

shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

(h) Requesters must agree to pay all fees charged for services associated with their requests. LSC will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester. For requests estimated to exceed \$25, LSC will consult with the requester prior to processing the request, and such requests will not be deemed to have been received by LSC until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required (and the request will not be deemed to have been received by LSC until such payment is made); or

(2) LSC determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days of receipt by LSC, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of LSC for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by LSC for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by LSC.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If LSC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, LSC shall aggregate such requests and charge

accordingly. Likewise, LSC will aggregate multiple requests for documents received from the same requester within 45 days.

§ 1602.15 Submitter's rights process.

(a) When LSC receives a FOIA request seeking the release of confidential commercial information, LSC shall provide prompt written notice of the request to the submitter in order to afford the submitter an opportunity to object to the disclosure of the requested confidential commercial information. The notice shall reasonably describe the confidential commercial information requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's confidential commercial information wishes to object to the disclosure of the confidential commercial information, the submitter must provide LSC with a detailed written statement identifying the information which it objects to LSC disclosing. The submitter must send its objections to the Office of Legal Affairs or, if it pertains to Office of Inspector General records, to the Office of Inspector General, and must specify the grounds for withholding the information under FOIA or this part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement must be received by LSC within seven business days of the date of the notice from LSC. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have five business days from the date of the notice of proposed release to appeal that decision to the LSC President or Inspector General (as provided in § 1602.13 (c)), whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested confidential commercial information that the requested information should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC's regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Likewise, whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

Dated: October 20, 2016.

Stefanie K. Davis,
Assistant General Counsel.

[FR Doc. 2016-25832 Filed 10-28-16; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[**IB Docket No. 02-34; FCC 16-108**]

Amendment of the Commission's Space Station Licensing Rules and Policies, Second Order on Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission addresses the remaining petitions for reconsideration of the *First Space Station Licensing Reform Order*, and amends, clarifies, or eliminates certain provisions to streamline its procedures and ease administrative burdens on applicants and licensees.

DATES: Effective November 30, 2016.

FOR FURTHER INFORMATION CONTACT: Jay Whaley, 202-418-7184, or if concerning the information collections in this document, Cathy Williams, 202-418-2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Order on Reconsideration*, FCC 16-108, adopted on August 15, 2016 and

released August 16, 2016. The full text of the Second Order on Reconsideration is available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-108A1.pdf. It is also available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CYA257, Washington, DC 20554. 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).

Synopsis

In the *First Space Station Licensing Reform Order*, 68 FR 51499, the Commission adopted new satellite licensing procedures intended to enable the Commission to issue satellite licenses more quickly without allowing satellite license applicants to abuse the Commission's licensing procedures. In response, a number of petitions for reconsideration were filed. The Commission addressed those petitions that were focused on the satellite bond requirements in the *First Order on Reconsideration and Fifth Report and Order*. This *Second Order on Reconsideration* addresses the remaining petitions for reconsideration of the *First Space Station Licensing Reform Order* and amends the Commission's rules in order to streamline these new satellite licensing procedures, and to clarify and reaffirm safeguards against subversion of the licensing process, thus furthering the goals of the *First Space Station Licensing Reform Order* to develop a faster satellite licensing procedure while safeguarding against speculative applications, thereby expediting service to the public.

NGSO-Like Processing Round Procedure

We revise section 25.157(e) of the current rules to eliminate the requirement that the Commission withhold spectrum for use in a subsequent processing round if fewer than three qualified applicants file applications in the initial processing round, known as the "three-licensee presumption." We find that the "three-licensee presumption" is overly restrictive for its intended purpose. We agree with petitioners that a specific frequency band does not necessarily equate to a market, and thus having fewer than three licensees in a band does not necessarily indicate a harmful lack of competition in some market that we should attempt to remedy. We find it common that licensees in different

bands compete with each other in the provision of satellite-based services in broader markets, and we note that there are numerous NGSO-like system operators that currently compete across frequency bands.

