*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. In addition, it does not concern environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 because that Executive Order applies only to rules that are ''significant'' under Executive Order 12866, and this rule is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards covered by voluntary consensus standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

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 is submitting 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**. In addition, 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 in 5 U.S.C. 804(2). However, it nevertheless will take effect in 60 days in accordance with the procedures applicable to direct final rules.

**List of Subjects in 40 CFR Part 262**

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

**Authority:** The Federal regulation change is being made under the authority of the Resource Conservation and Recovery Act (RCRA) sections 2002 and 3002, 42 U.S.C. 6912 and 6922.

Dated: June 12, 2006.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

## Subpart J—University Laboratories XL Project—Laboratory Environmental Management Standard

■ 2. Section 262.108 is revised to read as follows:

### § 262.108 When will this subpart expire?

This subpart will expire on April 15, 2009.

[FR Doc. E6–9754 Filed 6–20–06; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 2, 25, and 87

**[ET Docket No. 02–305, FCC 06–62]**

## World Radiocommunication Conferences Concerning Frequency Bands above 28 MHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies a Petition for Partial Reconsideration filed by AirTV Limited in response to the Commission's *S-Band Allocation Order,* which, inter alia, deleted the unused Broadcasting Satellite Service (BSS) allocation from the band 2500–2690 MHz and removed a related footnote from the Table of Frequency Allocations (Table). We continue to believe that the decision in the *S-Band Allocation Order* serves the public interest because it will prevent terrestrial licensees in the band 2500–2690 MHz from incurring the costs of mitigating the interference expected from BSS systems, such as the one proposed by AirTV.

**DATES:** Effective July 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Patrick Forster, Office of Engineering and Technology, Policy and Rules Division, (202) 418–7061, e-mail: *Patrick.Foster@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order on Reconsideration,* ET Docket No. 02–305, FCC 06–62, adopted May 3, 2006 and released May 8, 2006. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

**Summary of the Order on Reconsideration**

1. In the *Order on Reconsideration,* the Commission denies a Petition for Partial Reconsideration (Petition) filed by AirTV Limited (AirTV) in response to the Commission's *S-Band Allocation Order,* which, *inter alia,* deleted the unused Broadcasting Satellite Service (BSS) allocation from the band 2500–

2690 MHz and removed a related footnote from the Table of Frequency Allocations (Table). We continue to believe that the decision in the *S-Band Allocation Order* is necessary to prevent terrestrial licensees in the band 2500–2690 MHz from incurring the costs of mitigating the interference expected from BSS systems, such as the one proposed by AirTV.

2. On January 22, 2004, AirTV filed its Petition seeking reinstatement of the BSS allocation in the band 2520–2670 MHz and expansion of the BSS allocation in that band through deletion of footnote NG101. On February 9, 2004, we released a public notice seeking comment on AirTV's Petition, 69 FR 7484 February 17, 2004. The Wireless Communications Association International, Inc. (WCA) filed an opposition (Opposition) to AirTV's Petition on March 3, 2004. In addition, both AirTV and WCA submitted additional pleadings in the record.

3. Pursuant to § 1.429(a) of the Commission's rules, any interested party may petition for reconsideration of a final action in a Commission proceeding. Section 1.429(b) states that a petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only if (1) the facts relied on relate to events which have changed since the last opportunity to present them to the Commission; (2) the facts relied on were unknown to the petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such an opportunity; or (3) the Commission determines that consideration of the facts relied on is required in the public interest.

4. We first reject AirTV's apparent position that it bore no responsibility for demonstrating in the record that BSS systems, such as its proposed Direct-to-Aircraft (DTA) system, would not cause interference to terrestrial systems. We distinguish between a burden of proof, which AirTV mistakenly believes that we imposed upon it in the *S-Band Allocation Order,* and the burden of persuasion that is an integral part of any rulemaking proceeding. In the *Notice of Proposed Rule Making,* (''NPRM''), the Commission sought comment on the proposed deletion of an unused BSS allocation, and the record that was subsequently developed included pleadings setting forth reasons why we should adopt or reject the proposal. Because the Commission must make a rational connection between the facts found and the choice made, and provide a reasoned analysis to support its determination—and because in this case the comments contained conflicting stances—any interested party had a responsibility to weigh in with substantive and persuasive arguments in order to support its position. Thus, it was incumbent upon AirTV to offer substantive and persuasive comments that could counter both our tentative conclusion and other parties' pleadings that supported the proposed deletion of the allocation. In addition, however, we also now agree with WCA that AirTV's suggestion in its comments that the Commission should retain the BSS allocation, but without footnote NG101, was an inappropriate filing and amounts to the equivalent of a waiver request or a petition for further rulemaking. As such, it was incumbent on AirTV to show that its proposed DTA system would not interfere with terrestrial systems.

