

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: January 6, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99-640 Filed 1-8-99; 9:17 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[ET Docket No. 98-206, FCC 98-310]

Fixed Satellite Service and Terrestrial System in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (“NPRM”) proposes to establish non-geostationary satellite orbit (“NGSO”) fixed satellite service (“FSS”) operations which could provide global broadband wireless services. This NPRM seeks to develop appropriate spectrum sharing criteria to allow the proposed NGSO FSS operations in the Ku band without interfering with incumbent operations. If appropriate sharing criteria are adopted, NGSO FSS operations could increase spectrum usage, provide a wide variety of broadband wireless services and increase competition within the satellite service industry. The NPRM also seeks to develop a more extensive record regarding the ability of terrestrial based service that would retransmit local television signals and provide one-way data services to direct broadcast satellite (“DBS”) subscribers in the 12.2–12.7 GHz band.

DATES: Comments are due February 16, 1999, reply comments are due March 15, 1999. Written comments by the public on the proposed and/or modified information collections are due March 15, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 15, 1999.

ADDRESSES: All filings must be sent to the Commission’s Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission,

445 Twelfth Street, S.W., TW-A325, Washington, DC 20554. 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, Room C-1804, 445 Twelfth Street, S.W., Washington, DC 20554 or via internet to jboely@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, Office of Engineering and Technology, (202) 418-2451. For additional information or copies of the information collections contact Judy Boley at (202) 418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Notice of Proposed Rule Making*, ET Docket 98-206, FCC 98-310, adopted November 19, 1998, and released November 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-C404), 445 Twelfth Street, S.W., Washington, D.C., and also may be purchased from the Commission’s duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, N.W. Washington, D.C. 20036. This Notice of Proposed Rulemaking contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Summary of the Notice of Proposed Rulemaking

1. The Commission takes this action in response to two Petitions for Rulemaking filed on July 3, 1997 and March 6, 1998, by SkyBridge L.L.C. (“SkyBridge”) (RM-9147) and Northpoint Technology (“Northpoint”) (RM-9245), respectively. Additionally, the NPRM considers changes to the International Radio Regulations contained in the Final Acts of the 1997 World Radiocommunication Conference (“Final Acts of WRC-97”), Geneva, 1997.

2. *Skybridge Petition.* SkyBridge requests that the Commission amend its rules to permit non-geostationary satellite orbit (“NGSO”) fixed satellite

service (“FSS”) systems to operate in the United States (“U.S.”) in the 10.7–12.7 GHz band for NGSO space-to-earth links (“downlinks”) (a total of 2 gigahertz) and in the 12.75–13.25 GHz, 13.75–14.5 GHz, and 17.3–17.8 GHz bands for NGSO earth-to-space links (“uplinks”) (a total of 1.75 gigahertz). The requested downlink bands are generally used by geostationary-satellite orbit (“GSO”) FSS, DBS and fixed services. The requested appliance bands are generally used by GSO FSS operations, fixed services, mobile services, and Government operations. SkyBridge proposes technical criteria which it claims would protect GSO satellite and terrestrial operations in these bands from unacceptable interference from NGSO FSS systems. SkyBridge contends that its system would provide high-speed Internet and on-line access services, video conferencing and telephony, entertainment services, interactive video on demand, and a variety of substitutes for terrestrial infrastructure links.

3. *WRC-97/2000.* To promote spectrum sharing between NGSO systems and other services, WRC-97 adopted spectrum sharing criteria for NGSO systems in the Ku and Ka-bands (see *Notice* at paragraphs 4–6 for an explanation). However, because the studies justifying the WRC-97 action had not gone through the typical International Telecommunications Union (“ITU”) study group process for validation, several components of the spectrum sharing criteria are deemed provisional, or are subject to review and possible modification at WRC-2000 to determine whether they adequately protect incumbent operations. Currently, Joint Task Group (“JTG”) 4-9-11, in which the U.S. participates, is conducting technical analyses of NGSO FSS sharing issues in preparation for WRC-2000.

4. *Northpoint Petition.* Northpoint proposes to provide terrestrial retransmission of local television signals and provide one-way data services to DBS receivers in the 12.2–12.7 GHz band on a secondary basis. Northpoint states that its proposal would allow DBS subscribers to receive local television programming and one-way data services with minimal additional equipment and thus would permit the DBS service to compete more fully with cable television services. Because Northpoint is requesting that its technology be permitted to operate in some of the same spectrum requested by SkyBridge, we are addressing both petitions in this proceeding.

