



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06-160; FCC 18-157]

Proposed Amendment of the Commission's Policies and Rules for Processing Applications in the Digital Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) proposes to amend its rules to establish a licensing and regulatory framework for space stations in the Digital Broadcast Satellite Service in the 12.2-12.7 GHz and 17.3-17.8 GHz frequency bands that would harmonize the rules regulating DBS with those regulating geostationary-satellite orbit Fixed-Satellite Service systems.

DATES: Comments are due **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by IB Docket No. 06-160, by any of the following methods:

- Federal Communications Commission's Web Site: <http://apps.fcc.gov/ecfs>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Sean O'More, International Bureau, Satellite Division, 202-418-2453, sean.omore@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Notice of Proposed Rulemaking (Second NPRM), FCC 18-157, adopted November 9, 2018, and released November 13, 2018. The full text of the Second NPRM is available at

https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-157A1.pdf. The full text of this document is also available for inspection and copying during business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street SW., Washington, DC 20554.

To request materials in accessible formats for people with disabilities, send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Comment Filing Requirements

Interested parties may file comments and reply comments on or before the dates indicated in the DATES section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers. Comments may be filed electronically using the Internet by accessing the ECFS, <http://apps.fcc.gov/ecfs>.
- Paper Filers. Parties who file by paper must include an original and four copies of each filing.

Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications

Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Persons with Disabilities. To request materials in accessible formats for persons with disabilities (braille, large print, electronic files, audio format), or to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call 202-418-0530 (voice) or 202-418-0432 (TTY).

Ex Parte Presentations

We will treat this proceeding as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Paperwork Reduction Act

This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

In this Second Notice of Proposed Rulemaking (Second NPRM), the Commission seeks comment on whether to establish a licensing and regulatory framework for DBS satellite systems

that would be analogous to that which currently exists for geostationary (GSO) Fixed-Satellite Service (FSS) systems. First, the Commission seeks comment on processing requests for new DBS service on a “first-come, first-served” basis – including an optional, two-step application process – that governs GSO FSS licensing. Second, the Commission seeks comment on applying the milestone and bond requirements for the geostationary Fixed-Satellite Service to DBS. Third, the Commission seeks comment on extending the license terms of non-broadcast DBS space stations from 10 to 15 years. Fourth, the Commission seeks comment on lifting the “freeze” on new DBS applications that has been in place since 2006, when the Commission last proposed changes to the DBS licensing regime in a 2006 Notice of Proposed Rulemaking (2006 Notice). Finally, the Commission seeks comment on clarifying that requests for new DBS at orbital locations less than nine degrees apart, but that any new DBS systems at such reduced-spacing orbital locations must not increase interference to DBS systems at the internationally-planned nine-degree orbital locations.

Proposal

While the Commission currently has no DBS license applications before it, clarification of the rules and harmonization of those rules with the recently-updated rules governing the licensing of GSO FSS will facilitate the licensing of new DBS systems and may encourage interest in new DBS systems.

License Application Processing Procedures. The Commission seeks comment on proposed rules for processing requests to provide new DBS service to U.S. consumers. These rules would apply to any future request to provide DBS service to the United States using the 12.2-12.7 GHz band (space-to-Earth) and associated feeder links in the 17.3-17.8 GHz band (Earth-to-space), including channels not currently licensed at orbit locations assigned to the United States under the International Telecommunication Union (ITU) Region 2 BSS and feeder-

link Plans (Region 2 Plan), as well as DBS service from space stations located at orbital locations not assigned to the United States in the ITU Region 2 BSS and feeder-link Plans.

Consistent with the Commission's prior proposal in the 2006 Notice, the Commission proposes to treat requests to provide DBS using a "first-come, first-served" licensing approach used for GSO-like FSS and to eliminate DBS competitive bidding procedures. The 2006 Notice specifically sought comment on whether, pursuant to section 309(j) of the Communications Act, and in light of the Northpoint case, the Commission could design a competitive bidding system, or auction, to assign mutually exclusive applications for DBS licenses or spectrum.

Commenters overwhelmingly supported use of "first-come, first-served," procedures for DBS and no commenter suggested how the Commission could design a competitive bidding system under section 309(j). Accordingly, based on the court holding in Northpoint and the record in response to the 2006 Notice, the Commission concludes that DBS licenses cannot be auctioned at this time.

