

requires sufficient evidence in the medical records of the occurrence of SI. The acute SI or related complications must be of sufficient severity to require inpatient hospitalization.

(10) *Anaphylaxis or Anaphylactic shock*.—(i) *Definition*. Anaphylaxis or anaphylactic shock is, for purposes of the Table, as an acute, severe, and potentially lethal systemic allergic reaction to a component of the smallpox vaccine.

(ii) *Table requirements*. A Table injury for anaphylaxis or anaphylactic shock in a recipient requires sufficient evidence in the medical records of the occurrence of an acute anaphylaxis or anaphylactic shock must be of sufficient severity to require inpatient hospitalization. Anaphylaxis or anaphylactic shock is not a Table injury for contacts.

(11) *Vaccinial Myocarditis, Pericarditis, or Myopericarditis (MP)*.—(i) *Definition*. MP is, for purposes of the Table, vaccinial myocarditis, pericarditis, or myopericarditis. Myocarditis is defined as an inflammation of the heart muscle (myocardium). Pericarditis is defined as an inflammation of the covering of the heart (pericardium). Myopericarditis is defined as an inflammation of both the heart muscle and its covering. The inflammation associated with MP may range in severity from very mild (subclinical) to life threatening. In many mild cases, myocarditis is diagnosed solely by transient electrocardiographic (EKG) abnormalities (e.g., ST segment and T wave changes), increased cardiac enzymes, or mild echocardiographic abnormalities. Arrhythmias, abnormal heart sounds, heart failure, and death may occur in more severe cases. Pericarditis generally manifests with chest pain, abnormal heart sounds (pericardial friction rub), EKG abnormalities (e.g., ST segment and T wave changes), and/or increased fluid accumulation around the heart.

(ii) *Table requirements*. A Table injury for MP in a recipient or contact requires sufficient evidence in the medical records of the occurrence of acute MP. The acute MP (or related complications) must be of sufficient severity to require inpatient hospitalization. A death resulting from MP requires sufficient microscopic (histopathologic) evidence of MP or its sequela in heart tissue.

(c) *Glossary for Purposes of This Section*

(1) *Blister or vesicle* means a circumscribed, elevated skin or mucous membrane lesion containing an accumulation of fluid.

(2) *Contact* means a person who developed a vaccinial lesion or infection through inoculation (and not vaccination).

(3) *Exposure period* means the span of time during which vaccinia virus can be transmitted from a vaccine recipient shedding vaccinia or through a contact case shedding vaccinia.

(4) *Inoculation* means transmission of and infection with the vaccinia virus through a means other than smallpox vaccination. Spread (inoculation) of vaccinia virus may occur in two ways: either self-inoculation in which the vaccinia virus is spread from the vaccinial lesion at the vaccination site to one or more areas on the same person or person-to-person inoculation when the vaccinia virus is spread to another person, a contact.

(5) *Inoculation site* means the skin or mucous membrane surface where the vaccinia virus entered the body through means other than vaccination.

(6) *Lesion* means a pathologic change.

(7) *Pustule* means a circumscribed, elevated skin or mucous membrane lesion containing an accumulation of white blood cells.

(8) *Recipient* means a person to whom the smallpox vaccine was administered.

(9) *Ulceration* means a specific skin or mucous membrane lesion characterized by erosion of the skin or mucous membrane surface.

(10) *Vaccination* means the administration and receipt of the smallpox (vaccinia) vaccine, and not through contact.

(11) *Vaccination site* means the skin surface where the vaccinia virus entered the body through vaccination.

[FR Doc. 03-21906 Filed 8-26-03; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 1

[USCG 2003-15137]

RIN 1625-AA71

Right To Appeal; Director, Great Lakes Pilotage

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On June 23, 2003, we published a direct final rule that notified the public of the Coast Guard's intent to amend its appellate procedures to provide explicit authority for appeal

of decisions or actions taken by the Director, Great Lakes Pilotage. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, the rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as August 22, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Tom Lawler, Coast Guard, telephone 202-267-1241. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202-366-0271.

SUPPLEMENTARY INFORMATION: On June 23, 2003, we published a direct final rule [68 FR 37091] that notified the public of the Coast Guard's intent to amend its appellate procedures to provide explicit authority for appeal of decisions or actions taken by the Director, Great Lakes Pilotage. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, the rule will go into effect as scheduled.

Dated: August 21, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03-21966 Filed 8-26-03; 8:45 am]

BILLING CODE 4910-15-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket Nos. 02-34 and 02-54, FCC 03-102]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts new satellite licensing procedures, intended to enable the Commission to issue satellite licenses more quickly. In addition, the Commission eliminates the anti-trafficking rule for satellites, together with new safeguards to protect against speculation. These actions are necessary to expedite provision of satellite services to the public, without allowing satellite license applicants to abuse the Commission's licensing procedures.

DATES: Effective August 27, 2003, except for §§ 25.137(d)(4), 25.164 (c) through

(e), and 25.165 which will become effective September 11, 2003. The Commission has adopted a freeze on new satellite applications. This freeze is terminated as of August 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: This summary of the Commission's First Report and Order, IB Docket Nos. 02-34 & 02-54, FCC 03-102, adopted April 23, 2003, and released on May 19, 2003. The complete text of this First Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy 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@lol.com. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Paperwork Reduction Act Analysis: The actions taken in the First Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, and §§ 25.137(d)(4), 25.164(c) through (e), and 25.165 have been found to impose new or modified reporting requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements has been approved by the Office of Management and Budget (OMB). OMB granted approval for this information collection by means of a Notice of Action for collection number 3060-1007 dated August 13, 2003.

