

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.

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.

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. 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),¹ 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."² The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴ 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).⁵

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

¹ 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)).

² 5 U.S.C. 605(b).

³ *Id.* at 601(6).

⁴ *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**."

⁵ Small Business Act, 15 U.S.C. 632

to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public.

10. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for NGSO FSS licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$12.5 million or less in annual revenues.⁶

11. The rules adopted in the *Report and Order* apply only to entities providing NGSO FSS. Small businesses will not have the financial ability to become NGSO FSS system operators because of the high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.⁷ Since the spectrum and orbital resources available for assignment are not open to new entrants, we estimate that only the four applicants whose applications are pending will be authorized by the Commission to provide these services. None of the seven applicants is a small business because each has revenues in excess of \$12.5 million annually or has parent companies or investors that have revenues in excess of \$12.5 million annually.⁸

12. Therefore, we certify that the rules adopted in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *Report and Order*, including this Final Regulatory Flexibility, in a report to Congress pursuant to the Congressional Review Act.⁹ In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.¹⁰

Ordering Clauses

13. 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. Sections 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r),

this *Report and Order* is hereby ADOPTED.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Report and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b). A copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

List of Subjects 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons set forth in the preamble, part 25 of title 47 of the Code of Federal Regulations is 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 25.145 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as (f) and (g) and by adding paragraphs (c)(3), (f)(1)(iv), (h) and (i) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.

* * * * *

(c) * * *

(3) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

* * * * *

(f) *Reporting requirements.*

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(iv) All operators of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz bands shall, within 10 days after a required implementation

milestone as specified in the system authorization certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or person with knowledge thereof) to demonstrate that the milestone has been met. Failure to file a timely certification of milestones, or filing disclosure of non-compliance, will result in automatic cancellation of the authorization with no further action required on the Commission's part.

* * * * *

(h) *Replacement of Space Stations within the System License Term.*

Licensees of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands authorized through a blanket license pursuant to paragraph (b) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization and

(2) Launch of this space station will not cause the license to exceed the total number of operating space stations authorized by the Commission.

(i) *In-Orbit Spares.* Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (b) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

■ 3. Section 25.261 is added to read as follows:

§ 25.261 Procedures for avoidance of in-line interference events for Non-Geostationary Satellite Orbit (NGSO) Satellite Network Operations in the Fixed Satellite Service (FSS) Bands.

(a) *Applicable NGSO FSS Bands.* The coordination procedures in this section apply to non-Federal-Government NGSO FSS satellite networks operating in the following assigned frequency bands: The 28.6–29.1 GHz or 18.8–19.3 GHz frequency bands.

⁶ 13 CFR 121.201, North American Industry Classification System ("NAICS") code 517410.

⁷ *See e.g.*, Final Analysis Communication Services, Inc., 13 FCC Rcd 6618, 6644 (1998) (non-geostationary satellite applicant estimated that "cost of construction, launch and first-year operating costs for two satellites was approximately \$6.22 million").

⁸ 13 CFR 121.201, North American Industry Classification System ("NAICS") code 517410.

⁹ *See* 5 U.S.C. 801(a)(1)(A).

¹⁰ *See* 5 U.S.C. 605(b).

(b) *Definition of "In-line interference events."* For purposes of this section, an "in-line interference event" is defined as the interference associated with an occurrence of any physical alignment of space stations of two or more satellite networks with an operating Earth station of one of these networks in such a way that the angular separation between operational links of the two networks is less than 10° as measured at the Earth station.

(c) *Default procedure.* If no agreed coordination exists between two or more satellite networks, then the bands will be divided among the affected satellite networks involved in an in-line interference event in accordance with the following procedure:

(1) Each of n (number of) satellite networks involved in a particular in-line interference event shall select 1/n of the assigned spectrum available in each frequency band for its home base spectrum. The selection order for each satellite network shall be determined by and be in accordance with the date that the first space station in each satellite network is launched and operating;

(2) The affected space station(s) of the respective satellite networks shall only operate in the selected (1/n) spectrum associated with its satellite network, its home base spectrum, for the duration of the in-line interference event;

(3) All affected space station(s) may resume operations throughout the assigned frequency bands once the angular separation between the affected space stations in the in-line interference event is again greater than 10°.

(d) *Coordination procedure.* Any coordination procedure agreed among the affected operating satellite networks, which allows operations of the satellite networks when each network's respective space stations are within the 10 degree avoidance angle associated with an in-line interference event, shall supersede the default procedure of paragraph (c) of this section. Coordination may be effected using information relating to the space stations and the parameters of one or more typical earth stations. All parties are required to coordinate in good faith.

[FR Doc. 03-25599 Filed 10-10-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278, FCC 03-230]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission temporarily stays the limitations imposed in § 64.1200(f)(3) on the duration of an "established business relationship" as applied to the sending of unsolicited facsimile advertisements. As a result, the 18-month limitation on the duration of the established business relationship based on purchases and transactions and the three-month limitation on applications and inquiries will not apply to the transmission of facsimile advertisements pending either a decision on this issue on reconsideration or January 1, 2005, whichever is sooner, when the extension of the established business relationship to unsolicited facsimile advertisements is due to expire.

DATES: Effective October 14, 2003. The Federal Communications Commission will publish a document in the **Federal Register** when the stay is lifted to remove the note to § 64.1200(f)(3) added by this document.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica McMahon or Richard Smith of the Consumer & Governmental Affairs Bureau at (202) 418-2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, adopted September 26, 2003, and released October 3, 2003. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may 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. To request materials in accessible formats for people with disabilities (Braille, large print,

electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

Synopsis

In this *Order*, the Commission now temporarily stays, for an interim period, the limitations imposed in § 64.1200(f)(3) on the duration of an "established business relationship" as it applies to the sending of unsolicited facsimile advertisements. During this interim period, the established business relationship, as applied to unsolicited facsimile advertisements, will not expire after 18 months of the recipient's last purchase or transaction or three months after the last application or inquiry. Given that the Commission's adoption of the modified established business relationship definition in the *Report and Order*, FCC 03-153, published at 68 FR 44144 (July 25, 2003), and *Announcement* of effective date published at 68 FR 56764 (October 1, 2003), was limited to its application to telephone solicitations, the Commission believes that good cause exists to stay application of the time limitations imposed on the established business relationship in the context of facsimile advertisements until the Commission conducts a review on reconsideration. The Commission emphasizes that nothing in this *Order* impacts the conclusion in the *Order on Reconsideration*, FCC 03-208; published at 68 FR 50978, August 25, 2003, that an established business relationship constitutes sufficient permission to send a facsimile advertisement until January 1, 2005.

The Commission notes, however, that in the absence of any Commission action on this issue prior to January 1, 2005, the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements will go into effect as required by the *Order on Reconsideration*.

The actions contained herein have not changed our Final Regulatory Flexibility Analysis (FRFA), which is set forth in the *Report and Order*. Thus, no supplemental FRFA is necessary. In addition, the action contained herein imposes no new or modified reporting and/or recordkeeping requirements or burdens on the public.

Ordering Clauses

Pursuant to sections 1-4, 227, and 303(r) of the Communications Act Of 1934, as amended, 47 U.S.C. 151-154,