

making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” See 5 U.S.C. 601–612, the RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, title II, 110 Stat. 857 (1996). 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. See 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 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 U.S. Small Business Administration (SBA). See 15 U.S.C. 632. The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having \$12.5 million or less in annual revenue. See 13 CFR 121.201, NAICS code 517410.

Pursuant to the RFA, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Flexibility NPRM*. (*Flexibility Notice*, 16 FCC Rcd at 15565–67, paragraphs 85–93.) We received no comments in response to the IRFA. For the reasons described below, we now certify that the policies and rules adopted in the present *Flexibility Order* will not have a significant economic impact on a substantial number of small entities.

The *Flexibility Order* provides additional operational flexibility for MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band, the L-band, and the Big LEO bands. The flexibility consists of

permitting the MSS providers to integrate ancillary terrestrial components (ATC) into their networks. We find that providing this flexibility will have no significant economic impact on small entities because the MSS operators will not be required to make use of the additional capability. We believe that permitting the additional flexibility will enhance the ability of MSS operators to offer American consumers high quality, affordable mobile services on land, in the air, and over the oceans without using spectrum resources beyond the spectrum already allocated and authorized for MSS use in these bands. Operational flexibility will: (1) Increase efficient spectrum use through MSS network integration and terrestrial reuse; (2) reduce costs, eliminate inefficiencies, and enhance operational ability in MSS systems; (3) encourage technological innovation and the development of new wireless applications; and (4) strengthen competition in the telecommunications marketplace both in the United States and in other nations. We implement the *Flexibility Order* through the addition of a footnote to the U.S. Table of Frequency Allocations, found in § 2.106 of our rules, 47 CFR 2.106.

We also find that our action—which brings additional flexibility to existing MSS licensees—will not affect a substantial number of small entities. There are currently five 2 GHz MSS licensees, two Big LEO MSS licensees and three L-band MSS licensees authorized to provide service in the United States. Although at least one of the 2 GHz MSS system licensees and one of the Big LEO licensees are small businesses, small businesses often do not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. We expect that, by the time of MSS ATC system implementation, these current small businesses will no longer be considered small due to the capital requirements for launching and operating a proposed system.

Ordering Clauses

It is ordered that, pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this Report and Order is

adopted and that part 25 of the Commission’s rules is amended, as specified in the rule changes, effective August 4, 2003.

It is further ordered that the petition for rulemaking filed by Iridium Satellite LLC is granted in part to the extent described above and is denied in all other respects.

It is further ordered that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act and as set forth in Appendix D of the Report and Order, is adopted.

It is further ordered that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act and as set forth in Appendix D of the Report and Order, is adopted.

It is further ordered that the Commission’s Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 25

Incorporation by reference, Radio, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising pages 43, 44, 45, 46, 48, 49, and 52 of the Table of Frequency Allocations and adding footnote US380 to the list of United States (US) Footnotes, to read as follows:

§ 2.106 Table of Frequency Allocations.

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