

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 25, and 97

[ET Docket No. 98-142, FCC 98-177]

#### Mobile-Satellite Service Above 1 GHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** By this action, we propose to amend the Commission's Rules by allocating the 5091-5250 MHz and 15.43-15.63 GHz bands to the fixed-satellite service ("FSS") on a co-primary basis for Earth-to-space ("uplink") transmissions and by allocating the 6700-7075 MHz and 15.43-15.63 GHz bands on a co-primary basis for space-to-Earth ("downlink") transmissions. We also propose to add these frequency bands to the list of frequencies available for use by the Satellite Communications Service. We further propose to limit the use of these new FSS allocations to feeder links that would be used in conjunction with the service links of non-geostationary satellite orbit mobile-satellite service ("NGSO MSS") systems. The adoption of these proposals would provide spectrum for feeder links to support the current and immediate requirements of NGSO MSS systems.

**DATES:** Comments are due September 21, 1998, reply comments are due October 5, 1998.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, (202) 418-2450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 98-142, FCC 98-177, adopted July 28, 1998, and released August 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also

may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW Washington, DC 20036.

#### Summary of the Notice of Proposed Rule Making

1. *Introduction.* By this action, we propose to amend part 2 of the Commission's rules by allocating the 5091-5250 MHz and 15.43-15.63 GHz bands to the FSS on a co-primary basis for uplink transmissions and by allocating the 6700-7075 MHz and 15.43-15.63 GHz bands on a co-primary basis for downlink transmissions. We also propose to amend part 25 in order to add these frequency bands to the list of frequencies available for use by the Satellite Communications Service. We further propose to limit the use of these new FSS allocations to feeder links that would be used in conjunction with the service links of NGSO MSS systems. The adoption of these proposals would provide spectrum for feeder links to support the current and immediate requirements of NGSO MSS systems. In order to implement these feeder-link allocations, we propose, consistent with the international allocations and footnotes, to maintain the international standard system's right of precedence over all other uses in the 5000-5150 MHz band and to remove that right in the 5150-5250 MHz band, to delete the aeronautical mobile-satellite (R) service allocations in the 5150-5250 MHz and 15.4-15.7 GHz bands, and to delete the FSS and inter-satellite feederlink allocations for the aeronautical radionavigation and/or aeronautical mobile (R) services in the 5000-5250 MHz and 15.4-15.7 GHz bands.

2. In addition, we propose to implement the clarification concerning the maximum power flux density ("PFD") for Big LEO service uplinks at 1610-1626.5 MHz that was adopted at the 1995 World Radiocommunication Conference ("WRC-95") and the more lenient coordination threshold standard for Big LEO service downlinks at 2483.5-2500 MHz that was adopted at the 1997 World Radiocommunication Conference ("WRC-97"). The proposals we make in this instant proceeding are consistent with international allocations for these frequency bands and will provide incumbent operations in these

bands with adequate protection from harmful interference.

3. *NGSO MSS Feeder Links in the 5000-5250 MHz Band.* We propose to allocate the 5150-5250 MHz band to the non-Government fixed-satellite (Earth-to-space) service on a primary basis; to adopt international footnotes S5.367 (previously 733), S5.444 (796), S5.444A, S5.447A, and S5.447C domestically; to delete reference to footnote 797 from the United States Table of Frequency Allocations; and to add the 5091-5250 MHz band to the list of frequency bands available in the Satellite Communications Service. The adoption of this proposal would provide Big LEO and other commercial systems with 159 megahertz of contiguous NGSO MSS feeder uplink spectrum from 5091 MHz to 5250 MHz. However, we caution Globalstar and any other prospective user of the 5091-5250 MHz band that Working Group 4A is still developing the sharing criteria between aeronautical radionavigation service and FSS uplinks for this band; that prior to January 1, 2010, the requirements of existing and planned international standard systems (e.g., microwave landing systems) which cannot be met in the 5000-5091 MHz band will take precedence over other uses of the 5091-5150 MHz band; and, that after January 1, 2010, FSS uplinks will operate on a secondary basis to the aeronautical radionavigation service in the 5091-5150 MHz band. In addition, we seek comment on footnote S5.447B, which provides for "reverse band working" in the 5150-5216 MHz band.

4. Finally, we observe that the National Telecommunications and Information Administration ("NTIA") has previously adopted footnote G126, which states that Differential-Global-Positioning-System ("DGPS") stations may be authorized on a primary basis in the 5000-5150 MHz bands for the specific purpose of transmitting DGPS information intended for aircraft navigation. We propose to add footnote G126 to the Government column of the 5000-5150 MHz band.