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM) in IB Docket No. 02-34.² The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

Need for, and Objectives of, the Proposed Rules. The objective of the proposed rules is to discourage parties from filing "speculative" satellite applications, i.e., applying for a satellite license without intending to construct the satellite facilities. These rule revisions are needed because speculative satellite applications can delay or preclude other parties from obtaining a satellite license and providing service to the public.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were submitted in response to the IRFA.

Description and Estimate of the Number of Small Entities To Which Rules Will 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.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ 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).⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."¹⁰ As of 1992, there were approximately 85,006 such jurisdictions in the United

States.¹¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules adopted in this *First Report and Order* affect satellite operators. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.¹² This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.¹³ 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under \$10 million. In addition, 24 firms had receipts for that year of \$10 million to \$24,999,990.¹⁴

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate of the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In this *First Report and Order*, the Commission adopts a mandatory electronic filing requirement for space station license applicants. The Commission believes that filing satellite license applications electronically is no more burdensome than submitting paper applications, because a majority

⁴ 5 U.S.C. 604(a)(3).

⁵ *Id.* 601(6).

⁶ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, 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**."

⁷ Small Business Act, 15 U.S.C. 632 (1996).

⁸ 5 U.S.C. 601(4).

⁹ 1992 Economic Census, U.S. Business of the Census, Table 6 (special tabulation of data under contract to Office of the Advocation of the U.S. Small Business Administration).

¹⁰ 5 U.S.C. 601(5).

¹¹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

¹² "This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

¹³ 13 CFR 120.121, NAICS code 513340.

¹⁴ U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, "Establishment and Firm Size," Table 4, NAICS 513340 (Issued Oct. 2000).

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), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² Amendment of the Commission's Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, IB Docket No. 02-34, 67 FR 12498 (Mar. 19, 2002) (NPRM).

³ See 5 U.S.C. 604.

of satellite applicants currently file their applications electronically on a voluntary basis.

None of the other rules adopted in this *First Report and Order* are expected to increase the reporting, record keeping and other compliance requirements of any licensee.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁵

In this proceeding, we adopt rule revisions designed to allow the Commission to issue satellite licenses faster than is now possible, which will enable satellite operators to provide service faster, and to attract investors faster. This will have a positive economic impact on all satellite licensees, including small entities.

In the *NPRM*, the Commission proposed applying a first-come, first-served procedure to all satellite applications, including non-geostationary satellite applications. In the *First Report and Order*, the Commission concluded that applying a first-come, first-served procedure to non-geostationary satellite applications could enable one applicant to unreasonably exclude others, including small entities, from the market. Accordingly, the Commission rejected this proposal.

Report to Congress: The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Summary of Report and Order: In this document, the Commission adopts new

satellite licensing procedures, intended to enable the Commission to issue satellite licenses more quickly. First, the Commission establishes a queue for satellite applications, based on the date and time they are filed. If an application is filed before a needed international frequency allocation is adopted, the application will be returned as premature. If an application is filed before a needed domestic frequency allocation is adopted, the application will be considered only pursuant to a waiver of the Table of Frequency Allocations, 47 CFR 2.106. If an application is filed after international and domestic frequency allocations are adopted, but before the Commission adopts service-band specific service rules, the application will be considered only subject to default service rules adopted in the *First Report and Order*. Included in those default service rules is a requirement for the applicant to disclose its orbital debris mitigation proposals, if any. This requirement is based on the record in IB Docket No. 02–54. In addition, as explained further below, the Commission adopts different procedures for non-geostationary satellite orbit (NGSO) satellite system applications and geostationary satellite orbit (GSO) applications. If an applicant files an application before there are GSO/NGSO sharing criteria for that band, then we will consider only GSO applications or NGSO applications, depending on which is filed first, until the Commission adopts sharing criteria. If a GSO application and an NGSO application are filed at the same time, the band will be split proportionally between GSOs and NGSOs.

Second, the Commission adopts different procedures for different types of satellite applications. When a non-geostationary satellite orbit (NGSO) application or a geostationary satellite orbit (GSO) Mobile Satellite Service (MSS) application (together, “NGSO-like”) reaches the front of the queue, the Commission starts a modified processing round, and divides the available spectrum equally among all the qualified applicants. If a licensee loses or surrenders its license, the spectrum assigned to that licensee will be reassigned to the remaining licensees, unless the number of remaining licensees is sufficient to make reasonably efficient use of the frequency band. The Commission presumes that this number is three. In this case, the Commission will announce another processing round for the newly available spectrum. Similarly, the Commission will start another processing round if there are fewer than

three qualified applicants in the initial processing round.

When a non-geostationary satellite (GSO) application other than a GSO MSS application reaches the front of the queue, the Commission considers it on a first-come, first-served basis. The Commission will grant each of those applications if the applicant is qualified, and the proposed satellite would not conflict with any other previously licensed satellite. If two or more qualified GSO-like applications are filed at the same thousandth of a second, the Commission will divide the spectrum equally among the qualified applicants at that orbit location. If a GSO-like licensee loses its license, that orbit location will become available for another GSO-like applicant on a first-come, first-served basis.

For both the modified processing round and first-come, first-served procedures, the Commission revises its rules for amendments to satellite applications and modifications to satellite licenses.

In addition, the Commission eliminates the anti-trafficking rule for satellites, together with new safeguards to protect against speculation. By eliminating the anti-trafficking rule, the Commission will no longer review transfer of control applications to determine whether the transaction is the sale of a bare license for profit. The Commission will still review such applications to determine whether the transaction will further the public interest, convenience, and necessity.

Together with the elimination of the anti-trafficking rule, the Commission adopts safeguards to protect against speculation. First, the Commission replaces the financial qualification rules with a bond requirement. Formerly, the Commission required satellite license applicants to show that they have financing available to construct and launch the satellite and operate it for one year. Here, the Commission replaces that requirement with a requirement that licensees post a bond within 30 days of grant of the license, payable upon missing a milestone. The bond amount is \$7.5 million for NGSO-like applications, and \$5 million for GSO-like applications. The amount of the bond may be reduced when the licensee meets each of its milestones.

