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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 25****[CC Docket 92-297; FCC 01-164]****Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: The Federal Communications Commission (FCC) issued a document disposing of petitions for reconsideration of a previous order that established a frequency-use plan for Ka-Band satellite services. The reconsideration order eliminates a rule provision that restricted eligibility for license authority for uplink transmission in the 29.25-29.5 GHz frequency band and clarifies provisions concerning inter-system coordination in that band.

DATES: Effective May 29, 2002.**FOR FURTHER INFORMATION CONTACT:**

William Bell at (202) 418-0741. Internet: bbell@fcc.gov, International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 92-297, FCC 01-164, adopted May 22, 2001 and released on May 24, 2001. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800.

Summary of Memorandum Opinion and Order*Deletion of Repeating-Groundtracks Requirement*

In the *First Report and Order*, 61 FR 39425, July 29, 1996 in Docket No. 92-297, the Commission designated two adjacent frequency bands, 29.1-29.25 GHz and 29.25-29.5 GHz, for feeder uplinks for Mobile Satellite Service

systems using non-geostationary-orbit satellites (i.e., "NGSO/MSS" systems). The Commission also designated the 29.1-29.25 GHz band for hub-to-subscriber transmission by Local Multipoint Distribution Service ("LMDS") systems and the 29.25-29.5 GHz band for uplinks for Fixed Satellite Service systems using geostationary satellites (i.e., "GSO/FSS" systems).

In a petition for reconsideration of the *First Report and Order*, Motorola Satellite Communications, Inc. asked for deletion of a rule provision, 47 CFR 25.258(c), that limits eligibility for NGSO/MSS feeder uplink assignments in the 29.25-29.5 GHz band to systems whose satellites retrace the same path over the earth's surface on every orbit. Motorola argued that the restriction should be eliminated because it severely constrains system design, is unnecessary for inter-system coordination, and was adopted without adequate prior notice.

The FCC concludes that there is no evidence of record that an NGSO/MSS system must operate with repeating ground tracks in order to coordinate with GSO/FSS systems. The FCC therefore decides to eliminate the rule provision in question.

Geographic Separation

A petitioner requested that 47 CFR 25.258(b) be amended to allow GSO FSS licensees to rely on geographic separation for coordination of uplink transmission with NGSO FSS systems. The FCC denies the request because it has concluded that the rule already permits reliance on geographical separation for that purpose.

"Licensed"

A petitioner contended that the word "Licensed" should be stricken from § 25.258(b) because its use in that context might foster an impression that NGSO/MSS licensees need not coordinate with GSO/FSS systems proposed in pending applications. The FCC denies this amendment request. It holds that the petitioner's concern is unwarranted and, in any case, that merely deleting "Licensed" would not change the meaning of the rule provision.

Clarifying Amendments to § 25.258

Several petitioners proposed amendments to 47 CFR 25.258 to make it clear that interference should be minimized with respect to both GSO FSS and NGSO MSS systems and that NGSO applicants should demonstrate the feasibility of sharing with previously-licensed GSO systems that are not yet operational. The FCC agrees

that these proposed changes should be made.

Limits on LMDS Operation

In the *First Report and Order* the FCC prohibited use of the 29.1-29.25 GHz frequency band for LMDS subscriber-to-hub links, but indicated that the limitation might be reconsidered in the future based on evidence that sharing is feasible. A petitioner sought clarification regarding the process that would be used to reach a determination in this regard. The FCC says in the reconsideration order that it sees no reason to prescribe a specific process for making such a determination at this time and that clarification of requirements for fixed service leasing of LMDS spectrum is under consideration in another proceeding.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended ("RFA") requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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").

First, in this Memorandum Opinion and Order we eliminate a rule provision that barred use of the 29.25-29.5 GHz frequency band for transmission from earth stations to non-geostationary-orbit (i.e., "NGSO") satellites that do not trace constant paths over the ground in successive orbits. Any applicant for a license for NGSO uplink transmission in that band is required by other provisions in the Commission's rules to demonstrate that the proposed operation (1) would not interfere with authorized operation in that band by previously-licensed systems or (2) would be conducted in accordance with coordination agreements with the licensees of such systems. With these protective measures in place, we believe that the elimination of the restriction on use of the 29.25-29.5 GHz frequency band will not have a significant economic impact on any small entities.

Second, this Memorandum Opinion and Order adopts minor revisions to other rule provisions to make it clear that: (1) the frequencies and polarity of transmission to GSO satellites in the 29.25–29.5 GHz band from fixed earth stations in the vicinity of NGSO feeder-link stations must be chosen to minimize interference with reception of uplink transmission to NGSO, as well as GSO, satellites and (2) applicants for authority to use the 29.25–29.5 GHz band for feeder uplinks must show that sharing is possible with other systems that have been previously-authorized to use that band, not just systems that are currently operational. These changes merely clarify the Commission's pertinent intentions, rather than altering its policies and therefore impose no additional burden on any small entities. We therefore certify that the adoption of this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Memorandum Opinion and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

Ordering Clauses

Accordingly, that the "Petition for Partial Reconsideration" filed by Motorola Satellite Communications, Inc. on September 27, 1996 *is granted*.

The "Petition of TRW Inc. for Clarification and/or Partial Reconsideration of the First Report and Order" filed on September 24, 1996 *is granted* to the extent indicated herein and *is otherwise denied* and that the "Petition for Reconsideration of Texas Instruments, Inc." filed on August 28, 1996 *is denied* to the extent indicated herein.

Section 25.258 of the Commission's rules *is amended* as indicated in the rule changes, effective May 29, 2002. This action is taken pursuant to 47 U.S.C. 154(i) and 303(r).

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Memorandum Opinion and Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. 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 and 332, unless otherwise noted.

2. Section 25.258 is revised to read as follows:

§ 25.258 Sharing between NGSO MSS Feeder links Stations and GSO FSS services in the 29.25–29.5 GHz Bands.

(a) Operators of NGSO MSS feeder link earth stations and GSO FSS earth stations in the band 29.25 to 29.5 GHz where both services have a co-primary allocation shall cooperate fully in order to coordinate their systems. During the coordination process both service operators shall exchange the necessary technical parameters required for coordination.

(b) Licensed GSO FSS systems shall, to the maximum extent possible, operate with frequency/polarization selections, in the vicinity of operational or planned NGSO MSS feeder link earth station complexes, that will minimize instances of unacceptable interference with GSO FSS or NGSO MSS uplink reception.

(c) Applicants for authority to use the 29.25–29.5 GHz band for NGSO MSS feeder uplinks will have to demonstrate that their systems can share with GSO FSS and NGSO MSS systems that have been authorized for operation in that band.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH82

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Approximately 116 hectares (287 acres) of land fall within the boundaries of the critical habitat designation located in Santa Cruz County, California. We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on June 28, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe robusta var. *hartwegii* is endemic to Purisima sandstone and Santa Cruz mudstone in Scotts Valley in the Santa Cruz Mountains, Santa Cruz County, California. *C. r.* var. *hartwegii*, a short-lived annual species in the buckwheat family (Polygonaceae), is a low-growing herb with rose-pink involucrel (pertaining to a circle or collection of modified leaves surrounding a flower cluster) margins confined to the basal portion of the teeth and an erect form of growth. The aggregate flowers (heads) are medium in size (1 to 1.5 centimeters (cm) (0.4 to 0.6 inches (in) in diameter) and distinctly aggregate. Each flower produces one