

In the Reconsideration Order, the Commission amended § 25.149 to clarify that the rule does not preclude an MSS operator from filing an ATC application prior to actually meeting all of the gating requirements. However, the Commission will not grant an ATC authorization prior to an MSS operator's demonstrating that it has, in fact, met the gating criteria. This rule change will serve the public interest by granting ATC applications only after the Commission is satisfied that each of the gating criteria has in fact been met, or will be met at the same time the application is granted.

The Commission adopted a new rule section that requires an MSS operator that is granted ATC authority to notify the Commission within 30 days once it begins providing ATC service. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket and shall contain a certification that the MCC ATC service is consistent with its ATC authority.

In the event that an MSS operator anticipates that its proposal will present complex or controversial issues that may warrant a longer deliberative process, the MSS operator may seek an initial finding from the Commission that its proposed service offerings are "integrated" as required by the Commission's Report and Order.

The Commission revised § 25.143 to eliminate the language that required MSS operators have a conditioned ATC authorization before engaging in preoperational construction and testing. Rather, the Commission will permit such construction and testing, at the operator's risk, at any time after an MSS provider has initiated physical construction on the MSS system satellites and notified us concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. The MSS operator must notify the Commission in the form of a letter formally filed with the Commission in the appropriate MSS license docket. The letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. Upon the filing of such a notification letter, the Commission will issue an informational public notice stating that such a notification letter has been filed. The Commission requires

pre-operational construction and testing operations be in compliance with all appropriate technical rules including § 25.255 relating to procedures for resolving possible harmful interference. Also, MSS licensees engaging in pre-operational build-out and testing are required to comply with §§ 5.83, 5.85(c), 5.111 and 5.117.

Finally, the Commission modified § 25.117(f) to require that any initial application for the modification of a space station license to add an ancillary terrestrial component be placed on notice for public comment.

Procedural Matters

Supplemental Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), 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." (The RFA, 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).) 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 a Final Regulatory Flexibility Certification into the Report and Order. For the reasons described below, we now incorporate this supplemental final certification into the Order on Reconsideration and certify that the policies and rules adopted in the Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

The Order on Reconsideration will allow MSS operators to file applications prior to meeting the gating requirements. MSS operators that have been granted authorization will be required to notify the Commission within thirty days once the MSS operator begins providing ATC service. Finally, the rules will permit an MSS provider to construct and test, at the operator's risk, at any time after an MSS provider has initiated physical construction on the MSS system satellites and notified the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. The rule changes adopted in the Order on Reconsideration will have no significant economic impact on small entities because the MSS operators will not be required to make use of the additional capability. Under the rules adopted in the Order on Reconsideration, the Commission has permitted additional flexibility that 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.

The Commission also finds that this Order on Reconsideration—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.