The Commission also adopts new milestones. The NGSO-like milestones are now: (1) Contract execution; (2) critical design review; (3) commencement of construction; (4) launch; and (5) bring entire system into operation. The GSO-like milestones are (1) contract execution; (2) critical design review; (3) commencement of

¹⁵ 5 U.S.C. 603(c)(1)–(c)(4).

construction; and (4) launch. In addition, the Commission adopts information requirements for licensees to demonstrate that they have met each of the new milestones.

To protect further against speculative applications, the Commission adopts a limit on the number of pending applications and unbuilt satellites any applicant may have in any frequency band. Those limits are five GSO orbit locations and one NGSO satellite system. So that applicants do not undercut the policy goals of these limits, the Commission also adopts an attribution rule prohibiting a party from filing a satellite application if it holds more than 33 percent of the total asset value of applicants with applications for five GSO orbital locations, and one NGSO satellite system, in any frequency band, pending before the Commission. Stricter limits apply to applicants who establish a pattern of missing milestones. Applicants who have established such a pattern, and have two or more applications pending, or two licensed-but-unbuilt satellite systems of any kind, will not be permitted to file another GSO-like application or NGSO-like application in any frequency band.

In addition to these safeguards, the Commission prohibits applicants from selling their place in the queue, and require applications to be substantially complete.

The Commission adopts a number of other provisions in this *First Report and Order*. First, the Commission adopts mandatory electronic filing of space station applications. Second, the Commission creates a streamlined procedure for replacement satellite applications. Third, the Commission revises its full frequency reuse requirements. The Commission also extends the license terms of certain satellite licenses from 10 to 15 years. Finally, the Commission established a freeze on new satellite applications. This freeze is terminated as of August 27, 2003.

In addition, the Commission revises the procedures for non-U.S.-licensed satellite operators seeking access to the U.S. market, to be consistent with the new procedures for U.S. license applications. The Commission also adopted provisions for Permitted List satellite modifications, replacements of Permitted List satellites, and changes of ownership of satellites on the Permitted List.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(j), 7(a), 11, 301, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as

amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157(a), 161, 301, 303(c), 303(f), 303(g), 303(r), that this *First Report and Order* in IB Docket Nos. 02–34 and 02–54 is hereby *adopted*.

It is further ordered that parts 1 and 25 of the Commission's rules *are amended*.

It is further ordered that the provisions of this *First Report and Order* in IB Docket Nos. 02–34 and 02–54, other than §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, will be effective August 27, 2003.

It is further ordered that §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, as adopted in this *First Report and Order*, will be effective September 11, 2003.

It is further ordered that, effective upon the adoption date of this *First Report and Order* in IB Docket Nos. 02–34 and 02–54, no applications for space station licenses for any satellite service addressed in this *First Report and Order* will be accepted for filing. This freeze will continue until August 27, 2003.

It is further ordered that the license term of each space station license issued on or before April 17, 2002, and in effect on the release date of this Order, *is hereby extended* to 15 years, starting on the date the licensee certified to the Commission that the space station was successfully placed in orbit and its operations fully conform to the terms and conditions of its authorization.

It is further ordered that the Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *First Report and Order* in IB Docket Nos. 02–34 and 02–54, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative Practice and Procedure.

47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 25 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Amend § 1.1113 by adding paragraph (d) to read as follows:

§ 1.1113 Return or refund of charges.

* * * * *

(d) Applicants for space station licenses under the first-come, first served procedure set forth in part 25 of this title will be entitled to a refund of the fee if, before the Commission has placed the application on public notice, the applicant notifies the Commission that it no longer wishes to keep its application on file behind the licensee and any other applicants who filed their applications before its application, and specifically requests a refund of the fee and dismissal of its application.

PART 25—SATELLITE COMMUNICATIONS

■ 3. 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, 332, unless otherwise noted.

■ 4. Amend § 25.112 by adding paragraph (a)(3) and revising paragraph (b) introductory text to read as follows:

§ 25.112 Defective applications.

(a) * * *

(3) The application requests authority to operate a space station in a frequency band that is not allocated internationally for such operations under the Radio Regulations of the International Telecommunication Union.

(b) Applications for space station authority found defective under paragraph (a)(3) of this section will not be considered. Applications for authority found defective under paragraphs (a)(1) or (a)(2) of this section may be accepted for filing if:

* * * * *

■ 5. Amend § 25.113 by revising paragraph (g) to read as follows:

§ 25.113 Construction permits, station licenses, launch authority.

* * * * *

(g) A launch authorization and station license (*i.e.*, operating authority) must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization may be included in an application for space station license. However, an application for authority to launch and operate an on-ground spare satellite will be considered pursuant to the following procedures:

(1) Applications for launch and operation of an on-ground spare NGSO-

like satellite will be considered pursuant to the procedures set forth in § 25.157, except as set forth in paragraph (g)(3) of this section.

(2) Applications for launch and operation of an on-ground spare GSO-like satellite will be considered pursuant to the procedures set forth in § 25.158, except as set forth in paragraph (g)(3) of this section.

(3) Neither paragraph (g)(1) nor (g)(2) of this section will apply in cases where the space station to be launched is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

■ 6. Amend § 25.114 by revising paragraph (b) and removing and reserving paragraph (c)(13), to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation. Each application must also contain the formal waiver required by section 304 of the Communications Act, 47 U.S.C. 304. The technical information for a proposed satellite system need not be filed on any prescribed form but should be complete in all pertinent details. Applications for new space station authorizations other than authorizations for the Direct Broadcast Service (DBS) and Digital Audio Radio Satellite (DARS) service must be filed electronically through the International Bureau Filing System (IBFS).