We also recognize that in cases where one or more applicants in a processing round request less spectrum than they would be assigned if all the available spectrum were divided equally among all the qualified applicants, some spectrum would remain unassigned, thus we retain the procedure that the Commission adopted in the *First Space Station Licensing Reform Order*, to redistribute the remaining spectrum among the other qualified applicants who have previously applied for the spectrum. If spectrum still remains, then interested parties would be free to apply for that unassigned spectrum in another processing round.

Procedures for Redistribution of Spectrum

We clarify the procedures that apply when we redistribute spectrum among the remaining NGSO-like systems after an authorization for a NGSO-like system has been canceled or otherwise becomes available. This redistribution procedure applies only in cases where spectrum was granted pursuant to a processing round, and one or more of those grants of spectrum is lost or surrendered for any reason. In these cases, the Commission will issue a public notice or order announcing the loss or surrender of such spectrum, and will then propose to modify the remaining grants to redistribute the returned spectrum among the remaining system operators that have requested use of the spectrum. The returned spectrum will generally be redistributed equally among the remaining operators that requested the spectrum, although no operator will receive more spectrum on redistribution than it requested in its application. Additionally, if an operator has not requested use of a particular spectrum band, it will not receive spectrum in that band. If the Commission is unable to make a finding that there will be reasonably efficient use of the spectrum, we will consider on a case-by-case basis whether to open a new processing round for the returned spectrum, leave it unassigned at that point, or repurpose it for another use.

Safeguards Against Speculation

In the *First Space Station Licensing Reform Order*, the Commission eliminated the anti-trafficking rule for satellites, which prohibited satellite licensees from selling "bare" satellite licenses for profit, so as not to prevent

a satellite license from being transferred to an entity that would put it to its highest valued use in the shortest amount of time. The Commission put in place certain safeguards, including a determination of whether the seller obtained the license in good faith or for the primary purpose of selling it for profit, whether the licensee made serious efforts to develop a satellite or constellation, and/or whether the licensee faces changed circumstances. Petitioners expressed concern that by making this determination, the Commission would undercut the public interest benefits it identified in eliminating the anti-trafficking rule. We reiterate that this limited exception does not undermine our elimination of the anti-trafficking rule, and we require that parties opposing a transaction based on a seller's motivation to provide, at a minimum, *substantial* evidence that a satellite license was obtained for purposes of selling the license for profit, thus preventing opponents to a transaction from delaying the transaction on purely frivolous grounds and ensuring that these transactions do not encounter any unwarranted delay.

In the *First Space Station Licensing Reform Order*, the Commission adopted a rule prohibiting sales of places in the queue as an additional safeguard against speculation and revised its rules so that an applicant proposing to merge with another company could do so without losing its place in the processing queue. The revised rule treated transfers of control as minor amendments, thus within the queue, and major amendments to applications as newly filed applications, thus moving to the end of the queue. We find that it is not inconsistent to prohibit an applicant from selling its place in the queue, while allowing an applicant that transfers control over itself to a new controlling party to retain its place in the queue, especially when the new company is better positioned to compete in the marketplace, and that an applicant's transfer of control is less likely to be used as an abusive strategy than selling its place in the queue.

Effect of License Surrender Prior to Milestone Deadlines on Application Limit

Under section 25.159(d) of the rules, adopted in the *First Space Station Licensing Reform Order* and commonly referred to as the "Three-Strikes" rule, if a licensee misses three milestones in any three-year period, it is prohibited from filing additional satellite applications if it possesses two satellite applications and/or unbuilt satellites in any frequency band. This limit remains

in force until the licensee demonstrates that it would be very likely to construct its licensed facilities if it were allowed to file more applications. The Commission reasoned that a licensee that consistently obtains licenses but does not meet its milestones precludes others from going forward with their business plans while it holds those licenses.

