

**FOR FURTHER INFORMATION CONTACT:**

Gladys Beard, NPL Deletion Process Manager, U.S. EPA (SR-6J), 77 W. Jackson, Chicago, IL 60604, (312) 886-7253 or 1-800-621-8431.

**SUPPLEMENTARY INFORMATION:**

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353-5821, Monday through Friday 8 a.m. to 4 p.m.; Minnesota Pollution Control Agency 520 Lafayette, Saint Paul, Minnesota, Monday Through Friday, 8:00 to 4:30 p.m., (651) 296-6300.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water Supply.

Dated: August 6, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, EPA Region V.*

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

**Appendix B to Part 300—National Priorities List**

2. Table 1 of Appendix B to Part 300 is amended under Minnesota “MN” by revising the entry for “Joslyn Manufacturing and Supply Co” to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes
MN	Joslyn Manufacturing MN and Supply Co	Brooklyn Center	

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR PART 25**

[IB Docket 01-96; FCC 02-123]

**Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission has adopted licensing and service rules for entities to provide Fixed Satellite Service in the Ku-Band frequencies, specifically the 10.7-11.7 GHz, 11.7-12.2 GHz, 12.2-12.7 GHz, 12.75-13.25 GHz, 13.75-14.0 GHz, and 14.0-14.5 GHz frequency bands. System proponents currently on file are required to amend their proposals to comply with the adopted rules. Following a public comment period on the amendments, qualified systems will be authorized to operate. Upon launch, these new systems will provide a variety of data, video and telephony services in Ku-Band frequencies to U.S. consumers, for communications in the United States and around the world.

**DATES:** Effective August 16, 2002. Written comments by the public on the new information collections are due October 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418-0762 or via the Internet at [myoung@fcc.gov](mailto:myoung@fcc.gov). For additional information concerning the information collections contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Report and Order* in IB Docket No. 01-96, FCC 02-123, adopted April 18, 2002 and released April 26, 2002. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission’s duplicating 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@aol.com](mailto:qualexint@aol.com). It is also available on the Commission’s Web site at <http://www.fcc.gov>.

**Summary of the Report and Order**

1. The Federal Communications Commission has adopted sharing and service rules for the non-geostationary satellite orbit, fixed satellite service (NGSO FSS) in the Ku-Band frequencies. These systems will provide a variety of data, video and telephone services to U.S. consumers, for communications in the United States and around the world.

2. The Commission adopted an innovative sharing technique that can accommodate all seven pending applications for this service in the available frequency bands. The Commission calls this technique avoidance of in-line interference events. Under this technique, each applicant, once licensed, will be authorized to operate its system in the entire available service spectrum, so long as it avoids causing harmful interference to other NGSO FSS systems.

3. The Commission anticipates that there will be predictable instances when the space station of one NGSO FSS system and the earth station of another system are arranged in a perfect line of communication, an occurrence called an in-line interference event. The sharing technique allows and encourages the two system operators to exchange space station orbit data in order to predict and avoid these events by any mitigation means preferred. In the event the systems cannot agree on a preferred avoidance method, the Commission requires that they split the available NGSO FSS service spectrum in the Ku-Band equally between the systems involved in the event, for the duration of the event. The *Report and Order* allows the first launched NGSO FSS system to choose its preferred equal portion of the spectrum to which its space station will resort when an in-line interference event arises.

4. The *Report and Order* adopts a technical definition of an in-line interference event so that systems can coordinate their orbits in advance. The Commission adopted an Earth-surface

based (topocentric) angular separation standard, with a 10-degree-avoidance angle between satellites of different networks.

5. The *Report and Order* adopted blanket licensing procedures for NGSO FSS user Earth stations in the 11.7–12.2 GHz and 12.2–12.7 GHz downlink bands, and the 14.0–14.5 GHz uplink bands.

6. The *Report and Order* adopted service rules for the NGSO FSS service, including required coverage latitudes on Earth and an implementation milestones schedule. Licensees will be required to file an annual report describing the status of satellite construction and launch dates and a description of the use made of each satellite in orbit. The *Report and Order* also requires that applicants disclose orbital debris mitigation plans before licensing.