(c) * * *

(13) [Reserved]

* * * * *

7. Amend § 25.116 by removing and reserving paragraph (b)(3); adding paragraph (b)(5); revising paragraph (c) introductory text; redesignating paragraph (d) as (e); and adding new paragraph (d) to read as follows:

§ 25.116 Amendments to applications.

* * * * *

(b) * * *

(3) [Reserved]

* * * * *

(5) Amendments to “defective” space station applications, within the meaning of § 25.112 will not be considered.

(c) Any application for an NGSO-like satellite license within the meaning of § 25.157 will be considered to be a newly filed application if it is amended by a major amendment (as defined by paragraph (b) of this section) after a “cut-off” date applicable to the

application, except under the following circumstances:

* * * * *

(d) Any application for a GSO-like satellite license within the meaning of § 25.158 will be considered to be a newly filed application if it is amended by a major amendment (as defined by paragraph (b) of this section), and will cause the application to lose its status relative to later-filed applications in the “queue” as described in § 25.158.

* * * * *

■ 8. Amend § 25.117 by redesignating paragraph (d) as (d)(1), and adding paragraph (d)(2) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(d) * * *

(2) Applications for modifications of space station authorizations will be granted except under the following circumstances:

(i) Granting the modification would make the applicant unqualified to operate a space station under the Commission’s rules.

(ii) Granting the modification request would not serve the public interest, convenience, and necessity.

(iii) Except as set forth in paragraph (d)(2)(iv) of this section, applications for modifications of GSO-like space station authorizations granted pursuant to the procedure set forth in § 25.158, which seek to relocate a GSO satellite or add a frequency band to the authorization, will be placed in a queue pursuant to § 25.158 and considered only after previously filed space station license applications or space station modification applications have been considered.

(iv) Applications for modifications of space station authorizations to increase the authorized bandwidth will not be considered in cases in which the original space station authorization was granted pursuant to the procedures set forth in § 25.157(e) or § 25.158(c)(4).

* * * * *

■ 9. Amend § 25.119 by adding paragraph (g) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

* * * * *

(g) The Commission retains discretion in reviewing assignments and transfers of control of space station licenses to determine whether the initial license was obtained in good faith with the intent to construct a satellite system.

■ 10. Amend § 25.120 by revising paragraph (b) to read as follows:

§ 25.120 Application for special temporary authorization.

* * * * *

(b)(1) The Commission may grant a temporary authorization only upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these temporary operations would seriously prejudice the public interest. Convenience to the applicant, such as marketing considerations or meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose.

(2) The Commission may grant a temporary authorization for a period not to exceed 180 days, with additional periods not exceeding 180 days, if the Commission has placed the special temporary authority (STA) request on public notice.

(3) The Commission may grant a temporary authorization for a period not to exceed 60 days, if the STA request has not been placed on public notice, and the applicant plans to file a request for regular authority for the service.

(4) The Commission may grant a temporary authorization for a period not to exceed 30 days, if the STA request has not been placed on public notice, and an application for regular authority is not contemplated.

* * * * *

■ 11. Amend § 25.121 by revising paragraph (e) to read as follows:

§ 25.121 License term and renewals.

* * * * *

(e) *Renewal of licenses.* Applications for renewals of earth station licenses must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days, and no later than 30 days, before the expiration date of the license. Applications for space station system replacement authorization for non-geostationary orbit satellites shall be filed no earlier than 90 days, and no later than 30 days, prior to the end of the twelfth year of the existing license term.

■ 12. Amend § 25.137 by revising paragraphs (b), (c), and (d), and adding paragraphs (e), (f), and (g), to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

* * * * *

(b) Earth station applicants, or entities filing a “letter of intent,” or “Petition for Declaratory Ruling,” requesting authority to operate with a non-U.S. licensed space station must attach to

their FCC Form 312 an exhibit providing legal and technical information for the non-U.S. licensed space station in accordance with part 25. Applications addressed in this paragraph must be filed electronically through the International Bureau Filing System (IBFS).

(c) A non-U.S. licensed NGSO-like satellite system seeking to serve the United States can be considered contemporaneously with other U.S. NGSO-like satellite system pursuant to § 25.157 and considered before later-filed applications of other U.S. satellite system operators, and a non-U.S.-licensed GSO-like satellite system seeking to serve the United States can have its request placed in a queue pursuant to § 25.158 and considered before later-filed applications of other U.S. satellite system operators, if the non-U.S. licensed satellite system is:

- (1) In orbit and operating;
 - (2) Has a license from another administration; or
 - (3) Has been submitted for coordination to the International Telecommunication Union.
- (d) Earth station applicants requesting authority to operate with a non-U.S. licensed space station must demonstrate that the space station the applicant seeks to access has complied with all applicable Commission requirements for non-U.S. licensed systems to operate in the United States, including but not limited to the following:

- (1) Milestones;
- (2) Reporting requirements;
- (3) Any other applicable service rules;
- (4) Posting a bond of \$7.5 million for NGSO-like satellite systems, or \$5 million for GSO-like satellites, denominated in U.S. dollars, compliant with the terms of § 25.165;
- (5) Non-U.S. licensed GSO-like space station operators with a total of five requests for access to the U.S. market in a particular frequency band, or a total of five previously granted requests for access to the U.S. market with unbuilt GSO-like space stations in a particular frequency band, or a combination of pending GSO-like requests and granted requests for unbuilt GSO-like space stations in a particular frequency band that equals five, will not be permitted to request access to the U.S. market with another GSO-like space station license in that frequency band. In addition, non-U.S.-licensed NGSO-like satellite system operators with one request on file with the Commission in a particular frequency band, or one granted request for an unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to request access to the U.S. market with another NGSO-

like satellite system in that frequency band.