SES Americom (SES) maintains that the Commission should not consider a licensee's relinquishing a license prior to the contract execution milestone in determining whether to impose the limit on satellite applications and/or unbuilt satellites on that licensee. As an initial matter, we note that the milestone rules have been revised in the *Part 25 Review Second R&O* to eliminate interim milestones. As a result, there is no longer a contract execution milestone, and thus SES's arguments are now moot in part. However, since we retained the final milestone requirement, any authorization surrendered prior to fulfilling the remaining milestone requirement will continue to be subject to the "Three-Strikes" rule. For the reasons set forth in the *Part 25 Review Second R&O*, we continue to believe that, on balance, retaining this milestone and the resulting operation of the "Three Strikes" rule best serves the public interest, and we see no compelling justification to counter-balance the public interest benefits in retaining the current requirements. Accordingly, we will continue to presume that these licensees (*i.e.*, those covered under the "Three Strikes" rule) acquired licenses for speculative purposes, and we will restrict the number of additional satellite applications they may file to limit the potential for future speculation while the presumption is in effect.

Effects of Mergers on Application Limits

SIA asserts that it is unclear in the *First Space Station Licensing Reform Order* how the limit on pending and licensed but unlaunched satellites applies to satellite operators that would be formed by the merger of two companies. We clarify that the limit on satellite applications does not prevent the filing of an application for transfer of control or assignment of licenses, even if the combined entities would not meet the limits on pending applications and unbuilt stations specified in the rule. Of course, any such approval of the transfer of control will ultimately be conditioned on the entity coming into

compliance with the limits within a reasonable amount of time.¹

Needs for Safeguards in Different Parts of the GSO Orbit

In its Petition, Hughes asserts that the limit on pending applications and licensed-but-unlaunched satellites is not necessary for those orbital locations not covering the United States.² Hughes also advocates eliminating the bond requirement for applicants for satellites that will operate at non-U.S. orbital locations.³ Hughes proposes to define "U.S." orbital locations as those within the orbital arc between 60° W.L. and 140° W.L., and to define "non-U.S." locations as those outside that arc. Hughes argues that the limit should not apply to the "non-U.S." orbital locations because other Administrations have international coordination priority at many of those locations and because many other Administrations have volatile economies. Hughes argues that the demand for such locations has been "reasoned and measured," so that the Commission can address them in an orderly fashion.

The purpose of the safeguards in section 25.159 of the Commission's rules is not to reduce the number of satellite applications to a "reasoned and measured" level. Rather, the Commission intended the safeguards to discourage speculators from applying for satellite licenses, thereby precluding another applicant from obtaining a license, constructing a satellite, and providing service to the customers. Hughes assumes that, because fewer applications are filed outside of the arc from 60° W.L. to 140° W.L. than within that arc, speculation is not a concern. Although demand may not be as great for locations that cannot serve large portions of the United States, we have licensed many satellites at orbital locations in this portion of the arc that

are subject to competition. We have also granted U.S. market access to many non-U.S.-licensed satellites operating at those locations to provide services to U.S. customers. Thus, allowing operators to hold these orbital locations while they decide whether to proceed with implementation could preclude other operators whose plans also involve providing international service from going forward. For these reasons, we will continue to apply the safeguards against speculation, including the bond requirement, where appropriate, regardless of orbital location.

Satellite System Implementation Requirements

In its petition for reconsideration, ICO asserts that the *First Space Station Licensing Reform Order* does not state clearly that NGSO-like licensees acquiring additional spectrum from other NGSO-like licensees are permitted to implement a single, integrated NGSO system under a single milestone schedule. ICO requests the Commission to clarify that such licensees will not be required to construct multiple separate satellite systems.

The Commission eliminated the anti-trafficking rule to allow NGSO-like licensees in modified processing rounds to acquire rights to operate on additional spectrum from other licensees if they feel it is necessary to meet their business needs. It would be inefficient to require these licensees to build two incompatible satellite networks, each operating in only part of the spectrum rights that the licensee is authorized to use. We therefore clarify that NGSO-like licensees acquiring spectrum rights from other NGSO-like licensees are permitted to build a single, integrated NGSO-like system operating on all authorized frequency bands, under a single milestone schedule. These cases are inherently fact-specific, and so we decline to adopt a blanket approach about the milestone schedule that would apply in these cases.⁴ If the milestone schedules of each license differ, we will address, on a case-by-case basis, the particular milestone schedule that will be imposed on the integrated system.

