

2021.¹ The Department is issuing this notification to apprise the public of the court's order. The portions of the rule not affected by the court's order remain in effect.

Norris Cochran,

Acting Secretary, Department of Health and Human Services.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[B Docket No. 16-408; FCC 20-119; FR ID 17497]

Updates Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminates the domestic coverage requirement for non-geostationary-satellite orbit, fixed-satellite service (NGSO FSS) systems.

DATES: Effective February 26, 2021.

FOR FURTHER INFORMATION CONTACT: Clay DeCell, International Bureau, Clay.DeCell@fcc.gov, 202-418-0803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, FCC 20-119, adopted August 26, 2020, and released August 28, 2020. The full text of the Second Report and Order is available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-20-199A1.pdf. To request materials in accessible formats for people with disabilities, send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

¹ See Order, *Facing Foster Care et al. v. HHS*, No. 21-cv-00308 (D.D.C. Feb. 2, 2021) (order postponing effective date), ECF No. 18.

Paperwork Reduction Act

This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. 3501-3520. In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

In this Second Report and Order, the Commission eliminates the domestic coverage requirement for NGSO FSS systems. This action will provide greater regulatory certainty and operational flexibility to innovative NGSO FSS systems, while meeting the Commission's goal of promoting widespread NGSO service offerings.

The Commission's rules currently require NGSO FSS systems to be capable of providing continuous service within the fifty states, Puerto Rico, and the U.S. Virgin Islands. This domestic coverage requirement was originally adopted for mobile-satellite service (MSS) systems to promote efficient and ubiquitous service by satellite systems that are, as a general matter, unable to share spectrum. It was subsequently expanded to NGSO FSS systems to maximize use of a global spectrum resource allocated to this service, based on the assumption that NGSO FSS systems were inherently global in nature.

Since the Commission adopted its NGSO FSS domestic coverage requirements in 1997 and 2002, a number of NGSO FSS systems have been proposed that were not inherently global in nature. These systems have been designed to meet the requirements of certain underserved areas, where satellite services in general are especially valuable, such as in Alaska or on islands and ships in the Pacific Ocean. In addition, not all NGSO FSS systems may provide general consumer

or enterprise broadband services. Instead, they may focus on a narrower set of services for which there is no significant nationwide demand or rationale for imposing nationwide coverage for these services. Furthermore, in 47 CFR 25.261 the Commission has developed new, more efficient sharing criteria among NGSO FSS systems to encourage multiple systems to operate in different areas of the United States simultaneously. These spectrum sharing possibilities among NGSO FSS systems also allow both broad coverage and specialized coverage systems to coexist. Accordingly, one NGSO FSS system with only partial coverage of the United States does not preclude another NGSO FSS system from covering the remainder of the United States or from providing full U.S. coverage. Indeed, allowing targeted or regional coverage may promote more intense and efficient use of this spectrum by enabling geographic sharing in addition to other forms of sharing already in use.

Retaining the domestic coverage rule requires design tradeoffs that may hamper or preclude innovative satellite system designs, which could otherwise better address market needs.

Eliminating this rule serves the public interest by removing this unnecessary limit on design and operational flexibility, which imposes an artificial constraint on such technological evolution and innovation.

Cumulatively, NGSO FSS systems that have already been approved by the Commission will provide complete coverage of the United States, and the long reach of satellite technology, with the particular advantages of lower-latency associated with NGSO FSS systems, provide inherent incentives for future NGSO FSS systems to likewise provide coverage across the United States, especially the underserved areas. For example, the domestic coverage requirements were waived for the first, currently operating NGSO FSS system, but this system was later expanded to provide full coverage of the United States not because of a regulatory imposition but growing business rationales. We are therefore not persuaded by parties claiming that elimination of the domestic coverage requirement would weaken incentives for NGSO FSS operators to provide service in rural and remote areas, notably in Alaska.

For similar reasons, we disagree with commenters who argue that, absent the domestic coverage requirement, NGSO FSS operators will concentrate on high-population areas to the exclusion of rural and remote areas. NGSO FSS

satellite technology is relatively efficient at serving rural and remote areas when compared with alternative, terrestrial services. NGSO FSS operators have more of an incentive to serve areas which terrestrial providers find it more costly to serve, and less of an incentive to serve high-population areas which already have multiple terrestrial suppliers that would be more challenging to compete against. So while some NGSO FSS operators might not provide coverage throughout the United States, they have the incentive to concentrate their efforts in those areas where they have a cost advantage, typically in areas where there might be fewer terrestrial providers, and where those terrestrial providers might have higher costs per subscriber than in more highly populated areas.

