

2003. This document stays these rules until October 27, 2003.

DATES: Effective October 14, 2003. Sections 25.137(d)(4), 25.164(c) through (e), and 25.165, published at 68 FR 51499 are stayed until October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418-1539 or via the Internet at steven.spaeth@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of August 27, 2003 (68 FR 51499), adopting §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, and adopting an effective date of September 11, 2003 for these provisions. This document stays these provisions until October 27, 2003.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 25

[IB Docket 02-19; FCC 03-137]

Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission has adopted licensing and service rules for entities to provide Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band frequencies, specifically the 18.8-19.3 GHz and 28.35-29.1GHz frequency bands. Upon launch, these new systems will provide a variety of data, video and telephony services in Ka-Band frequencies to U.S. consumers, for communications in the United States and around the world.

DATES: Effective October 14, 2003.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in IB Docket No. 02-19, FCC 03-137, adopted June 18, 2003 and released July 9, 2003. The complete text of this *Report and Order* is available for

inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898 or via e-mail qualexint@aol.com. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Summary of the Report and Order

1. The Federal Communications Commission has adopted sharing and service rules for the non-geostationary satellite orbit, fixed satellite service (NGSO FSS) in the Ka-Band frequencies. These systems will provide a variety of data, video and telephone services to U.S. consumers, for communications in the United States and around the world.

2. The Commission adopted an innovative sharing technique that can accommodate all pending applications for this service in the available frequency bands. The Commission calls this technique avoidance of in-line interference events. Under this technique, each applicant, once licensed, will be authorized to operate its system in the entire available service spectrum, so long as it avoids causing harmful interference to other NGSO FSS systems.

3. The Commission anticipates that there will be predictable instances when the space station of one NGSO FSS system and the earth station of another system are arranged in a perfect line of communication, an occurrence called an in-line interference event. The sharing technique allows and encourages the two system operators to exchange space station orbit data in order to predict and avoid these events by any mitigation means preferred. In the event the systems cannot agree on a preferred avoidance method, the Commission requires that the split the available NGSO FSS service spectrum in the Ka-Band equally between the systems involved in the event, for the duration of the event. The *Report and Order* allows the first launched NGSO FSS system to choose its preferred equal portion of the spectrum to which its space station will resort when an in-line interference event arises.

4. The *Report and Order* adopts a technical definition of an in-line interference event so that systems can coordinate their orbits in advance. The Commission adopted an Earth-surface based (topocentric) angular separation

standard, with a 10-degree-avoidance angle between satellites of different networks.

5. The *Report and Order* determines the priority status of the one existing licensee from the first processing round of the Ka-Band NGSO FSS, Teledesic LLC, when it coordinates with operators licensed in this second processing round for the service.

6. The *Report and Order* adopted service rules for the NGSO FSS service, including an implementation milestones schedule. Licensees will be required to file an annual report describing the status of satellite construction and launch dates. The *Report and Order* also requires that applicants disclose orbital debris mitigation plans before licensing.

Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that a regulatory flexibility analysis be prepared 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."² The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴ A small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).⁵

9. The objective of the *Report and Order* and of this proceeding is to assign the NGSO FSS spectrum to satellite systems operators who can implement their proposals in a manner that serves the public interest. The final rules in the *Report and Order* will reduce regulatory burdens and, with minimal disruption

¹ See 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121, 110 Stat. 857 (1996)).

² 5 U.S.C. 605(b).

³ *Id.* at 601(6).

⁴ *Id.* at 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**."

⁵ Small Business Act, 15 U.S.C. 632