The Commission seeks further comment on this proposal. DBS is similar to GSO FSS, except for certain technical features required to protect DBS consumers from interference while using small receive-only antennas, and therefore DBS seems well suited to using the same processing procedure as used for GSO FSS. Comments received in response to the 2006 Notice overwhelmingly supported use of "first-come, first-served" procedures for DBS. The 2006 Notice observed that the Commission's experience with the "first-come, first-served" approach indicates that this procedure would also allow the quick issuance of DBS licenses and grants of U.S. market access, while still accommodating existing or new competitive systems in the same spectrum, and that this procedure would give applicants flexibility to design systems that will best serve their targeted customers. The Commission seeks comment on whether experience since the 2006 Notice reinforces or changes these assessments of the suitability of the proposed

“first-come, first-served” procedure for processing requests to provide DBS services.

Application Processing Framework. If the Commission adopts the proposal to process requests to provide new DBS service according to a “first-come, first-served,” the Commission proposes to apply the streamlined procedures the Commission recently adopted for FSS space stations in the *part 25 Streamlining Order*.

The Commission proposes that applications for authority to construct, deploy and operate a space station to provide DBS service, or requests for U.S. market access to provide DBS service to earth stations in the United States using a non-U.S. licensed space station under section 25.137 of the Commission’s rules, must provide the technical information required by section 25.114 of the Commission’s rules. Of particular applicability to DBS service, the following technical information must be provided under section 25.114: (1) whether the space station is to be operated on a broadcast or non-broadcast basis; and (2) information and analyses in the event that the technical characteristics of the proposed system differ from those in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations.

The Commission seeks comment on this proposal and whether section 25.114 should be amended to eliminate any of these DBS-specific requirements or to require any additional information relevant to the provision of DBS service. The Commission also proposes to apply the existing provisions of section 25.112 to determine whether a request to provide DBS service in the United States is acceptable for filing and seek comment on this proposal.

Milestone and Bond. The Commission proposes to apply sections 25.164 (Milestones) and 25.165 (Surety Bonds) to authorizations and grants of U.S. market access to provide DBS service. The Commission’s milestone and bond requirements are intended to deter warehousing by satellite operators before a proposed space station has been launched and begun operations.

In this instance, warehousing refers to the retention of preemptive rights to use spectrum and orbital resources by an entity that does not intend to bear the cost and risk of constructing, launching, and operating an authorized space station, is not fully committed to doing so, or finds out after accepting the license that it is unable to fulfill the associated obligations. Such milestone requirements extend not only to U.S. licensees, but also to operators of non-U.S. licensed space stations that have been granted access to the U.S. market.

In 2015, the Commission substantially streamlined the milestone and bond provisions contained in sections 25.164 and 25.165 of the Commission rules. Specifically, the Commission eliminated all of the space station construction milestones, except the requirements to bring a space station into operation at the assigned location within a specified period of time. Also, in order to provide better incentives against spectrum warehousing, the Commission modified the space station bond requirement to increase liability over time.

The Commission proposes to extend these streamlined milestone and bond provisions to DBS services. Currently, the milestone and bond provisions of sections 25.164 and 25.165 explicitly do not apply to DBS service. Instead, DBS authorizations are subject to analogous, but different, due diligence requirements contained in section 25.148(b) of the Commission's rules. Because we are proposing to treat requests for DBS service in substantially the same manner as the Commission treats requests for GSO FSS, the Commission proposes to eliminate the due diligence requirements contained in section 25.148(b) and replace them with a requirement to comply with the milestone and bond provisions of section 25.164 and 25.165. The Commission seeks comment on this proposal.

License Term. The Commission proposes to extend the license term for DBS space stations not licensed as broadcast facilities to 15 years from the current term of 10 years. Currently, licenses for DBS space stations licensed as broadcast facilities are issued for a period

of 8 years, and licenses for DBS space stations not licensed as broadcast facilities are issued for 10 years. The 8-year term for broadcast stations is established by the Communications Act. In 1995, the Commission extended the term of non-broadcast DBS licenses from 5 to 10 years, the maximum term then allowed by the Communications Act, and “which better reflect[ed] the useful life of a DBS satellite.” Because all DBS licensees offer subscription services, all existing DBS operators are classified as non-broadcast licensees and their license terms were extended to 10 years. Subsequently, the Telecommunications Act of 1996 granted the Commission authority to establish license terms longer than 10 years for non-broadcast stations.