(e) A non-U.S.-licensed satellite operator that is seeking to serve the United States pursuant to a Letter of Intent may amend its request by submitting an additional Letter of Intent. Such additional Letters of Intent will be treated as amendments filed by U.S. space station applicants for purposes of determining the order in which the Letters of Intent will be considered relative to other pending applications.

(f) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Letter of Intent or Petition for Declaratory Ruling, may modify its U.S. operations under the procedures set forth in § 25.117(d).

(g) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Petition for Declaratory Ruling must notify the Commission if it plans to transfer control or assign its license to another party, so that the Commission can afford interested parties an opportunity to comment on whether the proposed transaction affects any of the considerations we made when we allowed the satellite operator to enter the U.S. market. If the transferee or assignee is not licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement, the non-U.S.-licensed satellite operator will be required to make the showing described in paragraph (a) of this section.

■ 13. Amend § 25.140 by revising paragraph (b) and removing and reserving paragraphs (c) through (g) to read as follows:

§ 25.140 Qualifications of fixed-satellite space station licensees.

* * * * *

(b) Each applicant for a space station authorization in the fixed-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is legally, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization. Each applicant must provide the following information:

- (1) The information specified in § 25.114; and
- (2) An interference analysis to demonstrate the compatibility of its proposed system 2 degrees from any authorized space station. An applicant

should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See, e.g., appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service (available at address in § 0.445)).

(c)-(g) [Reserved]

* * * * *

§ 25.141 [Amended]

■ 14. Amend § 25.141 by removing and reserving paragraph (b).

■ 15. Amend § 25.142 by revising paragraph (a)(1), and by removing and reserving paragraph (a)(4) to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

(a) *Space station application requirements.* (1) Each application for a space station system authorization in the non-voice, non-geostationary mobile-satellite service shall describe in detail the proposed non-voice, non-geostationary mobile-satellite system, setting forth all pertinent technical and operational aspects of the system, and the technical and legal qualifications of the applicant. In particular, each application shall include the information specified in § 25.114. Applicants must also file information demonstrating compliance with all requirements of this section, and showing, based on existing system information publicly available at the Commission at the time of filing, that they will not cause unacceptable interference to any non-voice, non-geostationary mobile-satellite service system authorized to construct or operate.

* * * * *

(4) [Reserved]

* * * * *

§ 25.143 [Amended]

■ 16. Amend § 25.143 by removing and reserving paragraphs (b)(3) and (g).

■ 17. Amend § 25.144 by revising paragraph (b) to read as follows:

§ 25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.

* * * * *

(b) Milestone requirements. Each applicant for system authorization in the satellite digital audio radio service must demonstrate within 10 days after a required implementation milestone as specified in the system authorization,

and on the basis of the documentation contained in its application, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the milestone has been met. The satellite DARS milestones are as follows, based on the date of authorization:

* * * * *

§ 25.145 [Amended]

■ 18. Amend § 25.145 by removing and reserving paragraph (d).

§ 25.146 [Amended]

■ 19. Amend § 25.146 by removing and reserving paragraph (i).

■ 20. Revise § 25.155 to read as follows:

§ 25.155 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more other applications.

(b) An application for an NGSO-like space station license, within the meaning of § 25.157, will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another NGSO-like space station application; and

(2) The application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

(c) An application for a GSO-like space station license, within the meaning of § 25.158, will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another GSO-like space station application; and

(2) The application is received by the Commission in a condition acceptable for filing at the same millisecond as another GSO-like space station application with which it is mutually exclusive.

■ 21. Amend § 25.156 by adding paragraph (d) to read as follows:

§ 25.156 Consideration of applications.

* * * * *

(d)(1) Applications for NGSO-like satellite systems will be considered pursuant to the procedures set forth in § 25.157.

(2) Applications for GSO-like satellite systems will be considered pursuant to the procedures set forth in § 25.158.

(3) Applications for NGSO-like satellite and GSO-like systems employing two or more service bands will be treated like separate applications for each service band, and each service band request will be considered pursuant to § 25.157 or § 25.158, as appropriate.

(4) Applications for feeder link authority or intersatellite link authority will be treated like an application separate from its associated service band. Each feeder link request or intersatellite link request will be considered pursuant to the procedure for GSO-like service or NGSO-like service, as applicable.

(5) In cases where the Commission has not adopted frequency-band specific service rules, the Commission will not consider NGSO-like applications after it has granted a GSO-like application, and it will not consider GSO-like applications after it has granted an NGSO-like application, unless and until the Commission establishes NGSO/GSO sharing criteria for that frequency band. In the event that the Commission receives NGSO-like applications and GSO-like applications at the same time, and the Commission has not adopted sharing criteria in that band, the Commission will divide the spectrum between GSO-like and NGSO-like licensees based on the proportion of qualified GSO-like and NGSO-like applicants.

(6) An application for DBS or DARS services will be entitled to comparative consideration with one or more conflicting applications only if:

(i) The application is mutually exclusive with another application; and

(ii) The application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

■ 22. Add § 25.157 to read as follows:

§ 25.157 Consideration of NGSO-like satellite applications.

(a) This section specifies the Commission's procedures for considering license applications for "NGSO-like satellite systems." For purposes of this section, the term "NGSO-like satellite system" is defined as:

(1) All NGSO satellite systems, and
(2) All GSO MSS satellite systems, in which the satellites are designed to communicate with earth stations with omni-directional antennas.

(b) Each NGSO-like satellite system application will be reviewed to determine whether it is acceptable for

filing within the meaning of § 25.112. Any application that is not acceptable for filing would be returned to the applicant.