Non-U.S.-Licensed Satellites

Under the terms of the World Trade Organization (WTO) Agreement on

¹ In ruling on proposed mergers, the Commission routinely assesses "whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules."

² As noted above, the *First Space Station Licensing Reform Order* established two limits on pending applications and/or unbuilt satellites, the stricter of the two limits is applicable to licensees that have established a pattern of missing milestones. Hughes maintains that the stricter limit should not apply to orbital locations not covering the United States. We also observed above that the *Part 25 Review Second R&O* eliminated one of the two limits on pending applications and/or unbuilt satellites and the bond requirement. As a result, this issue is moot.

³ In the *Part 25 Review Second R&O*, the Commission adopted significant revisions to the bond requirement adopted in the *First Space Station Licensing Reform Order*. However, the Commission continues to require a bond for all satellite licenses regardless of the orbit location.

⁴ For example, depending on the differences in the milestone schedules, permitting licensees to adopt a schedule with significantly more time might encourage licensees to acquire other licensees merely to gain more time to fulfill their milestone schedules. On the other hand, integrating additional spectrum into a single network may legitimately require more time in some cases.

Basic Telecommunication Services (WTO Telecom Agreement),⁵ WTO signatories, including the United States, have made binding commitments to open their markets to foreign competition in satellite services.⁶ Consistent with those commitments, the Commission adopted *DISCO II* in 1997 to establish procedures for non-U.S.-licensed satellite operators seeking access to the U.S. market. In the *DISCO II First Reconsideration Order*, the Commission streamlined those procedures.

In the *First Space Station Licensing Reform Order*, the Commission established a procedure for addressing changes in ownership of non-U.S.-licensed satellites. Specifically, when the operator of such a satellite undergoes a change in ownership, the Commission requires the satellite operator to notify the Commission of the change. The Commission then issues a public notice announcing that the transaction has taken place and inviting comment on whether the transaction affects any of the considerations made when the original satellite operator was allowed to enter the U.S. market. In addition, if control of the satellite was transferred to an operator not based in a WTO member country, the Commission would invite comment on whether the purchaser has satisfied all applicable *DISCO II* requirements. The Commission then determines whether any commenter raised any concern that would warrant precluding the new operator from entering the U.S. market, including concerns relating to national security, law enforcement, foreign policy, or trade issues.

According to SIA, the rule revisions adopted in the *First Space Station Licensing Reform Order* to implement this satellite transfer procedure do not state clearly that satellite operators are allowed to notify the Commission of transfers of ownership of satellites *after* the transfer takes place. SIA asks us to revise section 25.137(g) of the

Commission's rules to make clear that non-U.S.-satellite operators may notify the Commission of a change of ownership after the transfer takes place. We will do so. The Commission did not intend to require foreign entities to notify the Commission of the transaction before it had been completed. Rather, the Commission adopted its proposal in the *Space Station Licensing Reform NPRM* to address such changes in ownership by "issuing a public notice announcing that the transaction has taken place." Therefore, we revise section 25.137(g) as SIA suggests, as set forth in Appendix B of the Second Order on Reconsideration. We also clarify that parties must notify the Commission within 30 days after consummation of the transaction in order to enable the Commission to perform the review described in the *First Space Station Licensing Reform Order* in a meaningful and timely manner while the new foreign operator is permitted to access the U.S. market.

Further, in the *First Space Station Licensing Reform Order*, the Commission stated that operators requesting authority to provide service in the United States from a foreign-licensed satellite must file Form 312 (Application for Satellite Space and Earth Station Authorizations). Hughes asserts that the electronic Form 312 does not allow a non-U.S.-licensed satellite operator to indicate that it is not seeking a Commission license, but is instead seeking U.S. market access. Hughes also questions whether parties seeking U.S. market access must file their requests electronically. First, contrary to Hughes's assertion, the electronic version of Form 312 provides a place to indicate that the applicant is filing a petition for declaratory ruling, which is the procedure for requesting U.S. market access. Second, the Commission stated explicitly in the *First Space Station Licensing Reform Order* that U.S. market access requests must be filed electronically, and we continue to believe that mandatory electronic filing serves the public interest by facilitating prompt receipt of petitions for declaratory ruling and accurate recording of the time of filing under the first-come, first-served processing procedure, and by providing other administrative efficiencies.