5. *NGSO MSS Feeder Downlinks in the 6700-7075 MHz Band.* We observe that the 1995 Conference Preparatory Meeting Report indicated that studies have shown that bi-directional spectrum sharing between geostationary fixed-satellite service and non-geostationary mobile-satellite service feeder link

networks is technically feasible given careful site selection and antenna sizing, and depending on the number of gateway earth stations. At WRC-95, we proposed the 6700–7025 MHz band as a “reverse band” candidate. We made this proposal because the numerous restrictions on the GSO FSS uplink allotment plan for the 6725–7025 MHz band have resulted in only light use of this band throughout the world, including the United States. Therefore, we believe that the 6700–7075 MHz band could be used for feeder downlinks by up to four NGSO MSS systems using currently available technology, with two of the systems “cross polarized” from the other two. Accordingly, we propose to allocate the 6700–7075 MHz band to the non-Government fixed-satellite (space-to-Earth) service on a co-primary basis; to adopt international footnotes S5.440 (previously 791), S5.441 (792A), S5.458 (809), S5.458A, and S5.458B domestically; to add a cross reference to the rules for the Satellite Communications Service with respect to the 6875–7075 MHz band; and to add the 6700–7075 MHz band (space-to-Earth) to the list of FSS frequency bands available in the Satellite Communications Service. In addition, we propose to adopt footnote S5.149 which states, *inter alia*, that in making assignments to stations of other services, administrations are urged to take all practicable steps to protect radio astronomy use of the 6650–6675.2 MHz band from harmful interference. Finally, we propose to replace the Domestic Public Fixed Service (part 21) and Private Operational-Fixed Microwave Service (part 94) cross references with one for the Fixed Microwave Services (part 101); to delete the erroneous cross reference to the Domestic Public Fixed Service (part 21) for the 6875–7075 MHz band in the Table of Frequency Allocations; and to add an existing part 2 requirement to the rules for the Amateur Radio Service. We request comment on all of the proposals. In particular, comment is sought on the PFD limits in No. S9.11A (previously known as Resolution 46). It is our belief that the proposed PFD limits will afford terrestrial fixed and broadcast auxiliary users of the band with adequate protection. We assume that each satellite system will require only a few gateways, approximately six in number. We solicit comment on this assumption, on how many gateways overall are likely to use this band, whether technological advances are likely to significantly increase the number of gateways, and where these gateways are

likely to be geographically located, especially whether they will likely be located in rural areas, or in urban areas. In general, we request comment on the likely impact of sharing the spectrum with Big LEO feeder links upon the terrestrial users.

6. *NGSO MSS Feeder Links in the 15.4–15.7 GHz Band.* In preparation for WRC-97, the Commission, the WRC-97 Advisory Committee, and NTIA assisted the ITU in the development of the necessary technical constraints that would allow FSS uplinks and downlinks to co-exist with incumbent services in the 15.4–15.7 GHz band. WRC-97 adopted the United States proposals for the 15.4–15.7 GHz band. We now propose to implement these WRC-97 changes domestically. Specifically, we propose to allocate the 15.43–15.63 GHz band to the fixed-satellite service for both uplink and downlink transmissions and to adopt international footnotes S5.511A and S5.511C domestically. We also propose to delete reference to footnotes 733 and 797 from the 15.4–15.7 GHz band entry in the Table of Frequency Allocations, to add a cross reference to the rules for the Satellite Communications Service into the 15.43–15.63 GHz band entry, and to add both the FSS uplink and downlink allocations to the list of frequency bands available in the Satellite Communications Service. We request comment on these proposals.

7. *Big LEO Service Link Coordination.* During our preparation for WRC-95, we stated that technical constraints that could hinder implementation of the Big LEO service had been identified in that proceeding and in the ITU-R process. Accordingly, we proposed that WRC-95 remove several of these constraints from the Big LEO service link spectrum. WRC-95 generally adopted our proposals, and we are now proposing to implement domestically these WRC-95 changes.

8. Big LEO systems are authorized to use the 1610–1626.5 MHz band for their service uplinks. In our WRC-95 preparation, we proposed to modify footnote 731E by specifying a “peak” power density limit in those parts of the 1610–1626.5 MHz band which are used by systems operating in accordance with footnote 732, and by specifying a “mean” power density in the part of the band where no such systems are operating. We also stated that interference protection under RR No. 953 should be sufficient and accordingly proposed to delete the language specifying additional protection of non-MSS services in the 1610–1626.5 MHz band.

9. WRC-95 adopted our proposal for RR 731E (re-numbered as S5.364), except that the additional protection of non-MSS services was not deleted. In addition, international footnotes 722, 731F, 732, 733, 733A, 733E, and 734, which have previously been adopted domestically, were re-numbered as S5.341, S5.365, S5.366, S5.367, S5.368, S5.372, and S5.149, respectively. Accordingly, we propose to update the United States table by adopting these international footnotes domestically. We request comment on this proposal. Finally, we observe that a recent revision to footnote US319 was inadvertently not published in the Code of Federal Regulations and that footnote S5.368 (previously 733A) was inadvertently not added to the 1613.8–1626.5 MHz band. We therefore take this opportunity to correct these oversights.