(c) Each NGSO-like satellite system application that is acceptable for filing will be reviewed to determine whether it is a "competing application," *i.e.*, filed in response to a public notice initiating a processing round, or a "lead application," *i.e.*, all other NGSO-like satellite system applications.

(1) Competing applications that are acceptable for filing will be placed on public notice to provide interested parties an opportunity to file pleadings in response to the application pursuant to § 25.154.

(2) Lead applications that are acceptable for filing will be placed on public notice. This public notice will initiate a processing round, establish a cut-off date for competing NGSO-like satellite system applications, and provide interested parties an opportunity to file pleadings in response to the application pursuant to § 25.154.

(d) After review of each of the applications in the processing round, and all the pleadings filed in response to each application, the Commission will grant all the applications that meet the standards of § 25.156(a), and deny the other applications.

(e)(1) In the event that there is insufficient spectrum in the frequency band available to accommodate all the qualified applicants in a processing round, the available spectrum will be divided equally among the licensees whose applications are granted pursuant to paragraph (d) of this section, except as set forth in paragraph (e)(2) or (e)(3) of this section.

(2) In cases where there are only one or two applications in a processing round granted pursuant to paragraph (d) of this section, each applicant will be assigned 1/3 of the available spectrum, and the remaining spectrum will be made available to other licensees in an additional processing round pursuant to paragraph (c) of this section.

(3) In cases where there are three or more applications in a processing round granted pursuant to paragraph (d) of this section, and one or more applicants apply for less spectrum than they would be warranted under paragraph (e)(1) of this section, those applicants will be assigned the bandwidth amount they requested in their applications. In those cases, the remaining qualified applicants will be assigned the lesser of the amount of spectrum they requested in their applications and the amount spectrum that they would be assigned if the available spectrum were divided

equally among the remaining qualified applicants.

(f)(1) Each licensee will be allowed to select the particular band segment it wishes to use no earlier than 60 days before they plan to launch the first satellite in its system, and no later than 30 days before that date, by submitting a letter to the Secretary of the Commission. The licensee shall serve copies of this letter to the other participants in the processing round pursuant to § 1.47 of this chapter.

(2) The licensee shall request contiguous bandwidth in both the uplink and downlink band. Each licensee's bandwidth selection in both the uplink and downlink band shall not preclude other licensees from selecting contiguous bandwidth.

(3) If two or more licensees in a processing round request the same band segment, all licensees other than the first one to request that particular band segment will be required to make another selection.

(g)(1) In the event that an applicant's license is cancelled for any reason, the Commission will redistribute the bandwidth allocated to that applicant equally among the remaining applicants whose licenses were granted concurrently with the cancelled license, unless the Commission determines that such a redistribution would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band.

(2) In the event that the redistribution of bandwidth set forth in paragraph (g)(1) of this section would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band, the Commission will issue a public notice initiating a processing round, as set forth in paragraph (c) of this section, to invite parties to apply for an NGSO-like satellite system license to operate in a portion of the bandwidth made available as a result of the cancellation of the initial applicant's license. Parties already holding licenses to operate an NGSO-like satellite system in that frequency band will not be permitted to participate in that processing round.

(3) There is a presumption that three satellite licensees in a frequency band are sufficient to make reasonably efficient use of the frequency band.

(h) Services offered pursuant to an NGSO-like license in a frequency band granted before the Commission has adopted frequency-band-specific service rules for that band will be subject to the default service rules in § 25.217.

■ 23. Add § 25.158 to read as follows:

§ 25.158 Consideration of GSO-like satellite applications.

(a) This section specifies the Commission's procedures for considering license applications for "GSO-like satellite systems." For purposes of this section, the term "GSO-like satellite system" is defined as a GSO satellite designed to communicate with earth stations with directional antennas. Examples of GSO-like satellite systems are those which use earth stations with antennas with directivity towards the satellites, such as FSS, and MSS feeder links which use GSO satellites. GSO-like satellite systems are satellite systems that are not NGSO-like satellite systems within the meaning of § 25.157(a).

(b) Applications for GSO-like satellite system licenses will be placed in a queue and considered in the order that they are filed, pursuant to the following procedure:

(1) The application will be reviewed to determine whether it is acceptable for filing within the meaning of § 25.112. If not, the application will be returned to the applicant.

(2) If the application is acceptable for filing, the application will be placed on public notice pursuant to § 25.151, and interested parties will be given an opportunity to file pleadings pursuant to § 25.154.

(3) The application will be granted only if it meets each of the following criteria:

(i) After review of the application and any pleadings filed in response to that application, the Commission finds that the application meets the standards of § 25.156(a); and

(ii) The proposed satellite will not cause harmful interference to any previously licensed operations.

(c) An applicant for a GSO-like satellite system license is not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.

(d) In the event that two or more GSO-like satellite system license applications are mutually exclusive within the meaning of § 25.155(c), the Commission will consider those applications pursuant to the following procedure:

(1) Each application will be reviewed to determine whether it is acceptable for filing within the meaning of § 25.112. Any application not found acceptable for filing will be returned to the applicant.

(2) All applications that are acceptable for filing will be placed on public notice pursuant to § 25.151, and interested parties will be given an opportunity to file pleadings pursuant to § 25.154.

(3) Each application will be granted if it meets the criteria of paragraph (b)(3) of this section, and otherwise will be denied.

(4) In the event that two or more applications are granted pursuant to paragraph (d)(3) of this section, the available bandwidth at the orbital location or locations in question will be divided equally among those licensees.

