

rebalancing of spectrum in the Big LEO band would serve the public interest and seeks comment on the proposal in Iridium's petition and on various alternative uses for the Big LEO spectrum, including whether the Commission should reallocate spectrum for unlicensed services, an additional commercial mobile radio service (CMRS) licensee or other services, or initiate a second processing round by which the Commission could authorize new MSS entry.

The Commission seeks specific technical detail and cost-benefit analysis on the current and projected use of the Big LEO band in the NPRM. For example, given Iridium's request for additional spectrum, how is Iridium utilizing its current spectrum allocations and what are its future spectrum requirements? If the Commission were to make more Big LEO spectrum available, exactly how much additional spectrum would be appropriate? What type of system would Iridium deploy in this additional spectrum? How is Globalstar utilizing its currently assigned Big LEO spectrum? What are Globalstar's projected spectrum needs? Will it require additional Big LEO spectrum in the future? If Globalstar does not use or is not permitted to use the entire Big LEO service downlink spectrum, what should the Commission do with any unused spectrum? Will changes to the Big LEO spectrum sharing plan have any effect on GLONASS, the Russian Global Navigation System, and radioastronomy service (RAS) operations in the band? How does the current U.S. Big LEO spectrum sharing plan fit with international band plans for Big LEO operations and what impact will changes to the U.S. plan have on plans in other regions?

The Commission also seeks comment on the possibility of making any returned spectrum available in a second Big LEO processing round. How much spectrum would need to be made available to provide sufficient incentive for applicants to participate in a second Big LEO processing round? Are the current Big LEO processing rules sufficient to handle a second processing round or would the Commission need to conduct a rulemaking to develop appropriate rules for second round applicants and licensees?

In addition, the Commission seeks comment on possibility of re-allocating any returned Big LEO spectrum. Should unlicensed devices be allowed to operate in the band? Should this band be allocated for site-based or critical infrastructure licensees? Alternatively, should the Commission pair spectrum

in the uplink and downlink service bands for assignment to a terrestrial CMRS licensee? The Commission seeks comment on implementation of ATC in the portion of the Big LEO bands beyond those authorized for ATC in the *Report and Order* adopted in this docket, *see In the Matter of Flexibility for Delivery of Communications by Mobil Satellite Service Providers in the 2 GHz Band*, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order*, IB Docket 01-185, FCC No. 03-15. This *Report and Order* is published elsewhere in this issue of the **Federal Register**. The Commission asks whether there are any advantages or disadvantages to allowing CDMA or TDMA systems to deploy ATC in particular parts of the unresolved portions of the Big LEO service up and downlink spectrum.

Procedural Issues

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis 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." In the *NPRM*, the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. Pursuant to the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities by the policies and actions considered in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. Comments are due July 7, 2003. The Commission will send a copy of the document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. *See* 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). *See* 5 U.S.C. 601 *et seq.*, title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Need for and Objectives of the Proposed Rules

This *NPRM* seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands. Given the state of the Big LEO MSS industry including changing traffic patterns, consumer demand and a recent request for additional spectrum by Iridium, one of the Big LEO operators, the *NPRM* seeks comment on: (1) the Commission's original spectrum sharing plan, (2) the proposal of Iridium for additional spectrum and (3) other possible uses of the band.

Legal Basis

This action is taken pursuant to sections 1, and 4(i) and (j) of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 201(c)(11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c)(11), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would 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 the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of 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 SBA. *Id.* section 632

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. *See* 13 CFR 121.201, NAICS Code 51334. This definition provides that a small entity is 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 which could potentially fall into the L-band, Big LEO or 2 GHz MSS category. Of those, approximately 775 reported annual receipts of \$11 million or less