5. In the *S-Band Allocation Order,* the Commission made the determination that deleting the BSS/Fixed Satellite Service (FSS) allocation would serve the public interest by preventing the potential disruption of Educational Broadband Service (EBS) and Broadband Radio Service (BRS) across the country, as well as by avoiding imposing high costs on terrestrial licensees to mitigate harmful interference from BSS and FSS services to terrestrial services. A review of the record on reconsideration gives us no reason to alter our conclusion. We do not find persuasive AirTV's argument that we should overturn our decision on the grounds that its proposed system would not produce ''unacceptable interference'' to terrestrial systems because it would operate with power flux density (PFD) levels 10 dB below the PFD levels specified in International Telecommunication Union (ITU) Table 21–4. As the final product of a consultative process that involved input from a variety of working groups, ITU Table 21–4 sets forth maximum PFD levels at the Earth's surface produced by emissions from a satellite that are intended to promote sharing between BSS and terrestrial services in the band 2500–2690 MHz. We note, however, that other parties that have studied the potential for BSS interference to terrestrial systems in the band have discussed the possible interference mitigation measures that may be necessary with shared operations in the band. For example, in a liaison statement from ITU–R Study Groups Working Party (WP) 6S to WP 8F that AirTV did not cite, WP 6S indicates that all BSS systems, even if operated at PFD levels 10 dB below the levels specified in ITU Table 21–4 as AirTV proposed, will reduce the coverage area of terrestrial systems in the band 2630–2655 MHz. Similarly, the United Kingdom, within the framework of the European Conference of Postal and Telecommunications Administrations Electronic Communications Committee Project Team 1 (CEPT ECC/PT1), found that BSS systems, even if operated at the lower PFD levels proposed by AirTV, will result in reduced coverage area for terrestrial systems using the band 2630–2655 MHz. Even one of the Draft Recommendations cited by AirTV in support of its Petition expressly assumes that terrestrial stations will be employing mitigation techniques to counteract BSS systems' interference. All these studies predict the additional interference mitigation costs for terrestrial systems subjected to BSS interference would include, for example, the need to install additional base stations in order to restore any lost coverage area. Furthermore, because the studies by WP 6S and the United Kingdom only consider BSS systems' interference potential to IMT–2000 terrestrial systems, the potential impact to existing BRS and EBS systems in the United States is actually greater than the impact predicted in those studies. This is due to the fact that existing BRS and EBS systems use receiving antennas with higher gain than the receiving antennas typically employed in IMT–2000 systems.

6. A closer examination of AirTV's proposed system gives us additional reason to conclude that it would impose interference mitigation burdens on incumbent terrestrial service operators. When we compare the interference-to-noise (I/N) ratios AirTV purports its system would produce with the ratios reported in the WP 6S and United Kingdom studies, we find that AirTV's I/N ratios closely approximate the I/N ratios that the WP 6S and the United Kingdom materials indicate will result in reduced coverage area and increased interference mitigation costs for terrestrial systems. Furthermore, the interference study that accompanied AirTV's Petition does not evaluate the interference potential of its proposed satellites at 55° West Longitude and 96° West Longitude, and does not compute the I/N ratios for elevation angles below 20° for its proposed satellite at 86° West Longitude, where the interference potential from AirTV's proposed system to terrestrial systems is greatest. Satellite signals received at elevation angles below 20° have the greatest potential to cause harmful interference to terrestrial

systems because the gain of the receiving antennas in these terrestrial systems increases as the elevation angle decreases below this angle. In this regard, the potential for interference from AirTV's system is most prevalent where AirTV's satellite signals would be received by terrestrial systems' receiving antennas at elevation angles less than 20°, as WCA asserts, in Alaska and Hawaii, but also in portions of the Continental United States, including locations in Arizona, California, Nevada, Oregon, Washington, Idaho, Montana, North and South Dakota, Wyoming, Colorado, and Utah. An evaluation of the interference potential of AirTV's proposed system at elevation angles less than 20° shows that it would produce I/N ratios that exceed −6dB, which all parties have indicated will affect terrestrial operations in the band.