(5) Licensees whose licenses are granted pursuant to paragraph (d)(4) of this section will be allowed to select the particular band segment it wishes to use no earlier than 60 days before they plan to launch the first satellite in its system, and no later than 30 days before that date, by submitting a letter to the Secretary of the Commission. The licensee shall serve copies of this letter to the other participants in the processing round pursuant to § 1.47 of this chapter.

(6) Licensees whose licenses are granted pursuant to paragraph (d)(4) of this section shall request contiguous bandwidth in both the uplink and downlink band. Each licensee's bandwidth selection shall not preclude other licensees from selecting contiguous bandwidth.

(7) If two or more licensees whose licenses are granted pursuant to paragraph (d)(4) of this section request the same band segment, all licensees other than the first one to request that particular band segment will be required to make another selection.

(e) Services offered pursuant to a GSO-like license in a frequency band granted before the Commission has adopted frequency-band-specific service rules for that band will be subject to the default service rules in § 25.217.

■ 24. Add § 25.159 to read as follows:

§ 25.159 Limits on pending applications and unbuilt satellite systems.

(a) Applicants with a total of five applications for GSO-like space station licenses on file with the Commission in a particular frequency band, or a total of five licensed-but-unbuilt GSO-like space stations in a particular frequency band, or a combination of pending GSO-like applications and licensed-but-unbuilt GSO-like space stations in a particular frequency band that equals five, will not be permitted to apply for another GSO-like space station license in that frequency band.

(b) Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band, or one licensed-but-unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to apply for

another NGSO-like satellite system license in that frequency band.

(c) If an applicant has an attributable interest in one or more other entities seeking one or more space station licenses, the pending applications and licensed-but-unbuilt satellite systems filed by those other entities will be counted as filed by the applicant for purposes of the limits on the number of pending space station applications and licensed-but-unbuilt satellite systems in this paragraph. For purposes of this paragraph, an applicant has an "attributable interest" in another entity if:

(1) It holds equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of that entity, or

(2) It holds a controlling interest in that entity, or is the subsidiary of a party holding a controlling interest in that entity, within the meaning of 47 CFR 1.2110(b)(2).

(3) For purposes of paragraphs (c)(1) and (c)(2) of this section, ownership interests shall be calculated on a fully diluted basis, *i.e.*, all agreements, such as warrants, stock options, and convertible debentures, will generally be treated as if the rights thereunder already have been fully exercised.

(d) In the event that a licensee misses three or more milestones within any three-year period, the Commission will presume that the licensee obtained one or more of those licenses for speculative purposes. Unless the licensee rebuts this presumption, it will not be permitted to apply for a GSO-like satellite or an NGSO-like satellite system in any frequency band if it has two or more satellite applications pending, or two licensed-but-unbuilt satellite systems of any kind. This limit will remain in effect until the licensee provides adequate information to demonstrate that it is very likely to construct its licensed facilities if it were allowed to file more applications.

(e) For purposes of this section, "frequency band" means one of the paired frequency bands available for satellite service listed in § 25.202.

■ 25. Amend § 25.161 by revising paragraph (a) to read as follows:

§ 25.161 Automatic termination of station authorization.

* * * * *

(a)(1) Failure to meet any applicable milestone for implementation of the licensed satellite system specified in §§ 25.164(a) and/or (b), without

demonstrating that the failure was caused by circumstances beyond the licensee's control, or

(2) If there are no applicable milestones for implementation of the licensed satellite system specified in §§ 25.164(a) and/or (b), the expiration of the required date of completion of construction or other required action specified in the authorization, or after any additional time authorized by the Commission, if a certification of completion of the required action has not been filed with the Commission unless a request for an extension of time has been filed with the Commission but has not been acted on.

* * * * *

■ 26. Add § 25.164 to subpart B to read as follows:

§ 25.164 Milestones.

(a) Licensees of geostationary orbit satellite systems other than DBS and DARS satellite systems, including GSO MSS satellite systems, licensed on or after August 27, 2003 will be required to comply with the schedule set forth in paragraphs (a)(1) through (a)(4) of this section in implementing their satellite systems, unless a different schedule is established by Title 47, Chapter I, or by Commission Order, or by Order adopted pursuant to delegated authority. These dates are to be measured from the date the license is issued.

(1) *One year:* Enter into a binding non-contingent contract to construct the licensed satellite system.

(2) *Two years:* Complete the critical design review of the licensed satellite system.

(3) *Three years:* Begin the construction of the satellite.

(4) *Five years:* Launch and operate the satellite.

(b) Licensees of non-geostationary orbit satellite systems other than DBS and DARS satellite systems licensed on or after September 11, 2003, will be required to comply with the schedule set forth in paragraphs (b)(1) through (b)(5) of this section in implementing their satellite systems, unless a different schedule is established by Title 47, Chapter I, or by Commission Order, or by Order adopted pursuant to delegated authority. These dates are to be measured from the date the license is issued.

(1) *One year:* Enter into a binding non-contingent contract to construct the licensed satellite system.

(2) *Two years:* Complete the critical design review of the licensed satellite system.

(3) *Two years, six months:* Begin the construction of the first satellite in the licensed satellite system.

(4) *Three years, six months:* Launch and operate the first satellite in the licensed satellite system.

(5) *Six years:* Bring all the satellites in the licensed satellite system into operation.

(c) Licensees of all satellite systems, other than DBS and DARS satellite systems, licensed on or after September 11, 2003, will be required to submit a copy of their binding non-contingent contract with the Commission on or before the date scheduled for entering into such a contract.

(d) Licensees of all satellite systems, other than DBS and DARS satellite systems, licensed on or after September 11, 2003, will be required to submit information to the Commission sufficient to demonstrate that the licensee has completed the critical design review of the licensed satellite system on or before the date scheduled for entering into such completion.

