

Public Law 104–13. Public and agency comments are due September 23, 2003.

Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA),² requires that a regulatory flexibility analysis be prepared for notice-and-comment rule 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.”³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ 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).⁶

24. Under the amended rules adopted in the Fourth Memorandum Opinion and Order, DBS licensees are required to provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed equivalent power flux density (EPFD) limits may be exceeded. This requirement is less burdensome than the rule adopted in the *Second R&O*⁷ that required disclosure of all DBS customer locations under similar circumstances. Furthermore, under the amended rules, DBS licensees are required to provide merely the information deemed necessary by DBS licensees to enable others to take into account the presence of MVDDS transmitters. This requirement is less burdensome than the rule adopted in the *Second R&O* that

imposed direct responsibility on DBS licensees for proper siting of future DBS receivers to take into account the presence of MVDDS.

25. Licensees of NGSO FSS systems are required to submit, ninety days prior to the initiation of service to the public, a technical showing that demonstrates that they are capable of meeting low-angle radiation limits specified in § 25.208(o) of the Commission’s rules for the 12.2–12.7 GHz band. Finally, licensees of NGSO FSS systems are required under the amended rules to ensure that the PFD limit is not exceeded into an operational MVDDS receiver. Taken together, these requirements are less burdensome than those adopted in the *Second R&O* because they merely require a showing that the NGSO FSS system is *capable* of meeting (instead of demonstrating the system has factually met) the specified technical limits, and because the PFD limit need only be met into *operational*, rather than *all*, MVDDS receivers.

26. These changes are deregulatory requirements. Therefore, we certify that the requirements of the Fourth Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

27. The Commission will send a copy of the Fourth Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁸ In addition, the Fourth Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.⁹

Ordering Clauses

28. Pursuant to sections 4(i), 302, 303(e) 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, the petitions for reconsideration filed by Pegasus Broadband Corporation, MDS America, Inc., EchoStar Satellite Corporation and DIRECTV, Inc., SkyBridge L.L.C., SES Americom, Inc., and Satellite Broadcasting and Communications Association *Are denied*.

29. Parts 25 and 101 of the Commission’s rules are amended as specified in the rule changes, effective August 25, 2003, except § 25.146 which contains information collection requirements which have not been approved by the Office of Management

and Budget (“OMB”). The Commission will publish a document in the **Federal Register** announcing the effective date. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g) 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

30. It is further ordered that the proceeding in ET Docket No. 98–206 is terminated.

List of Subjects

47 CFR Part 25

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

47 CFR Part 101

Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25 and 101 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended. 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.139 is amended by revising paragraph (a) to read as follows:

§ 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

(a) NGSO FSS licensees shall maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter. This information shall not be used for purposes other than set forth in § 101.129 of this chapter. Only sufficient information to determine compliance with § 101.129 of this chapter is required.

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² The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

³ 5 U.S.C. 605(b).

⁴ 5 U.S.C. 601(6).

⁵ 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**.”

⁶ 15 U.S.C. 632.

⁷ *Second R&O*, 17 FCC Rcd 9614 (2002).

⁸ See 5 U.S.C. 801(a)(1)(A).

⁹ See 5 U.S.C. 605(b).