ITU Priority

In the *First Space Station Licensing Reform Order*, the Commission discussed the interrelationship between its domestic licensing framework and the international coordination framework set forth in the Radio

Regulations of the International Telecommunication Union (ITU). Hughes requests that we clarify how we will determine whether to grant or deny market access requests from non-U.S.-licensed satellite operators, particularly in cases where a non-U.S. operator has ITU coordination date-filing priority, *i.e.*, an earlier ITU protection date, but is behind a U.S. applicant in the U.S. space station queue. In particular, Hughes argues that the first-come, first-served procedure should not "block" a non-U.S.-licensed satellite operator with ITU priority.

The Commission discussed international coordination issues in the *First Space Station Licensing Reform Order*. Specifically, the Commission stated that it will license satellites at orbital locations at which another Administration has ITU priority. In fact, if a later-filed market access request—with or without ITU priority—is mutually exclusive with an earlier-filed, granted application, it may be dismissed absent a coordination agreement between the applicants. The Commission further stated, however, that it will issue the earlier-filed authorization subject to the outcome of the international coordination process, and emphasized that the Commission is not responsible for the success or failure of the required international coordination. Absent such coordination, a U.S.-licensed satellite making use of an ITU filing with a later protection date would be required to cease service to the U.S. market immediately upon launch and operation of a non-U.S.-licensed satellite with an earlier protection date, or be subject to further conditions. We continue to follow this general approach today.

Modifications

Hughes notes that the rule revisions adopted in the *First Space Station Licensing Reform Order* require the Commission to treat modification requests involving new orbital locations or new frequency bands in the application processing queue, and other modification requests outside of the queue. Hughes supports this approach, but asserts that the Commission stated elsewhere in the *First Space Station Licensing Reform Order* that, unless it could categorically classify certain modification requests involving new frequencies or orbital locations as "minor," it would treat all such modification requests in the processing queue. Hughes requests the Commission to reconcile these two statements.

In the *First Space Station Licensing Reform Order*, the Commission revised its rules to adopt a clear, simple test for

⁵ The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement). The Marrakesh Agreement includes multilateral agreements on the trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Service (GATS) is Annex 1B of the Marrakesh Agreement. The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996).

⁶ The United States made market access commitments for Direct-to-Home (DTH) Service, Direct Broadcast Satellite (DBS) Service, and Digital Audio Radio Service (SDARS), and took an exemption from most-favored nation (MFN) treatment for those services as well. Generally, GATS requires WTO member countries to afford MFN treatment to all other WTO member nations.

determining whether to process a modification request in the processing queue: modification requests involving new orbital locations or new frequency bands are considered in the queue, and other modifications are considered outside of the queue.⁷ We clarify here that nothing in the text of the *First Space Station Licensing Reform Order* was intended to alter the Commission's decision to consider modification requests in this fashion. The Commission also suggested, however, that it could, at a later date, adopt rules to define certain modification requests involving new orbital locations as minor, and to consider such modification requests outside the queue. In this regard, in the *Second Space Station Licensing Reform Order*, the Commission decided to treat certain fleet management modification requests involving orbital reassignment of specific satellites outside the queue. We affirm, however, that, absent a rulemaking finding public interest reasons to create additional exceptions, we will continue to process orbital reassignment and frequency modification requests as set forth in section 25.117(d)(2)(iii).

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking in the Matter of Comprehensive Review of Licensing and Operating Rules for Satellite Services*. The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. 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. Thus, on October 14, 2016, the Office of Management and Budget (OMB) determined that the rule changes in this document are non-substantive changes

to the currently approved collection, OMB Control Number 3060–0678. ICR Reference Number: 201610–3060–011.

Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We received no comments on this issue. We have assessed the effects of the revisions adopted that might impose information collection burdens on small business concerns, and find that the impact on businesses with fewer than 25 employees will be an overall reduction in burden. The amendments adopted in this *Second Order on Reconsideration* eliminate unnecessary information filing requirements for licensees and applicants; eliminate unnecessary technical restrictions and enable applicants and licensees to conserve time, effort, and expense in preparing applications and reports. Overall, these changes may have a greater positive impact on small business entities with more limited resources.

Congressional Review Act

The Commission will send copies of this *Second Order on Reconsideration* to Congress and the General Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Effective Date

The effective date for the rules adopted in this *Second Order on Reconsideration* is 30 days after date of publication in the **Federal Register**.

Need for, and Objectives of, the Rules

This Order adopts minor changes to part 25 of the Commission's rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services.⁸ We revise the rules to, among other things, further the goals of the *First Space Station Licensing Reform Order* to develop a faster satellite licensing procedure while safeguarding against speculative applications, thereby expediting service to the public.

This *Order* revises two sections of part 25 of the rules. Specifically, it revises the rules to:

(1) Eliminate the “three-licensee presumption” that applies to the NGSO-like processing round procedure, and also revise the procedures that we will apply when we redistribute spectrum among remaining NGSO-like licensees

when a license is cancelled for any reason.

(2) Clarify that non-U.S.-satellite operators may notify the Commission of a change of ownership after the transfer takes place.

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

No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities. The Commission has, nonetheless, considered any potential significant economic impact that the rule changes may have on the small entities which are impacted. On balance, the Commission believes that the economic impact on small entities will be positive rather than negative, and that the rule changes move to streamline the part 25 requirements.

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

Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, 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.

Description and Estimate of the Number of Small Entities to Which the Rules May 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 Small Business Administration (SBA). Below, we describe and estimate the number of small entity licensees that may be affected by the adopted rules.

⁷ The Commission adopted this test instead of a more complex proposal to place “major” modification requests in the queue, and to define “major” modification requests as those that would “degrade the interference environment.”

⁸ 47 CFR part 25, Satellite Communications.

Satellite Telecommunications and All Other Telecommunications

The rules adopted in this Order will affect some providers of satellite telecommunications services. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had \$32.5 million or less in annual receipts. Under the "Other Telecommunications" category, a business is considered small if it had \$32.5 million or less in annual receipts.

The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point 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." For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under \$25 million.

The second category of Other Telecommunications is comprised of entities "primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million. We anticipate that some of these "Other Telecommunications firms," which are small entities, are earth station applicants/licensees that will be affected by our adopted rule changes.

We anticipate that our rule changes will have an impact on space station

applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. 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.

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

The Order adopts a number of rule changes that will affect reporting, recordkeeping and other compliance requirements for space station operators. These changes, as described below, will decrease the burden for all businesses operators, especially firms that are applicants for licenses to operate NGSO-like space stations.

We simplify the rules to facilitate improved compliance. First, the Order simplifies information collections in applications for NGSO-like space station licenses. Specifically, the Order eliminates reporting requirements that are more burdensome than necessary. For example, the Order removes the "three-licensee presumption," a rebuttable presumption that assumes, for purposes of the modified processing round procedure for NGSO-like space station applications, a sufficient number of licensees in the frequency band is three, and if the processing round results in less than three applicants, $\frac{1}{3}$ of the spectrum in the allocated band will be reserved for an additional processing round. To rebut this presumption, a party must provide convincing evidence that allowing less than three licensees in the frequency band will result in extraordinarily large, cognizable, and non-speculative efficiencies. Thus, applicants for NGSO-like space stations will not need to expend resources, both technical and legal, to demonstrate that their NGSO-like systems are designed to provide such efficiencies in order to rebut the three-licensee presumption. Furthermore, in cases where spectrum was granted pursuant to a processing round, and one or more of those grants of spectrum is lost or surrendered for any reason, the rules now allow for the returned spectrum to be redistributed without automatically triggering a new processing round and the corresponding costs and paperwork involved, thus reducing the administrative burdens on those applicants.