5. The NPRM proposes to allow NGSO FSS downlink operations on a co-

primary basis in the 10.7–12.7 GHz band, and allow NGSO FSS appliance operations on a co-primary basis in the 12.75–13.25 GHz and 13.8–14.5 GHz bands. The *NPRM* does not propose to allow NGSO FSS appliance operations in the 13.75–13.8 GHz band due to potential interference with Government operations and in the 17.3–17.8 GHz band because of a conflict with use of this band for broadcasting satellite services (“BSS”) and radiolocation services. The *NPRM* proposes to use the WRC–97 power flux density (“pfd”) limits for sharing with the terrestrial fixed services and seeks comment on the WRC–97 spectrum sharing criteria (e.g., accumulative pfd (“apfd”) and effective pfd (“epfd”) limits and off-axis eirp limits) for sharing with other services. The *NPRM* requests further analysis regarding the adequacy of the WRC–97 limits, including the impacts of multiple NGSO FSS systems, as well as alternative proposals to enable NGSO FSS operations in these frequency bands. The *NPRM* also proposes to adopt coordination requirements and other procedures to facilitate NGSO FSS sharing with incumbent services. Further, the *NPRM* proposes to implement the WRC–97 allocation of the 12.2–12.7 GHz band to the FSS, and proposes initial licensing and service rules for NGSO FSS.

6. The *NPRM* does not propose to adopt Northpoint’s suggested use of the 12.2–12.7 GHz band, but seeks to develop a more thorough record to determine the spectrum sharing feasibility of its proposed system. Specifically, the *NPRM* requests further analysis regarding Northpoint’s ability to operate in the DBS band without causing harmful degradation of DBS service to customers. Further, the *NPRM* asks whether the SkyBridge and Northpoint proposals could both share spectrum with DBS and, if not, whether the band should be segmented to accommodate both proposed services (assuming sharing is feasible).

7. We note that there are other proceedings which could influence the spectrum bands requested by these two petitions. Specifically, on April 1, 1998, OpTel, Inc. (OpTel), an operator of private cable systems, filed a Petition for Rulemaking (RM–9257) with the Commission to amend parts 78 and 101 of the Commission’s rules to allow licensees in the fixed microwave service to use frequencies in the 12.7–13.25 GHz band to transmit video programming material to end users. Additionally, the Commission has initiated a proceeding to consider the carriage of digital broadcast television signals over the cable TV infrastructure

which may create capacity demands on the CARS frequencies. The *NPRM* requests comment on whether these proceedings would conflict with potential NGSO FSS operations in the 12.75–13.25 GHz band.

Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (“*NPRM*”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

9. We undertake this proceeding to address the spectrum sharing issues presented by SkyBridge’s and Northpoint’s proposed use of spectrum in the Ku-band frequency range. These proposals could increase competition and provide new advanced services to the public. Specifically, SkyBridge’s proposal could provide new high-speed data services and offer additional competition to other satellite services, and terrestrial wireless and wireline services. Similarly, Northpoint’s proposal could provide local video and new data services and facilitate competition to cable television systems. There is, however, extensive use of the requested frequency bands in the U.S. and these incumbent operations provide important and valuable services to the public. While we desire to promote competition and innovation by allowing for new services or additional spectrum use, we also need to consider the competing interests of the incumbent services in these bands.

10. Therefore, we propose to permit non-geostationary satellite orbit (“NGSO”) fixed-satellite service (“FSS”) operations² in certain segments of the

Ku-band³ and propose rules and policies to govern such operations. We also propose or ask for comment on technical criteria to ensure that such NGSO FSS operations do not cause harmful interference to existing users or do not unduly constrain future growth of incumbent services. Specifically, we ask whether the spectrum sharing criteria developed at the 1997 International Telecommunication Union (“ITU”) World Radiocommunication Conference (“WRC–97”)⁴ are adequate to permit NGSO FSS operations in various segments of the Ku-band or whether other criteria are needed to protect incumbent users. In addition, we ask for comment on a proposal to permit terrestrial use of the 12.2–12.7 GHz band for the retransmission of local television and provision of one-way data services by direct broadcast satellite (“DBS”) service operators and their affiliates.

Legal Basis

11. The proposed action is authorized under sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply

12. Skybridge has requested that the Commission amend Parts 2 and 25 of its rules to permit NGSO FSS systems to operate in the United States (“U.S.”) in the 10.7–12.7 GHz band for NGSO space-to-earth links (“downlinks”) (a total of 2 gigahertz) and in the 12.75–13.25 GHz, 13.75–14.5 GHz, and 17.3–17.8 GHz bands for NGSO earth-to-space links (“uplinks”) (a total of 1.75 gigahertz). The requested downlink bands are generally used by

satellites continuously orbiting the earth, rather than appearing to remain stationary relative to a user as a geostationary satellite does. NGSO satellites operate at lower altitudes and therefore appear to move from horizon to horizon. As the NGSO satellites move through their orbit, they transmit to and receive from earth stations that are in view of the satellite. Geostationary satellites orbit 22,300 miles above the Earth in the plane of the Earth’s equator. At this altitude, the geostationary satellite’s position appears fixed relative to an observer on the Earth.