10. Big LEO systems are authorized to use the 2483.5–2500 MHz band for their service downlinks. In our preparation for WRC-95, we expressed concern that footnote 753F references PFD limits in RR No. 2566 that may be too stringent and could result in unnecessary coordination. We also proposed to add cautionary language in footnote 753F to protect radio astronomy in the 4990–5000 MHz band and declined to propose to suppress footnote 733E.

11. Footnote 753F states that coordination, in this band, of space stations of the mobile-satellite and radiodetermination-satellite services with terrestrial services is required only if the PFD produced by a space station at the Earth's surface exceeds the limits in Radio Regulation No. 2566. WRC-95 re-numbered footnote 753F as S5.402 and modified it to provide a more lenient coordination threshold standard than the current requirement and this new coordination threshold standard is incorporated in Resolution 46/No. S9.11A. WRC-97 further revised the interim procedures in Resolution 46. We also note that the procedures for the coordination and notification of frequency assignments of satellite networks established under No. S9.11A are only interim in nature. In particular, we observe that the coordination threshold factors applicable to terrestrial services other than fixed services may be reviewed at a future conference. Nonetheless, we believe that the new coordination threshold will adequately protect incumbent terrestrial services, while significantly increasing the usefulness of the 2483.5–2500 MHz band for Big LEO service downlinks. In addition, international footnotes 752 and 753A, which have previously been adopted domestically, were re-

numbered as S5.150 and S5.398, respectively. Accordingly, we propose to update the United States table by adopting these international footnotes domestically. We invite comments on these proposals. Finally, we observe that a recent revision to footnote NG147 was inadvertently not published in the Code of Federal Regulations, and we therefore take this opportunity to correct this oversight.

### Initial Regulatory Flexibility Analysis Certification

12. The Regulatory Flexibility Act ("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." The RFA generally defines "small entity" as having the same meaning as the term "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).

13. This *Notice of Proposed Rule Making* ("Notice") proposes to allocate the 5091–5250 MHz and 15.43–15.63 GHz bands to the fixed-satellite (Earth-to-space) service on a primary basis, to allocate the 6700–7075 MHz and 15.43–15.63 GHz bands on a primary basis to the fixed-satellite (space-to-Earth) service, and to limit the use of these FSS allocations to feeder links that would be used in conjunction with the service links of NGSO MSS systems. We take this action on our own initiative in order to adopt domestically the NGSO MSS feeder link allocations adopted at WRC-95. The adoption of this proposal would accommodate the growing demand for Big LEO services and would provide satellite operators with increased flexibility in the design of their systems.

14. The Commission has not developed a definition of small entities specifically applicable to the satellite services licensees here at issue. Therefore, the applicable definition of small entity in the satellite services

industry is the definition under the Small Business Administration ("SBA") rules applicable to Communications Services "Not Elsewhere Classified."<sup>2</sup> This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities.<sup>3</sup> The Census Bureau category is very broad and commercial satellite services constitute only a subset of its total.

15. We estimate that—using current technology—up to four NGSO MSS systems could utilize the feeder uplink spectrum and that up to six NGSO MSS systems could utilize the feeder downlink spectrum being allocated in this proceeding. None of the Big LEO licensees is a small business because they each have revenues in excess of \$11 million annually or have parent companies or investors that have revenues in excess of \$11 million annually.

16. We therefore certify that this *Notice* will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects

#### 47 CFR Part 2

Communications equipment, Radio, Reporting and recordkeeping requirements.

#### 47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites.

#### 47 CFR Part 97

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–22353 Filed 8–19–98; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket 96–45, 97–160; DA 98–1576]

### Federal-State Joint Board on Universal Service and Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; Supplemental data request.

**SUMMARY:** In conjunction with the Commission's proceeding to select a forward-looking economic cost mechanism for determining the level of federal high cost support that eligible non-rural carriers will receive beginning July 1, 1999, we request certain revenue information from non-rural local exchange carriers and holding companies.

**DATES:** Responses to this data request must be submitted on or before October 6, 1998.

**ADDRESSES:** The full text of data request order and spreadsheets are available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC. In addition, interested parties may obtain the spreadsheet from the Commission's web site at [http://www.fcc.gov/ccb/universal\\_service/highcost.html#determine](http://www.fcc.gov/ccb/universal_service/highcost.html#determine).

**FOR FURTHER INFORMATION CONTACT:** Katie King, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

### SUPPLEMENTARY INFORMATION:

1. In the *Universal Service Order*, CC Docket No. 96–45, FCC 97–157 (released May 8, 1997) 62 FR 32862 (June 17, 1997), the Commission determined that the level of federal high cost support that eligible non-rural carriers will receive would be 25 percent of the difference between the estimated forward-looking economic cost of providing the supported services and a nationwide average revenue benchmark. The Commission also determined that the revenue benchmark should be calculated using revenues derived from local service, access, and other telecommunications services, including discretionary services. The Commission

<sup>1</sup> The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with American Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

<sup>3</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).