

he or she may be entitled to administrative relief from recovery under § 255.16 of this part.

**§ 255.18 Compromise of overpayments.**

(a) This section sets forth the principal standards which the Board applies in exercising its authority under 31 U.S.C. 3711 to compromise an overpayment. In addition, the Board may compromise an overpayment under the Federal Claims Collection Standards set forth in 4 CFR part 103.

(b) An overpayment may be compromised only if it is in the best interest of the agency. Circumstances and factors to be considered are:

(1) The overpayment cannot be collected because of the overpaid individual's inability to pay the full amount of the overpayment within a reasonable time;

(2) The overpaid individual refuses to pay the overpayment in full and it appears that enforced collection procedures will take an inordinate amount of time or that the cost of collecting does not justify the enforced collection of the full amount; or

(3) There is doubt that the Board could prove its case in court for the full amount claimed because of a bona fide dispute as to the facts or because of the legal issues involved.

**§ 255.19 Suspension or termination of the collection of overpayments.**

This section sets forth the principal standards which the Board applies in approving the suspension or termination of the collection of an overpayment. In addition the Board may suspend or terminate collection under the Federal Claims Collection Standards set forth in 4 CFR part 104.

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable; or

(4) The claim is legally without merit or cannot be substantiated by the evidence.

Dated: November 21, 1997.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 97-31726 Filed 12-03-97; 8:45 am]

BILLING CODE 7905-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 25**

[IB Docket No. 96-111; CC Docket No. 93-23; FCC 97-399]

**Non-U.S.-Licensed Satellites Providing Domestic and International Service in the United States**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Federal Communications Commission (Commission) adopts a new standard for foreign participation in the U.S. satellite services market consistent with the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures we establish will provide opportunities for foreign entities to deliver satellite services in this country. The liberalized market conditions that will result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

**DATES:** These amendments contain information collection requirements which are not effective until approved by the Office of Management and Budget, subject to 5 U.S.C. 801(a)(3). FCC will publish a document in the **Federal Register** announcing the effective date. Public and agency comments on the modifications to the information collections are due on or before February 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Linda Haller at (202) 418-0760, Tania Hanna at (202) 418-0762, or Laurie Sherman at (202) 418-0429 of the International Bureau. For additional

information concerning the information collections contained in this Report and Order, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in IB Docket No. 96-111; CC Docket No. 93-23; FCC 97-399, adopted November 25, 1997 and released November 26, 1997. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, DC 20036, telephone: 202-857-3800; facsimile: 202-857-3805.

This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due on or before February 2, 1998; OMB notification of action is due February 2, 1998. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

This Report and Order contains modifications to approved collections and has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Judy Boley at (202) 418-0214. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, Paperwork Reduction Project, OMB No. 3060-0678, Washington, D.C. 20554. For further information contact Judy Boley, (202) 418-0214.

*OMB Approval Number: 3060-0678.*

*Title:* Commission's Rules and Regulations for Satellite Applications and Licensing Procedures.

*Form Number:* 312.

*Type of Review:* Revision of existing collections.

*Respondents:* Businesses or other for profit organizations, including small businesses, governments.

*Number of Respondents:* 1,310.

*Estimated Time Per Response:* The Commission estimates that all respondents will hire an attorney or legal assistant to complete the form. The time to retain these services is 2 hours per respondent.

*Total Annual Burden:* 2,620 hours.

*Estimated Costs Per Respondent:* This includes the charges for hiring an attorney, legal assistant, or engineer at \$150 an hour to complete the submissions. The estimated average time to complete the Form 312 is 11 hours per response. The estimated average time to complete space station submissions is 20 hours per response. The estimated average time to prepare submissions using non-U.S. licensed satellites is 22 hours per response. The estimated average time to complete the ASIA submission is 24 hours per response. Fee amounts vary by type of service and application. Total fee estimates for industry are approximately \$5,800,000.00.

*Needs and Uses:* In accordance with the Communications Act, the information collected will be used by the Commission in evaluating applications requesting authority to operate pursuant to part 25 of the Commission's rules. The information will be used to determine the legal, technical, and financial ability of the applicants and will assist the Commission in determining whether grant of such authorizations are in the public interest.