³ The Ku-band generally refers to frequencies within the 12 GHz to 18 GHz range. The specific bands subject to this proceeding are the 10.7–12.7 GHz, 12.75–13.25 GHz, 13.75–14.5 GHz, and 17.3–17.8 GHz bands. For the purposes of this proceeding, we use the term “Ku-band” to refer generally to all of the frequency bands listed above that are under consideration in this proceeding.

⁴ See *Final Acts of the 1997 World Radiocommunication Conference (“Final Acts of WRC–97”)*; Article S21, Article S22, Resolution 130, Resolution 131, Resolution 538 (Geneva, 1997).

¹ 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 of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² NGSO satellite systems, such as proposed by SkyBridge, are characterized by a constellation of

geostationary-satellite orbit ("GSO") FSS, DBS and fixed services. The requested appliance bands are used by GSO FSS operations, fixed services, mobile services, and Government operations.

13. 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

14. Regarding incumbent cable television operations in the 12.75–13.25 GHz band, the SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

15. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers

shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. Regarding incumbent DBS operations in the 12.2–12.7 GHz band, because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated more than \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

17. Regarding incumbent GSO FSS satellite use and the proposed NGSO FSS use in these requested bands, the Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁹ According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the geostationary or non-geostationary orbit fixed-satellite service category. Of those, approximately 775 reported annual receipts of \$11 million or less and

qualify as small entities.¹⁰ Generally, these NGSO and GSO FSS systems cost several millions of dollars to construct and operate. Therefore the NGSO and GSO FSS companies, or their parent companies, rarely qualify under this definition as a small entity.

18. Regarding Auxiliary, Special Broadcast and other program distribution services in the Ku-band. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833). These definitions provide, respectively, that a small entity is one with either \$5.0 million or less in annual receipts or \$10.5 million in annual receipts. 13 CFR 121.201, SIC CODES 4832 and 4833. There are currently 2,720 FM translators and boosters, 4,952 TV translators. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

19. Incumbent microwave services in the 10.7–11.7 GHz and 12.75–13.25 GHz bands, include common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees, approximately 61,670 private

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**." 5 U.S.C. 601(3).

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

⁸ 5 U.S.C. 601(4).

⁹ 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

¹⁰ U.S. Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons. 13 CFR 121.201, SIC CODE 4812. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. We propose to apply the part 25 rules governing reporting requirements for FSS systems. Specifically, licensees are required to file an annual report with the Commission describing: the status of satellite construction and anticipated launch dates, including any major delays or problems encountered; a listing of any unscheduled satellite outages for more than 30 minutes including the cause(s) of any such outages; and a detailed description of the utilization made of each satellite on each of the in-orbit satellites.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. We propose to adopt or seek comment on adequate spectrum sharing criteria to minimize the potential for interference of these new NGSO FSS operations on incumbent operations, many of which qualify as small entities. Further, to promote system growth for the fixed microwave service (which includes most of the small entities under consideration in this proceeding), we are proposing to establish exclusion areas around the top 50 cities in the U.S. which would not permit NGSO earth stations to construct in these areas for several years. This proposal should permit fixed service small entities some level of assurance that future fixed links could be established without hinderance from NGSO FSS earth stations. We request comment on other alternatives that could minimize the impact of this action on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

23. The Commission's Office of Public Affairs, Reference Operations Division will send a copy of this NPRM to the

Chief Counsel for Advocacy of the Small Business Administration.

24. Paperwork Reduction Act. This Notice of Proposed Rulemaking contains either a proposed or 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 Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due March 15, 1999. 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.

OMB Control Number: N.A.

Title: Fixed Satellite Service and NGSO Sharing in Ku-Band.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5.

Estimated time per response: 22 hours.

Total Annual Burden: 110 hours.

Total Annual Cost: 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 space station submissions is 20 hours per response. Based on the assumption that applicants will hire outside counsel at an approximate cost of \$150 per hour, it is estimated that the cost per submission will be \$3,300.00.

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.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 25

Communications equipment, Radio, Satellites.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-578 Filed 1-11-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA-98-4943 (HM-225B)]

RIN 2137-AD31

Hazardous Materials: Authorization for the Continued Manufacture of Certain MC 331 Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to extend from March 1, 1999 to July 1, 1999, the period for continued manufacture of MC 331 cargo tanks without certification and demonstrated performance of the emergency discharge control system. The intent of this NPRM is to provide for the uninterrupted production of specification MC 331 cargo tanks used in the transportation of propane, anhydrous ammonia and other liquefied compressed gases.

DATES: Comments must be received on or before February 11, 1999.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-0001. Identify the docket number RSPA-98-4943 at the beginning of the comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. Comments also may be submitted by e-mail to rules@rspa.dot.gov.

Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except