7. Applicants for NGSO FSS in the Ku-Band are required to amend their applications to comply with the rules adopted, on or before September 16, 2002. Following a public comment period, qualified systems will be authorized to operate.

#### Paperwork Reduction Act

8. This *Report and Order* contains new information collections. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. This *Report and Order* has been submitted to OMB for review under the emergency clearance provisions of the PRA. The Commission, under the normal provisions of the PRA, invites the general public, and other Federal agencies to comment on the information collections contained in this proceeding prior to submitting it to OMB for review. Public and agency comments are due October 15, 2002. 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: 3060–1014 (New Collection).

*Title:* Ku-Band NGSO FSS Satellite Service.

*Form No.:* Not applicable.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 6.

*Estimated Time Per Response:* 1–4 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 84 hours.

*Total Annual Costs:* \$87,395.

*Needs and Uses:* The information collected will be used by the Federal Communications Commission and interested members of the public to ensure compliance with the rules adopted for the NGSO FSS in the Ku-Band. Specifically, applicants for this new service will be required to file amendments to their applications to conform to the newly-adopted service rules. Without the required conforming amendments, the pending applications would not meet the NGSO FSS rules. The applicants will also be required to file applications for blanket Earth station authorization for multiple, technically identical Earth stations. These applications will allow the Commission and concerned co-frequency services to ensure that NGSO FSS Earth stations do not exceed power limits that protect other services. Licensees authorized in the NGSO FSS will be required to file certifications that they meet scheduled milestones for constructing and launching their space stations. This information is required to ensure that licensees who do not build their licensed systems do not waste valuable public frequency resources. Finally, licensees will be required to file annual reports, which are also needed to ensure that valuable public frequencies resources are not wasted.

#### Final Regulatory Flexibility Certification

9. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, 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: (a) Is independently owned and operated; (b) is not dominant in its field of operation;

and (c) satisfies any additional criteria established by the Small Business Administration (SBA).

10. The objective of the *Report and Order* and of this proceeding is to assign the NGSO FSS spectrum to satellite systems operators who can implement their proposals in a manner that serves the public interest. The final rules in the *Report and Order* will reduce regulatory burdens and, with minimal disruption to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public.

11. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for NGSO FSS licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$12.5 million or less in annual revenues.

12. The rules adopted in this *Report and Order* apply only to entities providing NGSO FSS. Small businesses will not have the financial ability to become NGSO FSS system operators because of the high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services. Since the spectrum and orbital resources available for assignment are not open to new entrants, we estimate that only the seven applicants whose applications are pending will be authorized by the Commission to provide these services. None of the seven applicants is a small business because each has revenues in excess of \$11 million annually or has parent companies or investors that have revenues in excess of \$11 million annually.

13. Therefore, we certify that the rules adopted in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *Report and Order*, including this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

#### Ordering Clauses

14. Pursuant to 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), this

*Report and Order is adopted*, and part 25 of the Commission's Rules is amended.

15. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

#### List of Subjects 47 CFR Part 25

Satellites.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

#### Rule 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:

**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 25.114 is amended by adding paragraph (c) (22) to read as follows:

#### § 25.114 Applications for space station authorizations.

\* \* \* \* \*

(c) \* \* \*

(22) Applications for authorizations in the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz shall also provide all information specified in § 25.146.

3. Section 25.115 is amended by adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) User transceivers in the non-geostationary satellite orbit fixed-satellite service in the 11.7–12.2 GHz, 12.2–12.7 GHz and 14.0–14.5 GHz bands need not be individually licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form

and Schedule B, and shall specify the number of terminals to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.146. Any earth stations that are not user transceivers, and which transmit in the non-geostationary satellite orbit fixed-satellite service in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, and 13.75–14.0 GHz bands must be individually licensed, pursuant to paragraph (a) of this section.

4. Section 25.146 is amended by adding paragraphs (g) through (m) to read as follows:

#### § 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

\* \* \* \* \*

(g) *System License.* Applicants authorized to construct and launch a system of technically identical non-geostationary satellite orbit fixed satellite service satellites will be awarded a single “blanket” license covering a specified number of space stations to operate in a specified number of orbital planes.

