system operators to exchange space station orbit data in order to predict and avoid these events by any mitigation means preferred. In the event the systems cannot agree on a preferred avoidance method, the Commission requires that the split the available NGSO FSS service spectrum in the Ka-Band equally between the systems involved in the event, for the duration of the event. The *Report and Order* allows the first launched NGSO FSS system to choose its preferred equal portion of the spectrum to which its space station will resort when an in-line interference event arises.

4. The *Report and Order* adopts a technical definition of an in-line interference event so that systems can coordinate their orbits in advance. The Commission adopted an Earth-surface based (topocentric) angular separation

standard, with a 10-degree-avoidance angle between satellites of different networks.

5. The *Report and Order* determines the priority status of the one existing licensee from the first processing round of the Ka-Band NGSO FSS, Teledesic LLC, when it coordinates with operators licensed in this second processing round for the service.

6. The *Report and Order* adopted service rules for the NGSO FSS service, including an implementation milestones schedule. Licensees will be required to file an annual report describing the status of satellite construction and launch dates. The *Report and Order* also requires that applicants disclose orbital debris mitigation plans before licensing.

### Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>2</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</sup> A small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

9. The objective of the *Report and Order* and of this proceeding is to assign the NGSO FSS spectrum to satellite systems operators who can implement their proposals in a manner that serves the public interest. The final rules in the *Report and Order* will reduce regulatory burdens and, with minimal disruption

<sup>1</sup> See 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121, 110 Stat. 857 (1996)).

<sup>2</sup> 5 U.S.C. 605(b).

<sup>3</sup> *Id.* at 601(6).

<sup>4</sup> *Id.* at 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

<sup>5</sup> Small Business Act, 15 U.S.C. 632