Given these incentives and the coverage provided by already-approved NGSO FSS systems, we also do not agree that, in eliminating this requirement, we should require NGSO FSS system applicants that will not serve the entire United States to demonstrate in their application that they will provide substantial service to the rural areas within their coverage area. Like with the domestic coverage requirement itself, without this requirement, we believe that systems already in operation or proposed will continue to provide coverage of all of the United States because of the technical and financial advantages that NGSO FSS satellite systems have in providing services to sparsely populated areas when compared with terrestrial alternatives that are relatively more costly to deploy in these areas. And providing greater flexibility to NGSO FSS system designers will allow greater deployment and more cost-effective solutions for consumers, including in rural areas.

We also disagree with one comment that the domestic coverage requirement is mandated by section 1 of the Communications Act of 1934, as amended (the “Act”). The Commission has authorized a large variety of GSO satellite networks and terrestrial wireless systems without ever interpreting the Act to require that a single wireless applicant cover the entire United States. Nor did the Commission so interpret the Act when adopting the particular NGSO FSS coverage requirements at issue here. Indeed, the deregulatory and procompetitive purposes of the Telecommunications Act of 1996 suggest we should welcome competition in all its forms. The Commission fulfills its mission to “to make available, so far as possible, to all the people of the

United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service” by adopting rules and licensing policies that facilitate the authorization of multiple, innovative NGSO FSS systems capable of serving a variety of needs throughout the nation.

We also reject the approach of considering waivers on a case-by-case basis, as suggested by some commenters, as this would create regulatory uncertainty for NGSO FSS system proponents while they design systems that will ultimately seek a waiver. Even greater regulatory uncertainty, and higher costs of deployment, would result from Commission efforts to force the re-engineering of a satellite constellation until it complied with the domestic coverage requirement.

Instead, in light of NGSO FSS systems which have been licensed or granted U.S. market access to address underserved communities, including in Alaska, we conclude that affording satellite operators regulatory certainty and design flexibility will best serve the interests of connectivity across American communities. We therefore eliminate the domestic coverage requirement for NGSO FSS systems.

We will apply the rules and procedures we adopt in this Report and Order to pending space station applications and petitions for U.S. market access. In addition, we will allow current licensees and market access recipients to submit a simple letter request to modify particular conditions in their grants consistent with the rule changes adopted in this Order. The Commission may apply new procedures to pending applications if doing so does not impair the rights an applicant possessed when it filed its application, increase an applicant’s liability for past conduct, or impose new duties on applicants with respect to transactions already completed. Applicants do not gain any vested right merely by filing an application, and the simple act of filing an application is not considered a “transaction already completed” for purposes of this analysis. Accordingly, applying our new rules and procedures to pending space station applications will not impair the rights any applicant had at the time it filed its application. Nor will doing so increase an applicant’s liability for past conduct.

Final Regulatory Flexibility Analysis

As required by the RFA, an IRFA was incorporated in the Notice of Proposed Rulemaking in this proceeding. The Commission sought written public

comment on the proposals in the Notice, including comment on the IRFA. No comments were received on the IRFA. This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

The Order repeals a domestic coverage requirement for NGSO FSS satellite systems in order to provide additional regulatory certainty and flexibility, while encouraging the development of innovative satellite systems.

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

There were no comments filed that specifically addressed the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “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 SBA. Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the final rules.

E. Satellite Telecommunications

This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving

communications signals via a system of satellites or reselling satellite telecommunications.” The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

The rule changes adopted in this Order will affect space station applicants and licensees. Generally, space stations cost hundreds of millions of dollars to construct, launch, and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our actions.

F. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The Order adopts rule changes that would affect compliance requirements for space station operators. As noted above, these parties rarely qualify as small entities.

The Order eliminates a geographic service requirement that restricts the design possibilities of certain NGSO FSS satellite systems. This action is designed to achieve the Commission’s mandate to regulate in the public interest while minimizing burdens on all affected parties, including small entities.

G. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small

entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

In this Order, the Commission removes the domestic coverage requirement for NGSO FSS satellite systems. This action will reduce burdens on the affected licensees, including any small entities.

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

None.

Report to Congress: The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

It is ordered, pursuant to sections 4(i), 7(a), 10, 303, 308(b), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 160, 303, 308(b), 316, that this Second Report and Order *is adopted* and part 25 of the Commission’s rules *are amended*.

It is further ordered that this Second Report and Order and the rules as amended herein *will become effective* as of the date of publication of a summary in the **Federal Register**.

It is further ordered that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Second Report and Order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Administrative practice and procedure, Satellites.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

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. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

§ 25.146 [Amended]

■ 2. In § 25.146, remove and reserve paragraph (b).

■ 3. Revise § 25.217(b)(1) to read as follows:

§ 25.217 Default service rules.

* * * * *

(b)(1) For all NGSO-like satellite licenses, except as specified in paragraph (b)(4) of this section, for which the application was filed pursuant to the procedures set forth in § 25.157 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the technical requirements in paragraphs (b)(2) through (4) of this section, notwithstanding the frequency bands specified in these sections: §§ 25.143(b)(2)(ii) (except NGSO FSS systems) and (iii) (except NGSO FSS systems), 25.204(e), and 25.210(f) and (i).

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