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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 25, 74, 78, and 101

[IB Docket No. 98-172, FCC 02-317]

Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document alters the 18 GHz band plan, blanket licensing rules, and relocation rules adopted in a previous First Order on Reconsideration in this proceeding released in 2001. This document changes certain rules in light of the increased number of frequency spectrum options the Commission has recently made available to certain licensees. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective May 8, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration, FCC 02-317, released on November 26, 2002. The full texts of the documents are available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The documents are also available for download over the Internet at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-317. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, Telephone: 202-863-2893, Fax: 202-863-2898, e-mail qualexint@aol.com.

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Report and Order in this proceeding (18 GHz Order) 65 FR 54155, September 7, 2000 which, among other things, concluded that terrestrial fixed

service (FS) and ubiquitously deployed fixed-satellite service (FSS) earth stations generally could not share the same 18 GHz spectrum. Thus, in the 18 GHz Order, the Commission separated most terrestrial FS operations from most FSS operations by allocating separate sub-bands to each service; however, the Commission retained co-primary allocations for geostationary orbiting (GSO) FSS and FS operations in the 18.3-18.58 GHz band.

2. In response to the original 18 GHz Order, we received petitions for reconsideration from several parties, including Hughes Electronics Corporation (Hughes), a proponent of GSO FSS operations. On November 1, 2001, we released a First Order on Reconsideration 66 FR 63512, December 7, 2000 in this proceeding that resolved many of the petitioners' concerns. We deferred action, however, on two elements of Hughes' petition: (1) That we reconsider the co-primary allocation for FS in the 18.3-18.58 GHz band; and (2) that we permit blanket licensing of earth stations receiving in certain portions of the 18 GHz band.

3. Shortly after the Commission adopted the First Order on Reconsideration, the United States Circuit Court of Appeals for the D.C. Circuit issued an order rejecting a separate challenge to the 18 GHz Order from another FSS licensee in the 18 GHz band. In December 2001, the D.C. Circuit rejected those elements of the appeal not rendered moot by our First Order on Reconsideration. Concluding that the Commission's 18 GHz Order was entitled to the heightened degree of deference traditionally accorded decisions regarding spectrum management, the D.C. Circuit upheld the relocation policies and procedures adopted in the 18 GHz Order that had been challenged.

4. Since that time, the Commission has expanded the eligibility requirements to enable the vast majority of FS operators in the 18.3-18.58 GHz band to access other spectrum. On May 16, 2002, the Commission adopted the CARS Eligibility Order 67 FR 43257, June 27, 2002, which permitted all multichannel video programming distributors (MVPDs) to become eligible for Cable Television Relay Service (CARS) licenses in the 12.7-13.2 GHz and 17.7-18.3 GHz bands. Lifting eligibility restrictions on licenses in the 12.7-13.2 GHz and 17.7-18.3 GHz bands reversed a longstanding Commission policy that had allowed franchised cable systems and wireless cable systems to become CARS licensees, but denied the same opportunity to non-eligible competitors

to traditional cable systems, such as private cable operators (PCOs), which are dependent on the 18 GHz band. MVPD licensees who operate in the 18.3-18.58 GHz band are, following adoption of the CARS Eligibility Order, generally eligible for licenses in these alternative CARS bands.

5. In this Order, the Commission alters the 18 GHz band plan to make the FSS the sole primary spectrum allocation in the 18.3-18.58 GHz band. This action recognizes the Commission's recent decision to make additional spectrum available to current, co-primary users of the 18.3-18.58 GHz band. This Order also permits the blanket licensing of GSO FSS facilities in the 18.3-18.58 GHz and 29.25-29.5 GHz bands, and—consistent with the band clearing procedures that have been adopted in other proceedings—this Order adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3-18.58 GHz band. These changes to our rules will help promote the efficient use of spectrum for existing and future users.

6. Finally, this Order denies a Petition for Reconsideration of the First Order on Reconsideration filed by the Satellite Industry Association (SIA). SIA questions the Commission's relocation procedures and one-year testing period upon relocation set forth in the First Order on Reconsideration. In the Order, the Commission declined to depart from precedent and stated that the relocation procedures and one-year testing period have been adequately justified and alternatives adequately explored in light of the Commission's overall spectrum management goals.

7. On January 27, 2003, the Commission released an erratum to this Order. The erratum corrects omissions in the rule changes proposed in the Order. The final rules contain the omissions.

Procedural Matters

8. *Paperwork Reduction Act.* The rules adopted in this Second Order on Reconsideration involve no reporting requirements, and it is likely no additional outside professional skills will be necessary to comply with the rules and requirements here listed.

9. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the 18 GHz NPRM (63 FR 54100, October 8, 1998). The Commission sought written public