### Summary of Report and Order

1. In this Report and Order, the Commission takes an historic step by implementing the market opening commitments made by the United States in the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).<sup>1</sup> The WTO Basic Telecom Agreement, which will take effect on January 1, 1998,<sup>2</sup> is the

<sup>1</sup> The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 336 (1997) (the "Fourth Protocol to the GATS"). These results, as well as the basic obligations contained in the GATS, are referred to in this summary as the "WTO Basic Telecom Agreement."

<sup>2</sup> See ¶3 of the Fourth Protocol to the GATS.

culmination of the efforts of the United States and 68 other WTO Members to bring competition to global markets for telecommunications services, including satellite services. The WTO Basic Telecom Agreement is centered on the principles of open markets, private investment, and competition. It covers nations that account for 90 percent of worldwide telecommunications services revenues. By opening markets worldwide, the WTO Basic Telecom Agreement will allow new entrants to deploy innovative, cost-effective technologies, and thereby advance the growth of satellite services around the globe.

2. The Commission is optimistic that global implementation of the WTO Basic Telecom Agreement will result in significant worldwide benefits to consumers and providers. At the same time, it recognizes that much work needs to be done to ensure that the promise of the WTO Basic Telecom Agreement is fulfilled. With this Report and Order and the companion Foreign Participation in the U.S. Telecommunications Market Report and Order,<sup>3</sup> the Commission has implemented the letter and the spirit of the market opening commitments made by the United States. The Commission expects that foreign entities will begin to enter and compete in the U.S. market soon after January 1, 1998. The Commission also expects that U.S. providers will likewise be able to enter and compete in previously-closed foreign markets.

3. Under the terms of the WTO Basic Telecom Agreement, the United States has committed to allow foreign suppliers to provide a broad range of basic telecommunications services, including satellite services, in the United States. In return, most of the world's major trading nations have made binding commitments to move from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services. In this Report and Order, the Commission implements the United States' commitments to provide access to the U.S. market for satellite services by establishing a framework for assessing applications by non-U.S. licensed satellite systems to serve the United States.

4. The common sense policies and rules the Commission adopts will produce substantial public interest benefits for U.S. consumers. First, they

<sup>3</sup> Foreign Participation in the U.S. Telecommunications Market Report and Order, FCC 97-398 (released November 26, 1997) (Foreign Participation Order).

will facilitate greater competition in the U.S. satellite services market. Enhanced competition in the U.S. market, in turn, will provide users more alternatives in choosing communications providers and services, as well as reduce prices and facilitate technological innovation. In addition to encouraging a more competitive satellite market in the United States, this new environment will spur development of broader, more global satellite systems. These advancements will foster greater global community benefits by providing users, ranging from individual consumers and businesses to schools and hospitals, increased access to people, places, information, and ideas worldwide.

5. In the companion Foreign Participation Order, the Commission takes parallel steps to carry out the market opening commitments made by the United States in the WTO Basic Telecom Agreement. That order establishes a framework for facilitating entry into the U.S. market by foreign entities for provision of telecommunications services (other than satellite services). As in the companion order, in this Report and Order the Commission adopts for satellite services an approach that encourages foreign entry. Both decisions are guided by the common objective of promoting competition in the U.S. market, and achieving a more competitive global market for all basic telecommunications services.

6. While the United States was negotiating the WTO Basic Telecom Agreement, the Commission was exploring measures to increase opportunities for foreign entry in the United States satellite services market. The Commission began this proceeding in May 1996 by issuing a Notice of Proposed Rulemaking.<sup>4</sup> The NPRM proposed a uniform framework for permitting foreign-licensed satellite systems to serve the United States. Adopted when only a few of the world's satellite markets were open to competition by U.S. providers, the NPRM proposed to evaluate the effective competitive opportunities (ECO) in the country in which the foreign satellite was licensed (the ECO-Sat test) prior to granting an application to serve the United States. After the conclusion of the WTO Basic Telecom Agreement, the Commission issued a Further Notice of Proposed Rulemaking revising its proposals based on the

<sup>4</sup> In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Notice of Proposed Rulemaking, 11 FCC Rcd 18178 (1996), 61 FR 32398 (June 24, 1996) (NPRM).

market-opening changes that should result from the Agreement.<sup>5</sup> Both the NPRM and the FNPRM reflect the Commission's continuing objective to foster development of innovative satellite communications services for U.S. consumers through fair and vigorous competition among multiple service providers, including foreign-licensed satellites.

