

harmful interference according to TIA TSB-86 (or TSB-10F in the case of ATC operations by MSS licensees), or that has received actual harmful interference from the FS licensee. We do not find these provisions to be inconsistent as suggested by petitioners. Instead, we find that they are complementary toward achieving our underlying goal of crafting a relocation process that strikes a fair balance for all parties.

39. *Voluntary self-relocation.* Joint petitioners and SBC request that we clarify that incumbents in the 2110–2150 MHz or 2165–2200 MHz bands that voluntarily self-relocate may participate in 2 GHz band relocation cost sharing in similar fashion to the relocation plan we adopted for Personal Communications Services (PCS) in a separate proceeding. ICO responds that such an approach is inappropriate in this proceeding because, unlike the situation in the PCS cost-sharing proceeding cited by Joint Petitioners, MSS may not identify their selected 2 GHz frequencies until they have placed their first satellite in its intended orbit.

40. We decline to extend cost-sharing eligibility to self-relocating FS incumbents. Under the plan adopted in the *MSS Second Report and Order*, relocation of incumbent FS microwave links need occur only if there is harmful interference. We find that allowing self-relocating FS incumbents to share in relocation costs would circumvent our intention of limiting relocation to those FS incumbents receiving interference which cannot be resolved through the coordination process and a TSB-86 (or TSB 10-F for terrestrial ATC to FS) interference determination. Furthermore, we find that requiring relocation under those circumstances would inordinately increase the relocation cost burden on MSS licensees.

Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the following documents: the *Further Notice of Proposed Rulemaking* component of the *First Report and Order* and *Further Notice of Proposed Rulemaking*² and the *Third Notice of*

Proposed Rulemaking component of the *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* and *Order*³ in ET Docket No. 95–18, the *Notice of Proposed Rulemaking*⁴ in IB Docket No. 01–185, and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*⁵ in ET Docket No. 00–258. The Commission sought written public comments on the proposals in the *Further Notice of Proposed Rulemaking*, the *Third Notice of Proposed Rulemaking*, the *Notice of Proposed Rulemaking* and the *Further Notice of Proposed Rulemaking*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁶

A. Need for, and Objectives of, the Third R&O and Third MO&O

42. The goal of the *Third Report and Order* and *Third Memorandum Opinion and Order* is twofold. First, in the *Third Report and Order*, we modify the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees that currently operate within the 1990–2025 MHz band and when relocating Fixed Service (FS) microwave licensees that currently operate within the 2180–2200 MHz band. For the 1990–2025 MHz band, we immediately initiate Phase II of a planned two-phase relocation plan. In conjunction with the beginning of Phase II, we restart negotiation periods between MSS licensees and BAS incumbents to run for the publication of the *Third Report and Order* and *Third Memorandum Opinion and Order* in the **Federal Register**. These actions are necessary because the *Third Report and*

(1997), 62 FR 19509 and 62 FR 19538, April 22, 1997, respectively.

³ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *Memorandum Opinion and Order* and *Third Notice of Proposed Rulemaking* and *Order*, 13 FCC Rcd 23949 (1998) 63 FR 69606 and 63 FR 69562, December 17, 1998.

⁴ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band, IB Docket No. 01–185, *Notice of Proposed Rulemaking*, 16 FCC Rcd 15532 (2001), 66 FR 47621, September 13, 2001.

⁵ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Memorandum Opinion and Order* and *Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043 (2001), 66 FR 47591, September 13, 2001.

⁶ See 5 U.S.C. 604.

*Order*⁷ in ET Docket No. 00–285 reallocated the 1990–2025 MHz band to allow for both MSS licensees and new fixed and mobile service licensees to occupy the band. The allocation of a portion of the 1990–2025 MHz band to new fixed and mobile services means that MSS licensees will no longer be the only parties involved in the relocation of BAS incumbents that currently occupy the band. MSS licensees will operate in a reduced amount of spectrum from 2000–2020 MHz, and will now need to relocate BAS incumbents from spectrum that was designated as part of Phase II of the BAS relocation plan. Accordingly, incumbent BAS licensees must be relocated of this Phase II spectrum much more quickly that was anticipated when MSS was to occupy the entire 1990–2025 MHz band. It is also necessary to reset the negotiation periods to recognize the initiation of Phase II, the entry of new licensees into the band, and the lack of negotiation that was expected to have taken place between MSS and BAS licensees by this time. For the 2180–2200 MHz band, we affirm that the TIA TSB 10-F interference standard may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band. This modification was necessary because the *Order*⁸ in IB Docket No. 01–185 allowed MSS licensees to incorporate Ancillary Terrestrial Components into their systems. The 10-F standard is appropriate for the interference analysis of such non-satellite system components.

43. In the *Third Memorandum Opinion and Order*, we both grant and deny petitions for reconsideration and clarification of the above-referenced *First Report and Order* and *Further Notice of Proposed Rulemaking*. With respect to the 1990–2025 MHz band, we grant petitions and revise the sunset date (*i.e.* the date by which new licensees are no longer obligated to relocate incumbents in the band);

⁷ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Third Report and Order*, *Third Notice of Proposed Rulemaking*, and *Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003), 68 FR 12015 and 68 FR 11986, March 13, 2003, respectively.

⁸ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01–185, *Report and Order* and *Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003), 68 FR 33640, June 5, 2003, Errata (rel. March 7, 2003), appeal pending, AT&T Wireless Services, Inc. and Celco Partnership d/b/a Verizon Wireless v. FCC, No. 03–1191 (D.C. Cir. filed July 8, 2003).

¹ See 5 U.S.C. 603. 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).

² Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *First Report and Order* and *Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388