(e) Licensees of all satellite systems, other than DBS and DARS satellite systems, licensed on or after September 11, 2003, will be required to submit information to the Commission sufficient to demonstrate that the licensee has commenced physical construction of its licensed spacecraft on or before the date scheduled for such commencement.

(f) In cases where the Commission grants a satellite authorization in different stages, such as a license for a satellite system using feeder links or intersatellite links, the earliest of the milestone schedules shall be applied to the entire satellite system.

■ 27. Add § 25.165 to subpart B to read as follows:

§ 25.165 Posting of bonds.

(a) For all satellite licenses other than DBS and DARS licenses issued after September 11, 2003, the licensee is required to post a bond within 30 days of the grant of its license. Failure to post the required bond will render the license null and void automatically.

(1) NGSO-like licensees are required to post a bond in the amount of \$7.5 million.

(2) GSO-like licensees are required to post a bond in the amount of \$5 million.

(b) The licensee must use a surety company deemed acceptable within the meaning of 31 U.S.C. 9304 *et seq.* (See, e.g., Department of Treasury Fiscal Service, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsurance Companies, 57 FR 29356, July 1, 1992.) The bond must name the U.S. Treasury as beneficiary in the event of the licensee's default. The licensee must provide the Commission with a

copy of the performance bond, including all details and conditions.

(c) A licensee will be considered to be in default if it fails to meet any milestone deadline set forth in § 25.164, and, at the time of milestone deadline, the licensee has not provided a sufficient basis for extending the milestone.

(d) An NGSO-like licensee will be permitted to reduce the amount of the bond by 20 percent of the original bond amount upon successfully meeting a milestone deadline set forth in § 25.164(b). A GSO-like licensee will be permitted to reduce the amount of the bond by 25 percent of the original bond amount upon successfully meeting a milestone deadline set forth in § 25.164(a).

■ 28. Amend § 25.210 by removing and reserving paragraphs (e) and (g), and revising paragraph (f) to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(e) [Reserved]

(f) All space stations in the Fixed Satellite Service in the 3600–3700 MHz, 3700–4200 MHz, 5091–5250 MHz, 5825–5925 MHz, 5925–6425 MHz, 6425–6525 MHz, 6525–6700 MHz, 6700–7025 MHz, 10.7–10.95 GHz, 10.95–11.2 GHz, 11.2–11.45 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, 12.2–12.7 GHz, 12.75–13.15 GHz, 13.15–13.2125 GHz, 13.2125–13.25 GHz, 13.75–14.0 GHz, 14.0–14.5 GHz and 15.43–15.63 GHz bands shall employ state-of-the-art full frequency reuse either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams.

(g) [Reserved]

* * * * *

■ 29. Add § 25.217 to subpart C to read as follows:

§ 25.217 Default service rules.

(a) The technical rules in this section apply only to licenses to operate a satellite system in a frequency band granted after a domestic frequency allocation has been adopted for that frequency band, but before any frequency-band-specific service rules have been adopted for that frequency band.

(b)(1) For all NGSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.157 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply

with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(ii), 25.143(b)(2)(iii), 25.204(g), 25.210(c), 25.210(d), 25.210(f), 25.210(i), 25.210(k), and 25.210(l).

(2) In addition to the requirements set forth in paragraph (b)(1) of this section, the Commission will coordinate with the National Telecommunications and Information Administration (NTIA) regarding the operations of any licensees authorized to operate in a shared government/non-government frequency band, pursuant to the procedure set forth in § 25.142(b)(2)(ii).

(3) Earth station licensees authorized to operate with one or more space stations described in paragraph (b)(1) of this section shall comply with the requirements in § 25.136. In addition, earth station licensees authorized to operate with one or more space stations described in paragraph (b)(1) of this section in frequency bands shared with terrestrial wireless services shall comply with the requirements in § 25.203(c).

(c)(1) For all GSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.158 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(iv), 25.204(g), 25.210(c), 25.210(d), 25.210(f), 25.210(i), 25.210(j), 25.210(k), and 25.210(l).

(2) In addition to the requirements set forth in paragraph (c)(1) of this section, the Commission will coordinate with the National Telecommunications and Information Administration (NTIA) regarding the operations of any licensees authorized to operate in a shared government/non-government frequency band, pursuant to the procedure set forth in § 25.142(b)(2)(ii).

(3) Earth station licensees authorized to operate with one or more space stations described in paragraph (c)(1) of this section shall comply with the earth station antenna performance verification requirements in § 25.132, and the antenna gain pattern requirements in §§ 25.209(a) and (b). In addition, earth station licensees authorized to operate with one or more space stations described in paragraph (c)(1) of this section in frequency bands shared with terrestrial wireless services shall comply with the requirements in § 25.203(c).

(4) In addition to the requirements set forth in paragraph (c)(3) of this section, earth station licensees with a gain equivalent or higher than the gain of a 1.2 meter antenna operating in the 14.0–14.5 GHz band, authorized to operate with one or more space stations described in paragraph (c)(1) of this section in frequency bands greater than 14.5 GHz shall be required to comply with the antenna input power density requirements set forth in § 25.212(c).

(d) Applicants requesting authorization of a satellite subject to paragraphs (b) or (c) of this section must submit a narrative statement describing the debris mitigation design and operational strategies, if any, that they will use. Applicants are specifically required to submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(e) In the event that the Commission adopts frequency band-specific service rules for a particular frequency band after it has granted one or more space station or earth station licenses for operations in that frequency band, those licensees will be required to come into compliance with the frequency band-specific service rules within 30 days of the effective date of those rules, unless otherwise specified by either Commission or Bureau Order.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 030725185–3207–02; I.D. 071403B]

RIN 0648–AR34

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the turtle excluder device (TED) regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the southeastern Atlantic and the Gulf of Mexico, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS is allowing the use of a design of