7. For the foregoing reasons, we continue to believe that the Commission properly and rationally concluded that BSS systems will affect the coverage area and introduce potential interference mitigation costs for terrestrial systems. Although AirTV may plan to operate a system that generates PFD levels ''significantly below'' the maximum levels in Table 21–4 of the ITU Radio Regulations, that in itself does not mean that such operations will not have a significant effect on terrestrial users in the band. While Table 21–4 and the studies we discuss, above, set forth ways in which the band may be shared, it is a different matter to conclude that such shared use best serves the public interest here. In balancing the effect of such burdens on terrestrial licensees against the currently unused BSS allocation, the prospect of interference to terrestrial licensees that would affect their planning and deployment of systems weighs strongly against reinstating the unused BSS allocation. Accordingly, we continue to believe that it best serves the public interest to remove the allocation.

8. Because we have determined that BSS systems will impose interference mitigation costs that we find unacceptable for terrestrial systems, we also reject AirTV's suggestion that the Commission could consider individual BSS applications on a case-by-case basis as impractical. This is especially relevant in light of the Commission's decisions to reband and add a mobile allocation to the band 2500–2690 MHz that are anticipated to promote increased mobile use in these frequencies. Our restructuring of the band, with the enhanced flexibility targeted to facilitate new mobile and wireless broadband applications, is likely to make it more, rather than less, difficult to avoid interference from BSS systems to terrestrial systems. Moreover, based on our evaluation of AirTV's proposed system, we conclude that a BSS system will have minimal likelihood of success in overcoming these interference challenges. Were we to implement AirTV's suggestion to examine specific BSS system proposals on a case-by-case basis and address the appropriate terrestrial mitigation remedy for the interference such BSS systems would be expected to cause to terrestrial systems, we would introduce complexity, uncertainty, and the likelihood of increased costs for terrestrial operators in the band 2500–2690 MHz to build their systems with capabilities for mitigating possible interference from BSS operations. In exchange, we would introduce the prospect that, under certain circumstances that would have not been clearly demonstrated as of yet, it might be possible, at some point in the future, to deploy a BSS operation in the band that would not impose unacceptable interference mitigation costs on existing terrestrial systems.

9. We also find AirTV's other arguments unpersuasive. We reject the argument that, in order to delete the unused BSS allocation, we need an affirmative showing from terrestrial licensees in the band that the BSS cannot coexist with existing terrestrial services. Our election in the *Multichannel Video Distribution and Data Service* (MVDDS) proceeding to require such an analysis does not mandate such an analysis every time we consider adding a new service. In addition, this is a case in which the Commission deleted, rather than added, a service allocation from a frequency band. Furthermore, the respective services contemplated by the parties would both involve ubiquitous mobile receivers. Given the challenges inherent in arranging compatible uses of such receivers, we see no point in requiring or reviewing further technical studies. The sharing scenario proposed is, in this case, not practicable. Consequently, we see no purpose in maintaining an allocation for BSS when we are not in a position to adequately protect BSS earth stations from interference.

10. AirTV also contends for the first time, at this late date, that § 7 of the Communications Act of 1934, as amended, requires parties that oppose the introduction of a new service in the band (and thus support the Commission's deletion of the BSS allocation in the band 2500–2690 MHz) to demonstrate that the BSS was inconsistent with the public interest. As an initial matter, we note that that portion of the Act has been characterized as a broad policy statement reflecting congressional delegation on policy matters to the Commission's discretion. Furthermore, even if section 7 should be read to apply to the instant situation involving the deletion of an unused allocation, we nevertheless find that our decision is consistent with the provision's intent. Specifically, because we think that the BRS/EBS band, as recently restructured, holds great potential for the development of new services and technologies, it was consistent with the public interest for us to remove an allocation for a service (in this case, the BSS) that was not presently being offered and that, if deployed, could impose limitations on the rapid and robust deployment of new BRS and EBS technologies. Thus, our decision serves to encourage the provision of new technologies and services to the public, in furtherance of section 7's broad and general policies.