(h) In addition to providing the information specified in § 25.114 above, each NGSO FSS applicant shall provide the following:

(1) A demonstration that the proposed system is capable of providing fixed-satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, U.S.; and

(2) A demonstration that the proposed system be capable of providing fixed-satellite services to all locations as far north as 70 deg. latitude and as far south as 55 deg. latitude for at least 75 percent of every 24-hour period; and

(3) Sufficient information on the NGSO FSS system characteristics to properly model the system in computer sharing simulations, including, at a minimum, NGSO hand-over and satellite switching strategies, NGSO satellite beam patterns, NGSO satellite antenna patterns and NGSO earth station antenna patterns. In particular, each NGSO FSS applicant must explain the switching protocols it uses to avoid transmitting while passing through the geostationary satellite orbit arc, or provide an explanation as to how the power-flux density limits in § 25.208 are met without using geostationary satellite orbit arc avoidance. In addition, each NGSO FSS applicant must provide the orbital parameters contained in Section A.3 of Annex 1 to Resolution 46.

Further, each NGSO FSS applicant must

provide a sufficient technical showing to demonstrate that the proposed non-geostationary satellite orbit system meets the power-flux density limits contained in § 25.208, as applicable, and

(4) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(i) Considerations involving transfer or assignment applications.

(1) “Trafficking” in bare licenses issued pursuant to paragraph (g) of this section is prohibited.

(2) The Commission will review a proposed transaction to determine if the circumstances indicate trafficking in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities licensed pursuant to paragraph (g) of this section. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that no trafficking has occurred.

(j) Implementation Milestone Schedule. Each NGSO FSS licensee in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands will be required to enter into a non-contingent satellite manufacturing contract for the system within one year of authorization, to complete critical design review within two years of authorization, to begin physical construction of all satellites in the system within two and a half years of authorization, to complete construction and launch of the first two satellites within three and a half years of grant, and to launch and operate its entire authorized system within six years of authorization. Each NGSO FSS licensee in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands must submit certifications of milestone compliance within 10 days following a milestone specified in its authorization.

(k) *Reporting Requirements.* All NGSO FSS licensees in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands shall, on June 30th of the first year following launch of the first two space stations in their system, and annually thereafter, file a report with the International Bureau and the Commission's Laurel, Maryland field office containing the following information:

(1) Status of space station construction and anticipated launch

date, including any major problems or delay encountered;

(2) Identification of any space station(s) not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

(l) Replacement of Space Stations within the System License Term. Licensees of NGSO FSS systems in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands authorized through a blanket license pursuant to paragraph (g) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization and

(2) Launch of this space station will not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(m) In-Orbit Spares. Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (g) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

RIN 1018–AH88

#### Procedures for Establishing Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) adopts regulations establishing procedures for

implementing a spring/summer migratory bird subsistence harvest in Alaska. The 1916 Convention for the Protection of Migratory Birds Between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season. This rule establishes procedures for implementing that change and for incorporating subsistence management into the continental migratory bird management program.

**DATES:** This rule is effective August 16, 2002.

**ADDRESSES:** The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503.

**FOR FURTHER INFORMATION CONTACT:** Fred Armstrong, (907) 786–3887 or Bill Ostrand, (907) 786–3849, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, Alaska 99503.

#### SUPPLEMENTARY INFORMATION:

##### What Events Led to This Action?

By the beginning of the twentieth century, this nation began to witness the depletion of many species of migratory birds. Commercial or “market” hunting took a significant toll as restaurant owners paid top dollar for wild birds and the millinery industry demanded large numbers of feathers for hats. Individual States did not establish regulations or other management programs to adequately protect the migratory bird resources.

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States. The treaty prohibited market hunting and specified a closed season on taking migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals. The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1.

Neither treaty, however, took into account and allowed for the traditional harvest of migratory birds by northern indigenous people during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence lifestyle of the northern people and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as the other migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have construed the MBTA as prohibiting the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

##### What Will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal from the Department of State to the White House states that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

The amendments, however, are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. Therefore, the Letter of Submittal places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded