

FEDERAL COMMUNICATIONS COMMISSION

[FCC 04-8]

Auction of Direct Broadcast Satellite Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission affirms that its authority to auction licenses for Direct Broadcast Satellite service channels at orbit locations to which the United States is assigned by the International Telecommunication Union has not been altered by regulatory and statutory actions taken since DBS auctions were last held in 1996. The Commission also declines to impose eligibility restrictions on the three available DBS licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. This action will enable the Commission to proceed expeditiously with the auction of these three DBS licenses.

DATES: Effective February 26, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418-0786; Douglas Webbink, International Bureau, (202) 418-1494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Auction of Direct Broadcast Satellite Licenses Order ("*DBS Order*"), released on January 15, 2004. The complete text of the *DBS Order* as well as related Commission documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *DBS Order* and related Commission documents 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. When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 04-8 for the *DBS Order*). The *DBS Order* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/52/>.

I. Introduction

1. In the *DBS Order*, the Commission affirms that its authority to auction licenses for Direct Broadcast Satellite ("DBS") service channels at orbit

locations to which the United States is assigned by the International Telecommunication Union ("ITU") has not been altered by regulatory and statutory actions taken since DBS auctions were last held in 1996. The Commission also declines to impose eligibility restrictions on the three available DBS licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. The Commission does not address in the *DBS Order* the question of whether any eligibility restrictions are appropriate for the license to use the two available channels at the eastern orbit location of 61.5° W.L. but instead defers the resolution of this matter to a subsequent order.

II. Background

2. Eight orbit positions were assigned to the United States for DBS, under the auspices of the ITU, at the 1983 Regional Administrative Radio Conference for the Planning in Region 2 of the Broadcasting-Satellite Service in the Frequency Band 12.2-12.7 GHz and Associated Feeder Links in the Frequency Band 17.3-17.8 GHz. Under this Region 2 Band Plan for Ku-band DBS satellites ("ITU Region 2 Band Plan"), which was agreed upon by the nations present, the orbit slots assigned to the United States are for coverage of the United States.

3. The Commission first adopted competitive bidding rules for the DBS service in 1995. Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 60 FR 65587, December 20, 1995. In 2002, the Commission released Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order* ("*Part 100 R&O*"), 67 FR 51110, August 7, 2002, in which it streamlined the regulation of DBS and moved the DBS rules from part 100 to part 25.

4. On March 3, 2003, the Commission issued a public notice announcing an auction of DBS licenses (the *Auction No. 52 Comment Public Notice*, 68 FR 12906, March 18, 2003), in which it sought comment on its conclusion that the Commission has the authority to auction the DBS licenses included in Auction No. 52 and on a number of questions regarding whether eligibility restrictions are warranted for any of the licenses to be offered in Auction No. 52.

5. Pursuant to its delegated authority, the Wireless Telecommunications Bureau will resolve all the procedural issues relating to Auction No. 52 on which the Commission sought comment in the *Auction No. 52 Comment Public Notice* will adjust the license inventory of Auction No. 52 to reflect the

Commission's resolution of the eligibility issue for three licenses in the *DBS Order*, and will announce a new start date for the auction.

III. Discussion

A. The Commission's Authority To Auction DBS Licenses

6. The Commission concludes that it has the authority to auction the DBS licenses included in Auction No. 52, as well as any other licenses for DBS channels at the eight orbit locations assigned to the United States under the current ITU Region 2 Band Plan that may become available in the future. The Commission concludes that section 647 of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act"), 47 U.S.C. 765f, which prohibits the use of competitive bidding to assign orbit locations or spectrum used "for the provision of international or global satellite communications services," does not prohibit the use of auctions to assign licenses for DBS channels at the eight orbit locations assigned to the United States under the ITU Region 2 Band Plan. This is because the Commission finds that the DBS service authorized under such licenses is not an "international or global satellite communications service." Under the technical parameters of the ITU Region 2 Band Plan, these licenses are designed to provide service almost exclusively to the United States, and they must be used to provide a service delivered almost exclusively to U.S. consumers.

7. The Commission does not read the ORBIT Act auction prohibition to bar the use of the competitive bidding process for any service that provides incidental transborder service. Moreover, visibility of areas outside the United States from orbit locations assigned to the United States does not make service provided from these locations an international service. For coverage beyond that described in the ITU Region 2 Band Plan, a modification to the Plan, including further modifications of allocations currently in the Plan, would be required, and modifications of the ITU Region 2 Band Plan are not obtained as a matter of routine. The Commission also disagrees with the argument that the ORBIT Act prohibits auctions of DBS licenses because DBS service is provided on spectrum that is used for the provision of non-geostationary satellite orbit fixed-satellite service.

8. The Commission also concludes that, although it removed its own regulatory obstacles to the provision of DBS service outside the United States

from the U.S. orbit locations in Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order* ("DISCO I"), 11 FCC Rcd 2429 (1996), that decision had no effect on DBS operators' obligation to comply with the ITU Region 2 Band Plan. Therefore, the Commission finds that DISCO I should not be read to mean that the DBS licenses that it intends to assign by competitive bidding are to be used to provide an international satellite service, or to establish a basis for concluding that the auction prohibition of the ORBIT Act should apply to such U.S.-assigned DBS licenses. The Commission's conclusion that DBS service from the eight orbit locations assigned to the United States is predominantly domestic is consistent with actual service offerings and does not represent a departure from DISCO I.

B. Eligibility for the Three Available Western DBS Licenses

9. The Commission declines to adopt any eligibility restrictions for the three available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. In the part 100 proceeding, it considered a wide range of questions relating to whether ownership restrictions of any kind are appropriate for the DBS service, and it concluded that generally they were not.

10. No commenter proposed any eligibility restrictions for the available licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. This results in a record that lacks information regarding circumstances that would cause the Commission to impose eligibility restrictions in the DBS service with respect to these three licenses. Therefore, based on the record before it, the Commission concludes that there is no reason for it to deviate from any of its decisions in the *Part 100 R&O* as they apply to these licenses.

11. On the other hand, the Commission has received detailed comments presenting a number of arguments regarding the issue of whether it should adopt eligibility restrictions for the available license at 61.5° W.L. The Commission will address the matter of eligibility for the 61.5° W.L. license in a separate order, which it will issue as soon as it resolves the relevant issues that have been raised with respect to that license.

IV. Conclusion

12. For the reasons stated above, the Commission concludes that it has the authority to auction DBS licenses for the use of channels at the eight orbit

locations to which the United States is assigned under the ITU Region 2 Band Plan, and that this authority has not been altered or diminished by the Commission's adoption of DISCO I or the enactment of section 647 of the ORBIT Act. The Commission also concludes that no eligibility restrictions on the available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations are warranted, and it will maintain its policy of open eligibility for these licenses. The Commission reaches no conclusions concerning whether it should impose any eligibility restrictions on the license for the two unassigned channels at the 61.5° W.L. orbit location and defers the resolution of that issue to a separate order.

V. Ordering Clause

13. Accordingly, it is ordered that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), the *DBS Order* is hereby adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Second Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC-07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the second meeting of the WRC-07 Advisory Committee will be held on June 8, 2004, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views introduced by the Advisory Committee's Informal Working Groups.

DATES: June 8, 2004; 10 a.m.-12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418-7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC-07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC-07).

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the second meeting of the WRC-07 Advisory Committee. The WRC-07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the second meeting is as follows:

Agenda

Second meeting of the WRC-07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington, DC 20554, June 8, 2004; 10 a.m.-12 noon.

1. Opening remarks.
2. Approval of agenda.
3. Approval of the minutes of the first meeting.
4. IWG reports and documents relating to preliminary views.
5. Future meetings.
6. Other business.

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons of the first meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 29, 2003. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Tuesday, March 30, 2004 beginning at 10 a.m. and concluding at 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St, SW., Room TW-305, Washington, DC.