7. Specifically, in this Report and Order, the Commission adopts a framework under which it will consider requests for access by non-U.S. licensed satellites<sup>6</sup> into the United States. As required by Title III of the Communications Act of 1934, as amended (Communications Act), we will examine all requests to determine whether grant of authority is consistent with the public interest, convenience and necessity.<sup>7</sup> In making this determination, we will consider public interest factors such as the effect on competition in the United States, spectrum availability, eligibility and operating requirements, as well as national security, law enforcement, and trade and foreign policy concerns raised by the Executive Branch. The Commission adopts a presumption that entry by WTO Member satellite systems will promote competition in the U.S. satellite services market. Opposing parties may rebut the presumption by showing that granting the application would cause competitive harm in the U.S. satellite services market. Although we find that license conditions will generally provide sufficient protection against anticompetitive conduct, we recognize the possibility that circumstances might arise in which conditions might not adequately constrain the potential for anticompetitive harm in the U.S. market. In such cases, the Commission reserves the right to attach additional conditions to a license grant, or in the exceptional case in which grant would lose a very high risk to competition, deny an application.

8. The Commission will apply the presumption that entry will promote competition to affiliates of intergovernmental satellite organizations (IGO) licensed by WTO

Members. For applications from COMSAT to provide U.S. domestic service via INTELSAT or Inmarsat, the Commission will require COMSAT to waive its immunity from suit and demonstrate that the service will enhance competition in the U.S. market. For satellites licensed by non-WTO Members and for all satellites providing Direct-to-Home (DTH), Direct Broadcasting Satellite (DBS), and Digital Audio Radio Services (DARS), we will examine whether U.S. satellites have effective competitive opportunities in the relevant foreign markets to determine whether allowing the foreign-licensed satellite to serve the United States would satisfy the competition component of the public interest analysis.

9. This new framework is based on consideration of over 100 comments submitted from parties around the world over the course of more than a year, is grounded in the public interest requirements of the Communications Act and the procompetitive principles of the WTO Basic Telecom Agreement, sets forth clear criteria for entry into the United States by various types of non-U.S. satellites, delineates the applicable Commission rules and describes in detail the procedures for applications to provide service in the United States using a non-U.S. licensed satellite. This framework will largely replace the Commission's current approach of reviewing applications involving non-U.S. licensed satellites based on the individual circumstances before it. The Commission expects that our new framework will encourage and ease entry by non-U.S. satellites into the U.S. market and that the occasional request the Commission receives today involving a non-U.S. licensed satellite will become more common. At the same time, the Commission plans to continue to look carefully at market opening measures enacted by the rest of the world.

10. *Policy Objectives.* The purpose of this Report and Order is to establish a new framework to facilitate competitive entry in the U.S. satellite services market by non-U.S. licensed satellites, consistent with the WTO Basic Telecom Agreement. Providing opportunities for non-U.S. licensed satellites to deliver services in this country should bring U.S. consumers the benefits of enhanced competition and afford greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.

11. *WTO Members.* The Commission adopts an open entry standard for applicants seeking to access satellite

systems licensed by WTO Members to provide satellite services covered under the WTO Basic Telecom Agreement. An open entry policy will enable U.S. consumers to enjoy the benefits of increased competition in U.S. markets. The Commission presumes that entry will enhance competition in light of the fact that so many WTO Members have committed to lifting entry restrictions and adopting competitive safeguards. Where necessary to constrain the potential for anticompetitive harm in the U.S. market for satellite services, the Commission reserves the right to attach conditions to a grant of authority, and in the exceptional case in which an application poses a very high risk to competition, to deny an application.

12. *Non-WTO Members.* The Commission continues to be concerned about effective competitive opportunities for U.S. satellite systems in non-WTO Member markets. It finds that the market conditions that existed when the Commission proposed to adopt an ECO-Sat test, which determines whether there are effective competitive opportunities for U.S. satellites in the foreign market, have not changed sufficiently with respect to countries that are not members of the WTO. The Commission therefore finds that it will serve the goals of our international satellite policy to apply the ECO-Sat test in the context of applications from non-WTO Member entities and encourage such countries to open their markets to competition.

13. *Services Not Covered by the WTO Basic Telecom Agreement.* The Commission finds that circumstances that existed when it proposed to adopt an ECO-Sat test have not changed sufficiently with respect to DTH services, DBS services, and DARS. Commitments made as part of the WTO Basic Telecom Agreement were not sufficient to enable it to adopt a presumption of entry for these services. The Commission will apply the ECO-Sat test to applications to provide these services through all satellite systems, whether or not they are systems of WTO Members.

14. *Intergovernmental Satellite Organizations (IGOs) and IGO Affiliates.* Prior to acting on any application from COMSAT to provide domestic service via INTELSAT or Inmarsat, the Commission will require COMSAT to make an appropriate waiver of its immunity from suit, including suit under the U.S. antitrust laws. The Commission will then look to COMSAT to show that entry into the domestic market would promote competition and would otherwise be in the public interest. The Commission will treat IGO

<sup>5</sup> Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Further Notice of Proposed Rulemaking, FCC 97-252 (released July 18, 1997), 62 FR 40494 (July 29, 1997) (FNPRM).

<sup>6</sup> The phrase "non-U.S." licensed satellite system or operator means one that does not hold a commercial space station license from the Commission. By contrast, a "U.S." satellite system or operator means one whose space station is licensed by the Commission.

<sup>7</sup> 47 U.S.C. 301, *et. seq.*

affiliates that are licensed by WTO Members as it would similar systems licensed by WTO Members. In evaluating the competition component of an application involving an IGO affiliate, the Commission will consider any potential anticompetitive or market distorting consequences of a continued relationship or connection between an IGO and its affiliate.

15. *Additional Public Interest Factors and Operating Requirements.* In evaluating requests to serve the United States using a non-U.S. satellite, the Commission also will consider additional public interest factors, including spectrum availability, eligibility requirements such as legal, technical and financial qualifications, operating requirements, and national security, law enforcement, foreign policy and trade policy concerns. In applying these factors, the Commission will treat non-U.S. satellites as it would U.S. licensed satellites at the request stage, as well as after a system is operational. Thus, non-U.S. systems will be required to comply with the same financial, technical and legal qualifications, observe the prohibition against exclusive service arrangements and comply with other generally-applicable service rules.

16. *Access Procedures.* In implementing this framework, the Commission will not require space stations licensed by another country or administration to obtain separate and duplicative U.S. space station licenses. Rather, the Commission will license earth stations in the United States to operate with these satellites. Further, the Commission will permit operators of existing or planned non-U.S. space stations to participate in U.S. space station processing rounds, where the Commission considers competing applications to operate space stations that will offer a specific satellite service in particular frequency bands. In addition, earth station entities may file an earth station application either in a processing round or separately where the non-U.S. satellite is already in orbit.

17. This Report and Order contains a modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due on or before February 2, 1998. OMB comments are due on or before February 2, 1998. Comments should address: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

18. Written comments by the public on the proposed and/or modified information collections are due to Commission on or before February 2, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov). NOTE: OMB is required to make a decision concerning the modified collection of information contained in this Report and Order between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

#### Final Regulatory Flexibility Analysis

19. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in IB Docket No. 96-111.<sup>8</sup> After the conclusion of the WTO Basic Telecom Agreement, the Commission released the FNPRM requesting comment on the proposals in the FNPRM, including the IRFA.<sup>9</sup> The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).<sup>10</sup>

<sup>8</sup> See *supra* n.4.

<sup>9</sup> See *supra* n.5.

<sup>10</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act (CWAAA) of 1996, Public Law 104-121, 110 Stat. 847 (1996). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

#### I. Need for, and Objectives of, the International Satellite Services Report and Order

20. In this Report and Order, the Commission promulgates rules for non-U.S. licensed satellites to provide satellite services in the United States. This action will advance the growth of global satellite services and create greater competition in the U.S. satellite market. Enhanced competition in the U.S. market will benefit U.S. consumers, including small businesses, by increasing the availability of various satellite services, providing more alternatives in the selection of communications services, reducing prices, and facilitating technological innovation. The Commission adopts these rules in part to reflect the liberalized market environment that will result from the WTO Basic Telecom Agreement. Specifically, the Commission adopts an open entry standard for applicants seeking to access satellite systems from WTO Members providing satellite services covered by the U.S. Schedule of Commitments under the WTO Basic Telecom Agreement (Fixed Satellite Services and Mobile Satellite Services (MSS)).<sup>11</sup> The Commission presumes that entry will be competitive in these cases. The Commission reserves the right, however, to attach conditions to a grant of authority or, in exceptional circumstances, where conditions may not adequately constrain the potential for anticompetitive harm in the U.S. market, to deny an application. In deciding whether to grant non-WTO country satellites access to the U.S. market or whether to allow any non-U.S. satellite to provide non-covered services in the United States, the Commission adopts the "ECO-Sat test." This test requires that U.S. satellite operators have "effective competitive opportunities" in the foreign market before allowing a satellite licensed by that country access into the United States.

#### II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. No comments were filed in direct response to the questions posed in the IRFA in either the NPRM or the FNPRM. In reply comments to the NPRM, however, NATSAT argues that the Commission should not apply the ECO-Sat test to applications filed on or before

<sup>11</sup> Non-covered services are those not contained in the U.S. Schedule of Commitments in the WTO Basic Telecom Agreement—Direct to Home (DTH), Direct Broadcast Service (DBS) or Digital Audio Service (DARS).

July 15, 1996 by "designated entities" to resell MSS service in the United States.<sup>12</sup> It claims that such an exemption would be consistent with the directive Section 309(j) to ensure that small businesses and minority entrepreneurs have the chance to participate in the provision of spectrum-based services. In the Report and Order, the Commission does not adopt an ECO-Sat test with respect to WTO-Member satellites providing WTO-covered services. Thus, small entities may access a large percentage of non-U.S. satellites without conducting an ECO-Sat analysis. Moreover, an ECO-Sat analysis is a minimal burden when compared to the possibility that unrestricted entry by foreign-licensed satellite systems would distort competition in the United States market.

### III. Description and Estimate of the Number of Small Entities Subject to the Rules

22. The Commission has not developed its own definition of "small entity" for purposes of licensing satellite-delivered services.

Accordingly, we rely on the definition of "small entity" provided under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified.<sup>13</sup> A "small entity" under these SBA rules is defined as an entity with \$11.0 million or less in annual receipts.

### IV. Summary of Projected Reporting, Record Keeping and Other Compliance Requirements

23. This Report and Order requires foreign-licensed systems serving the United States to comply with the same public interest standards that the Commission applies to U.S. satellites. First, foreign-licensed satellite systems must comply with the same technical requirements as a U.S.-licensed satellite system. Without examining its technical compatibility with U.S.-licensed satellites, a foreign-licensed satellite system may cause unacceptable interference with U.S. systems and possible service disruptions to customers.<sup>14</sup> Second, the Commission requires foreign-satellite system applicants to comply with our financial rules, established under Section 308(b) of the Communications Act.<sup>15</sup> Reserving orbit locations or spectrum for future satellites without examining whether the operator is financially qualified to

build a system, which often costs hundreds of millions of dollars, could block entry by other United States or foreign companies that have the financial capability to proceed, ultimately delaying service to the public. Third, foreign-licensed satellite systems must comply with the Commission's legal qualifications consistent with Sections 308 and 309 of the Communications Act.<sup>16</sup> The purpose of requiring compliance with legal requirements is to ensure that entities providing satellite services in the United States will abide by Commission rules. For example, certain information may provide relevant indicia of compliance. Violations of law by an applicant, particularly those relating to credibility, may be evidence that it will not comply with Commission rules. Thus, it is vital that the Commission obtain assurance that an applicant will follow the rules that the Commission has established over the years to maximize the development of efficient, compatible, and innovative satellite systems.

### V. Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

24. The Commission will apply the same rules to foreign-licensed systems as have been applied to U.S. licensed systems. This approach will not impose any additional burdens on foreign-licensed satellite systems, small or large. Earth station operators seeking to access a non-U.S. satellite will be required to provide the same information regarding the satellite that U.S. satellite applicants must provide. This information is needed to ensure that transmissions from the space station into the United States do not cause technical interference into existing U.S. operations and that other Commission public interest objectives are met. The Commission expects, however, that the satellite information will be provided by the satellite operator to the earth station applicant because of their mutual business objectives. Thus, there will be no economic impact on small businesses because there are no additional burdens being imposed. Certain information will not be required. First, where the international technical coordination process has been completed between the United States and the foreign satellite, additional technical information about that foreign satellite is not necessary. This is because the United States and the

relevant foreign administration exchange extensive technical data about their respective systems during the course of the bilateral negotiations that lead up to a coordination agreement. This technical information is sufficient for us to determine whether the foreign satellite complies with Commission technical rules. The Commission finds that this new framework will benefit small businesses because earth station entities will have greater choice of space stations to access and opportunity to benefit from the other advantages of a more competitive market, such as reduced prices. In addition, small, local programmers will have access to a more competitive selection of satellite service providers. In this regard, our measures will advance the small business goals of Section 257 of the 1996 Act.