The Commission believes that issuing non-broadcast DBS space station licenses for 15 years would better reflect the useful life of new DBS satellites, as our extension of the license term for such DBS space stations from 5 to 10 years did in 1995. There are no technical or engineering considerations that render the operating life of a DBS satellite shorter than the operating life of a non-DBS satellite, such as those used to provide GSO FSS, and DBS satellites generally are able to provide service beyond their initial 10-year license terms. It would also make DBS space station license terms consistent with the terms of most other space stations. The Commission requests comment on our proposal as well as any alternative license term proposals.

Optional Two-Step FCC/ITU License Application Process. The Commission adopted an optional two-step application process for GSO FSS applicants in 2015. Under that two-step application process, an applicant for a GSO FSS license using frequencies in “unplanned” bands must submit a draft Coordination Request filing to the Commission using a simplified application form – Form 312 (Main Form) – pay the full license application fee and post a \$500,000 bond in order to establish and perfect a queue position. This first-step application submission establishes a place in the space station application processing queue as of the time of

filing of the simplified Form 312 with the Commission. As a second step, the prospective licensee must file a complete license application within two years of submission of the Coordination Request materials or forfeit the value of the bond and lose the queue status gained by the prior Coordination Request filing. This two-step application process is completely optional, and, as an alternative, applicants may file a full application without first submitting a draft Coordination Request or posting the corresponding \$500,000 bond. The Commission adopted a similar two-step application process for GSO FSS operation in “planned” frequency bands subject to Appendix 30B of the ITU Radio Regulations. In contrast, the Commission stated that it would treat proponents of satellite operations that are subject to Appendices 30 and 30A of the ITU Radio Regulations somewhat differently. For these proponents, which include those proposing operations in the 12.2-12.7 GHz and 17.3-17.8 GHz frequency bands used for DBS service, the Commission would still review and forward their ITU filings in advance of a license application, but such review and forwarding would not afford any licensing status, as applications for DBS systems are not eligible for first-come, first-served processing.

Our proposal to adopt first-come, first-served processing procedures for DBS applications changes this situation and ITU filings subject to Appendices 30 and 30A of the ITU Radio Regulations will not be forwarded to the ITU before a license application is filed with the Commission. However, adopting first-come, first-served processing also supports extending the optional two-step application process to these DBS filings. Thus, the Commission proposes to extend the two-step process for GSO FSS operations in unplanned bands to DBS operations in planned bands, and, in this respect, will treat ITU filings to modify an existing frequency assignment in the Region 2 Plan, to include a new frequency assignment in the Region 2 Plan, or to include a new or modified frequency assignment in the List of the Regions 1 and 3 Plan in the same manner as a Coordination Request filing for GSO FSS operation in non-planned bands.

Unlike Coordination Requests in non-planned bands, however, the Commission proposes to review a proposed filing under Appendices 30 and 30A prior to forwarding the filing to the ITU to ensure that it is compatible with other U.S. filings. This review is necessary to protect the rights of existing U.S. filings from being unduly eroded under the relevant ITU protection criteria by another U.S. filing. Accordingly, the party requesting a planned-band filing must either submit the results of an analysis demonstrating that the proposed operation will not “affect” any other U.S. filing under the relevant ITU criteria or, if another filing would be deemed affected, submit a letter signed by the affected operator (which may be the same as the operator requesting the new filing) that it consents to the new filing. This proposed review is consistent with our tentative conclusions above regarding the processing of all requests for DBS service. The Commission seeks comment on this proposal. The Commission likewise proposes to require applicants for DBS licenses using the two-step procedure to submit the application filing fee and a bond of \$500,000 with their applications and ITU filings. As noted above, in the FSS licensing framework, an applicant submission with the Commission under the first step of the optional two-step procedure must be accompanied by the application fee and a \$500,000 bond. The purpose of the application-stage bond is to deter speculation during the two-year period of queue priority before the applicant must submit a completed application. The Commission finds that these considerations also apply to DBS licensees. The Commission seek comment on this proposal.

