

ACTION: Final rule.

SUMMARY: This document reallocate portions of the frequency band currently used by the Mobile-Satellite Service (MSS) to provide additional spectrum for Fixed and Mobile Services, and deny Cellular Telecommunications and Internet Association's petition for reconsideration. This action furthers the Commission's efforts to identify and reallocate spectrum that can be used to promote the development and deployment of advanced wireless services, including those commonly associated with "3G" wireless applications.

DATES: Effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418-7474.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 00-258 and IB Docket No. 99-81, FCC 03-16, adopted January 29, 2003, and released February 10, 2003. The full text of this document is 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 complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of the Third Report and Order and Memorandum Opinion and Order

1. In the *Third Report and Order*, the Commission reallocated 30 megahertz of spectrum in the 2 GHz MSS band for Fixed and Mobile services on a primary basis and preserved the remaining 40 megahertz of spectrum for Mobile-Satellite Service (MSS) at this time. The Commission reallocated 15 megahertz from the MSS uplink band, specifically the 1990-2000 MHz and 2020-2025 MHz band segments, and 15 megahertz from the MSS downlink band, specifically the 2165-2180 MHz band segment. We modified the Table of Allocations to provide for Fixed and Mobile services in these bands on a co-primary basis. In addition, we also modified footnotes NG 156 and NG 168 of the U.S. Table of Frequency Allocations, concerning Fixed and Mobile service status in bands shared

with MSS, to reflect the revised MSS bands. The Commission created two new non-Federal Government footnotes that make incumbent BAS and cable television relay service operations that are secondary to MSS also secondary to new Fixed and Mobile services after prescribed cut-off dates. Finally, we conclude that some abandoned 2 GHz spectrum recently recaptured as a result of the initial MSS milestone review will be reassigned to the authorized MSS operators that remain when we complete the initial milestone review.

2. The 30 megahertz of spectrum that was reallocated from MSS comes from two sources: 14 megahertz of spectrum that was not assigned to any of the MSS licensees and 16 megahertz of spectrum (of the 21 megahertz) that had been abandoned at the time the *Third R&O* was adopted, as a result of MSS licensees not meeting initial milestones. The International Bureau has cancelled three MSS authorizations, thereby recapturing 21 megahertz of spectrum. Sixteen megahertz of this recaptured spectrum, as well as the 14 megahertz of unassigned spectrum, will be reallocated immediately for Fixed and Mobile services. Relying on unassigned and abandoned spectrum as the basis for the reallocation is least disruptive to the MSS licensees. Further, the initial MSS milestone review, which is not yet completed, has already made available an additional 5 megahertz of abandoned spectrum that we are not reallocating for new services. We note that the MSS entities have asserted the need for access to more than 3.5 megahertz of spectrum in each band for their Selected Assignments. We thus conclude that the public interest would be served by redistributing abandoned 2 GHz spectrum recently recaptured as a result of the initial MSS milestone review, above the 16 megahertz being reallocated, to the authorized MSS operators that remain when we complete the initial milestone review. Thus, it is possible that more than 5 megahertz of abandoned spectrum may be available for redistribution when the initial MSS milestone review is completed. We further note that the MSS milestone review is an ongoing process that spans several years, and it is possible that not all currently authorized MSS networks will be deployed. As we previously stated in *2 GHz MSS R&O*, 65 FR 59140, Oct. 4, 2000, we have not established nor do we do so here any policy or rule regarding the use of additional abandoned spectrum that may result after future MSS milestone reviews are completed. Instead, we will evaluate whether to

redistribute such spectrum or make it available to new entrants after achievement of each of our system implementation milestones.

3. Because we are revising the allocated spectrum for MSS and modifying the amount of spectrum that will constitute a Selected Assignment, we have also modified how Selected Assignments are to be located in the revised MSS bandwidth. In the *2 GHz MSS R&O*, we have determined that the MSS band plan would be divided into equal segments based on the number of licensed MSS systems. This incremental spacing approach allows MSS licensees to identify Selected Assignments working from either the bottom or the top of the band without requiring assignments to be selected in sequential order. In order to maintain this flexibility, the plan for each band will be based on dividing the revised MSS allocation in each band by the number of MSS licensees remaining when we complete the initial MSS milestone review. Thus, MSS licensees will choose Selected Assignments as an integer multiple of this amount from either band edge. We have modified, pursuant to section 316 of the Communications Act, 47 U.S.C. 316, and consistent with our decisions here, the 2 GHz MSS authorizations to increase the amount of spectrum for Selected Assignments, to require that a Selected Assignment be located within the revised MSS allocation, and to require that a Selected Assignment be chosen such that the band edge of the assignment is an integer multiple of the revised value from the band edge. We have also delegated authority to the International Bureau to issue revised authorizations, consistent with the decisions in this *Third Report and Order*, when the initial milestone review is completed. When the authorizations are modified, the MSS entities, can follow current procedures for notifying the Commission of their Selected Assignments and their selections will be put on public notice.

4. In deciding which segments of the MSS spectrum should be reallocated for Fixed and Mobile services, we recognize that the record is split on whether we should reallocate spectrum that overlaps the global MSS allocation, which consists of paired 30 megahertz bands at 1980-2110 MHz and 2170-2200 MHz. The U.S. MSS allocation, which consists of two paired 35 megahertz bands, overlaps 20 megahertz of the international allocation in the lower uplink band (1990-2010 MHz) and all of the 30 megahertz of the international allocation in the upper downlink band (2170-2200 MHz). After careful