11. We maintain our conclusion that deletion of the BSS allocation was not violative of international requirements, notwithstanding AirTV's arguments to the contrary. We note that the U.S. Schedule of Specific Commitments to the World Trade Organization (WTO) Basic Telecommunications Agreement includes an exemption from most-favored-nation obligations for the Direct-to-Home Fixed-Satellite Service (DTH–FSS), Direct Broadcast Satellite (DBS) service, and Digital Audio Radio Service (DARS). Under this exemption, the U.S. is not required to extend most-favored-nation treatment for these satellite services in evaluating coordination requests from foreign administrations for applications to transmit into the territory of the U.S. by non-U.S. satellite systems. In addition, nothing in the U.S. Schedule of Specific Commitments or in the Commission's decision implementing the WTO decision, however, limits the exempted satellite services to a specific frequency band, in particular the DBS frequency band. For this reason, the exemption applies to all signals transmitted or retransmitted by satellites that are intended for direct reception by the general public. Thus, we reject AirTV's assertion that, because BSS systems at 2500–2690 MHz are not part of the Commission's definition of DBS services in § 25.201, the Commission's deletion of the BSS allocation from the band 2500–2690 MHz was precluded by the commitments the U.S. has under the WTO's General Agreement on Trade in Services (GATS). In addition, as we previously determined, under the

WTO's GATS, the U.S. may also limit new satellite authorizations when incumbent operations face potential interference. Furthermore, we agree with WCA's assertion that the Commission's decision to delete the BSS allocation does not discriminate against foreign licensees, because the decision affects both domestic and foreign systems in a non-discriminatory fashion. This conforms to the WTO's GATS non-discrimination policies.

**Conclusion**

12. Having reexamined our allocation decision, we remain convinced that it was properly decided based on interference mitigation concerns. We continue to believe, that simultaneous operation of BSS and terrestrial systems at 2520–2670 MHz would require parties to address matters of technical compatibility in order to make use of the band. Thus, we continue to find that the public interest is served by our deletion of the unused BSS allocation, and that our decision will prevent terrestrial licensees from incurring the costs of evaluating and mitigating the interference that any proposed BSS deployment—including the AirTV system examined herein—would be expected to cause to terrestrial systems.

**Procedural Matters**

13. A Regulatory Flexibility Act analysis or certification, *see generally* 5 U.S.C 604–605, is not required because this order does not promulgate or revise any rules.

**Ordering Clauses**

14. Pursuant to sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, the Petition for Partial Reconsideration filed by AirTV Limited, is denied.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–9592 Filed 6–20–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CG Docket No. 03–123; DA 06–1043]**

### Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; dismissal of petition.

**SUMMARY:** In this document, the Commission denies a petition for declaratory ruling (*Petition*) filed by Telco Group, Inc. (Telco Group) requesting that the Commission either exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate Telecommunications Relay Service (TRS) Fund (Fund), or in the alternative, waive the portion of Telco Group's contribution based on its international end-user revenues. Further, Telco Group requests a stay of its payment obligation pending the Commission's decision. The Commission finds that the inclusion of international end-user revenues in calculating carriers' obligations to the Interstate TRS Fund is appropriate. In addition, the Commission is unable to find good cause to waive the portion of Telco Group's Interstate TRS Fund assessment based on its international services revenue. Because the Commission addresses the merits of the *Petition,* the request for stay is dismissed as moot.

**DATES:** Effective May 16, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This document does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). This is a summary of the Commission's document DA 06–1043, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling, CG Docket No. 03–123, DA 06–1043, adopted May 16, 2006, released May 16, 2006, addressing issues raised in Telco Group's Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver (*Petition*), filed July 26, 2004.

The full text of document DA 06–1043 and 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. Document DA 06–1043 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160.

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**Synopsis**

**Background**

Title IV of the ADA directs the Commission to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States. *See generally* Public Law 101–336, 104 Statute 327, 366–69 (July 26, 1990), codified at 47 U.S.C. 225; *see also* 47 U.S.C. 225(b)(1). Section 225 of the Communications Act, requires the Commission to establish regulations to ensure the quality of relay service. 47 U.S.C. 225(b). The Commission initially implemented this mandate in three orders.

In *TRS I,* the Commission adopted rules identifying the relay services that carriers offering voice telephone transmission services must provide to persons with hearing and speech disabilities and the TRS mandatory minimum standards that govern the provision of service. *See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (July 26, 1991) (*TRS I*), published at 56 FR 36729, August 1, 1991; *see* 47 CFR 64.604 of the Commission's rules (the TRS ''mandatory minimum standards''). In *TRS II*, the Commission adopted a shared funding mechanism for interstate TRS cost recovery, spreading the cost of providing TRS to all subscribers of every interstate service. *See Telecommunications Services for Individuals with Hearing and Speech*