Non-U.S. Licensed Systems. With the exception of the two-step processing procedure discussed above, the Commission proposes that procedures and requirements proposed for DBS service license applications also apply to requests to access the United States market by non-U.S. licensed space stations under our DISCO II framework. The Commission notes that the Commission decided in the DISCO II proceeding that entities wishing to serve the United States

with a non-U.S. satellite, including DBS satellites, must file the same information as applicants for a U.S. space station license, whether or not that satellite is already licensed by another administration. Consequently, if the Commission adopts a first-come, first-served licensing procedure for applicants for a U.S.-licensed DBS space station, operators of non-U.S. licensed DBS space station seeking U.S. market access and entities filing earth station applications to access non-U.S. licensed DBS space stations must file the same information required under section 25.114 of the Commission's rules.

The Commission further notes that the United States took an exemption from the World Trade Organization's Basic Telecommunication Agreement for "one-way satellite transmission of DTH and DBS television services and digital audio services." Thus, in order to serve the United States, foreign-licensed DBS systems must be found acceptable under the Effective Competitive Opportunities analysis the Commission adopted in our DISCO II proceeding in 1997 (ECO-Sat). The Commission does not intend to revisit any of these considerations, but merely propose that foreign DBS systems requesting market access to serve the United States will be considered on the same first-come, first-served basis as applications for authority to provide DBS services.

Reduced Spacing for DBS Space Stations. The Commission tentatively concludes that the public interest would be served by granting requests for new DBS service via space stations at orbital locations less than nine degrees apart, but that the public interest would not be served by adopting specific rules, different from those contained in Appendices 30 and 30A of the ITU Radio Regulations, for accommodating requests for new DBS systems at reduced-spacing orbital locations. Instead, such requests can be processed using the "first-come, first-served" procedures for DBS service proposed above.

After review of the comments and pleadings filed in response to the 2006 Notice, the

Commission tentatively concludes that the potential benefits of adopting additional rules requiring existing DBS service providers to accommodate operations at reduced orbital spacing are outweighed by the potential harms to existing subscribers to DBS service. As an initial matter, it is not clear that access to additional DBS orbital locations is needed to introduce new video programming services since DBS subscribership is dropping in the United States as the marketplace for the distribution of video programming over the Internet continues to grow and other opportunities exist to provide new video programming services in the United States in several frequency bands already allocated for satellite services. These include the 17/24 GHz BSS “reverse” band, which is specifically allocated for the provision of video programming, as well as frequency bands allocated for Ka-band GSO FSS. Furthermore, the proposals made by proponents for additional rules may require changes to the equipment currently used to provide DBS services to subscribers—such as requiring larger customer receive antennas and changes to space station designs—or would require existing DBS providers and their subscribers to accept more interference and service unavailability than is the case today.

However, the record does show that it is possible to accommodate the provision of new DBS services at reduced orbital spacings under existing rules. Specifically, our rules already allow us to consider requests for new DBS service at reduced orbital spacings if entities making such a request can coordinate their proposed operations with other U.S. DBS operators and secure agreements with other operators already having assignments in the ITU Region 2 Plans (or with prior requests for Plan modifications). The Commission proposes to address such requests under these existing rules rather than adopt new rules.

This approach protects current DBS consumers from interference and degradation of their video reception, while at the same time allowing potential new DBS operators to demonstrate – through careful system design, advancing technology, and coordination with existing DBS

systems – that new DBS systems can operate at orbital spacings of less than nine degrees without causing harmful interference to existing systems and their customers. It will also ensure that operations at reduced orbital separations will lead to the same levels of interference observed between two DBS systems operating nine degrees apart, with co-frequency, co-coverage operation, and nominal Appendix 30 power density levels. The Commission recognizes that this proposal will require mitigation measures by future operators at reduced orbital spacings, such as reduced power density levels or non-fully overlapping coverages. The Commission tentatively concludes that such measures are more easily and appropriately implemented by future entrants than retroactively imposed on existing DBS operators and their subscribers.