25. *Report to Congress:* The Commission will send a copy of the Report and Order including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A summary of the Report and Order and this FRFA will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

### Paperwork Reduction Act

26. This Report and Order contains new or modified information collections. A request for clearance of the information collections proposed in the FNPRM was submitted to Office of Management and Budget (OMB) and approved on October 13, 1997.<sup>17</sup> The changes to the approved information collection adopted in this Report and Order will be submitted to OMB and will become effective upon approval by OMB.

### Conclusion

27. In this Report and Order, the Commission adopts a new framework for foreign participation in the U.S. satellite services market, consistent with the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures the Commission establishes will provide opportunities for non-U.S. entities to deliver satellite services in this country. The liberalized market conditions that should result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various

<sup>12</sup> NATSAT NPRM Reply Comments at 11-15 citing 47 U.S.C. § 309(j).

<sup>13</sup> 1987 Standard Industrial Classification Manual; 13 CFR part 121.

<sup>14</sup> Report and Order at Section III.B.3.b.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See OMB No. 3060-0678.

satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

**Ordering Clauses**

28. Accordingly, *it is Ordered* that, pursuant to Sections 1, 2, 4(i), 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303(r), 308, 309, and 310, the policies, rules and requirements discussed herein *are adopted* and part 25 of the Commission's rules, 47 CFR part 25, *is amended* as set forth below.

29. *It is further ordered* that authority is delegated to the Chief, International Bureau as specified herein, to effect the decisions as set forth above.

30. *It is further ordered* that the Commission's Office of Managing Director shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

31. *It is further ordered* that the amendments to part 25 of the Commission's rules, 47 CFR part 25, FCC Form 312 and the Commission's policies, rules and requirements established in this *Report and Order* shall take effect January 5, 1998, or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507, whichever is later. The Commission will publish a notice, following publication of this Report and Order in the **Federal Register**, announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

**List of Subjects in 47 CFR Part 25**

Satellites.  
Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

Part 25 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

**PART 25—SATELLITE COMMUNICATIONS**

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

**Authority:** Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 25.113 Construction permits, station licenses, launch authority.**

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S. licensed space stations. \* \* \*

3. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

**§ 25.115 Application for earth station authorizations.**

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S. licensed satellites for domestic services. \* \* \*

4. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

**§ 25.130 Filing requirements for transmitting earth stations.**

(d) Transmissions of signals or programming to non-U.S. licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. \* \* \*

5. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

**§ 25.131 Filing requirements for receive-only earth stations.**

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251 through 25.256 of this part.

(j) Receive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from INTELSAT space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86-214 (released May 19, 1986) available through the International Reference Center, FCC, 2000 M St. NW., Washington, DC 20554.

6. A new § 25.137 is added to read as follows:

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

(a) Earth station applicants or entities filing a "letter of intent" requesting authority to operate with a non-U.S. licensed space station to serve the United States must attach an exhibit with their FCC Form 312 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

(1) The country in which the non-U.S. licensed space station is licensed; and

(2) All countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no practical or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest. This paragraph shall not apply with respect to requests for authority to operate using a non-U.S. licensed satellite that is 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.

(b) Earth station applicants, or entities filing a "letter of intent," requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with part 25 and part 100 of this Chapter. If the non-U.S. licensed space station is in orbit and operating, the applicant need not include the financial information specified in §§ 25.114 (c)(17) and (c)(18) of this part. If the international coordination process for the non-U.S.

licensed space station has been completed, the applicant need not include the technical information specified in §§ 25.114 (c) (5 through 11) and (c)(14) of this part, unless the technical characteristics differ from the characteristics established in that process.

(c) A non-U.S. licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it 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.

[FR Doc. 97-31800 Filed 12-3-97; 8:45 am]

BILLING CODE 6712-01-P