The Commission notes that the ITU Appendix 30 and 30A ITU rules do not govern the relationship between two DBS systems operating under U.S. ITU filings. The Commission proposes that the same ITU criteria be used to determine compatibility between a new DBS application with respect to a DBS system already in the processing queue or previously authorized, even when both systems are or will be operating under U.S. ITU filings. If any of the frequency assignments of the system already in the queue or previously authorized is affected, according to the ITU criteria, the new DBS application can still be considered compatible with this system by submission of a letter signed by the affected operator indicating that it consents to the new application.

The Commission seeks comment on this approach. In particular, the Commission seeks any updates to the record regarding specific benefits or harms arising from adopting rules to require existing DBS service providers to accommodate requests to provide DBS service at reduced orbital spacings and may consider adopting such rules if the record demonstrates that doing so would serve the public interest.

DBS Licensing “Freeze”. The Commission imposed a “freeze” on requests for new

DBS systems in 2005. The proposals the Commission makes in this Second Notice will, if adopted, resolve the issues that caused the Commission to impose that freeze. The Commission therefore proposes to lift the freeze and begin accepting new applications for DBS licenses after the effective date of rules adopted as a result of this Second Notice. The Commission also proposes that new applications or requests for U.S. market access be accepted only after a date specified in a public notice, which the International Bureau would release after the rules have become effective. The Commission seeks comment on these proposals.

Other Matters. The 2006 Notice also sought comment on other issues related to the regulation of DBS service that the Commission do not repeat in this Second Notice. These other issues relate to protection requirements among terrestrial Multichannel Video Distribution and Data Service (MVDDS) licensees and DBS operations at reduced spacings, protection of DBS operations at reduced spacings from interference from NGSO FSS operations, protection of mobile DBS receivers smaller than 45 cm in diameter, and whether to establish a spectrum cap on existing DBS licensees. The Commission seeks additional comment on these issues in light of developments since the 2006 Notice and our tentative conclusions in this Second Notice.

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 Second Notice of Proposed Rulemaking (NPRM). 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 NPRM provided above in section IV.B. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, summaries of the NPRM and IRFA will be published in the Federal Register.

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

The NPRM seeks comment on several proposals relating to the Commission's rules and policies for licensing space stations in the Digital Broadcasting Satellite (DBS) Service.

Adoption of the proposed changes would, among other things, provide a licensing system under which new licenses for DBS satellites in reduced spacing orbital slots would be processed according to the Commission's rules for geostationary orbit space stations in the Fixed-Satellite Service.

B. *Legal Basis*

The proposed action is authorized under sections 4(i), 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 316.

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 adoption of proposed rules. 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). Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the proposed rules.

Satellite Telecommunications and All Other Telecommunications. The rules proposed in this NPRM would affect some providers of satellite telecommunications services, if adopted.

Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, a business is considered small if it had \$32.5 million or less in annual receipts.

The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under \$25 million.

The second category of Other Telecommunications is comprised of entities “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million. We anticipate that some of these “Other Telecommunications firms,” which are small entities, are earth station applicants/licensees that might be affected if our proposed rule changes are adopted.

We anticipate that our proposed rule changes may have an impact on earth station and

space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch, and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our proposed actions.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance

Requirements for Small Entities

The NPRM proposes and seeks comment on several rule changes that would affect compliance requirements for earth station and space station operators. Most proposed changes, however, are directed at space station applicants and licensees. As noted above, these parties rarely qualify as small entities.

For example, the Commission proposes to allow additional uses of certain frequencies within the 17.2-17.7 GHz band, subject to compliance with technical limits designed to protect other users of the bands. We also seek comment on revised or new technical standards to promote sharing among DBS systems in reduced orbital spacings.

We also propose modified rules for satellite system implementation to provide additional flexibility to operators. In total, the proposals and questions in the NPRM are designed to achieve the Commission's mandate to regulate in the public interest while imposing the lowest necessary burden on all affected parties, including small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant

Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or

reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM.

The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

In this NPRM, the Commission invites comment on means to minimize negative economic impacts on applicants and licensees, including small entities, by permitting DBS space stations in orbital locations between the currently authorized orbital locations. Overall, the proposals in the NPRM seek to increase flexibility for DBS applicants and licensees and reduce burdens, while maintaining adequate protections against interference.

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

None.

List of Subjects

47 CFR Part 25

Administrative practice and procedure, Earth stations, Satellites.

Federal Communications Commission.

Marlene Dortch
Secretary,
Office of the Secretary.

The Federal Communications Commission proposes to amend 47 CFR part 25, as follows:

PART 25 – SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

2. Amend § 25.110 by revising paragraph (b)(3) introductory text and paragraph (b)(3)(iii) and adding paragraph (b)(3)(iv) to read as follows:

§25.110 Filing of applications, fees, and number of copies.

* * * * *

(b) ***

(3) A license application for 17/24 GHz BSS space station operation, for GSO FSS space station operation, or for GSO space station operation subject to the provisions in Appendices 30 and 30A of the ITU Radio Regulations (incorporated by reference, see § 25.108) may be submitted in two steps, as follows:

* * * * *

(iii) An application for GSO space station operation subject to the provisions in Appendices 30 and 30A of the ITU Radio Regulations (incorporated by reference, see §25.108)

may be initiated by submitting to the Commission, in accordance with the applicable provisions of part 1, subpart Y of this chapter, a draft ITU filing to: modify an existing frequency assignment in the Region 2 Plan; to include a new frequency assignment in the Region 2 Plan; or to include a new or modified frequency assignment in the List of the Regions 1 and 3 Plan, accompanied by a simplified Form 312 and a declaration of acceptance of ITU cost-recovery responsibility in accordance with §25.111(d). The simplified Form 312, Main Form submission must include the information required by items 1-17, 43, 45, and 46. In addition, the applicant must submit the results of an analysis demonstrating that no U.S. filing under Appendix 30 and 30A would be deemed affected by the proposed operation under the relevant ITU criteria or, for any affected filings, a letter signed by the affected operator that it consents to the new filing.

(iv) An application initiated pursuant to paragraphs (b)(3)(i), (b)(3)(ii) or (b)(3)(iii) of this section will be considered completed by the filing of an FCC Form 312 and the remaining information required in a complete license application, including the information required by §25.114, within two years of the date of submission of the initial application materials.

* * * * *

3. Amend § 25.114 by revising paragraph (a)(3) to read as follows:

§25.114 Applications for space station authorizations.

(a) ***

(3) For an application filed pursuant to the two-step procedure in §25.110(b)(3), the filing pursuant to §25.110(b)(3)(iv) must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits as required by paragraph (d) of this section, and must constitute a comprehensive proposal.

* * * * *

4. Amend § 25.121 by revising paragraph (a)(1) to read as follows:

§25.121 License term and renewals.

(a) ***(1) Except for licenses for SDARS space stations and terrestrial repeaters and 17/24 GHz BSS space stations licensed as broadcast facilities, licenses for facilities governed by this part will be issued for a period of 15 years.

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§25.140 [Amended]

5. Amend § 25.140 by revising the section header and adding new paragraph (a)(3)(vii) to read as follows:

§25.140 Further requirements for license applications for GSO space station operation in the FSS and the 17/24 GHz BSS.

(a)(1) ***

(vi) In addition to the information required by §25.114, an applicant for a GSO space station operating in the frequencies of the ITU Appendices 30 and 30A (incorporated by reference, see §25.108) must provide a statement that the proposed operation will take into account the applicable requirements of these Appendices of the ITU Radio Regulations and a demonstration that it is compatible with other U.S. ITU filings under Appendices 30 and 30A or, for any affected filings, a letter signed by the affected operator indicating that it consents to the new application.

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6. Amend § 25.148 by removing and reserving paragraphs (b), (d) and (e).

7. Amend § 25.164 by revising paragraph (a) to read as follows:

§25.164 Milestones.

(a) The recipient of an initial license for a GSO space station, other than a SDARS space station, granted on or after August 27, 2003, must launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization no later than five years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or the Commission.

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8. Amend § 25.165 by revising paragraph (a) introductory text to read as follows:

§25.165 Surety bonds.

(a) For all space station licenses issued after September 20, 2004, other than licenses for SDARS space stations and replacement space stations as defined in paragraph (e) of this section, the licensee must post a bond within 30 days of the grant of its license. Failure to post a bond will render the license null and void automatically.

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