Another example is that we see no reason to require non-U.S.-satellite operators with satellites on the Permitted List to notify the Commission

of a change of ownership before the transfer takes place. Thus, we revise our rule to state clearly that non-U.S.-satellite operators are allowed to notify the Commission of transfers of ownership of Permitted List satellites *after* the transfer takes place. Thus, these satellite operators are relieved of any additional burden that could result from a delay in completing a transfer of Permitted List satellites pending Commission approval.

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

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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 rules 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."

The Commission is aware that some of the revisions may impact small entities. The *First Space Station Licensing Reform Order* sought comment from all interested parties, and small entities were encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *First Space Station Licensing Reform Order*. No commenters raised any specific concerns about the impact of the revisions on small entities. This order adopts rule revisions to modernize the rules and advance the satellite industry. The revisions eliminate unnecessary requirements and expand routine processing to applications in additional frequency bands, among other changes. Together, the revisions in this Order lessen the burden of compliance on small entities with more limited resources than larger entities.

The adopted changes for NGSO-like space station licensing clarify requirements for NGSO-like modified processing rounds. Each of these changes will lessen the burden in the licensing process. Specifically, this Order adopts revisions to reduce filing requirements and clarify the procedures for redistribution of surrendered spectrum in such a way that applicant burden will be reduced. Thus, the revisions will ultimately lead to benefits

for small NGSO-like space station operators in the long-term.

Report to Congress

The Commission will send a copy of this *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 this Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Legal Basis

The 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), 161, 303(c), 303(f), 303(g), and 303(r).

Ordering Clauses

It is ordered, that pursuant to sections 4(i), 301, 302, 303(r), 308, 309, and 310 of the Communications Act, 47 U.S.C. 154(i), 301, 302, 303(r), 308, 309, and 310, and section 1.429 of the Commission's rules, 47 CFR 1.429, the petitions for reconsideration listed in Appendix A to the *Second Order on Reconsideration* are granted in part, denied in part, and dismissed as moot in part, to the extent indicated above.

It is further ordered, 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), 303(r), that this *Second Order on Reconsideration* in IB Docket 02–34 is hereby adopted.

It is further ordered, that part 25 of the Commission's Rules is amended as set forth in Appendix B of the *Second Order on Reconsideration* and section 25.157 is revised to remove the "three-licensee presumption" as well as the requirement that the Commission withhold spectrum for use in a subsequent processing round if fewer than three qualified applicants are licensed in the initial processing round.

It is further ordered, that section 25.137(g) is amended to clarify that satellite operators are allowed to notify the Commission of transfers of ownership of Permitted List satellites after the transfer takes place.

It is further ordered, that all rule revisions will be effective on the same date, which will be announced in a Public Notice.

It is further ordered, that the Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility

Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered, that the Chief, International Bureau is delegated authority to modify satellite licenses consistent with the provisions of this Order above.

It is further ordered, that this proceeding is terminated pursuant to section 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), absent applications for review or further appeals of this *Second Order on Reconsideration*.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

List of Subjects in 47 CFR Part 25

Administrative practice and procedure, Earth stations, Satellites.

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: Interprets or applies 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

- 2. Revise § 25.137(g) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(g) A non-U.S.-licensed satellite operator that acquires control of a non-U.S.-licensed space station that has been permitted to serve the United States must notify the Commission within 30 days after consummation of the transaction so that the Commission can afford interested parties an opportunity to comment on whether the transaction affected any of the considerations we made when we allowed the satellite operator to enter the U.S. market. A non-U.S.-licensed satellite that has been transferred to new owners may continue to provide service in the United States unless and until the Commission determines otherwise. If the transferee or assignee is not licensed by, or seeking a license from, a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement, the non-U.S.-licensed satellite operator will be required to make the showing described in paragraph (a) of this section.

- 3. Amend § 25.157 by revising paragraph (e) and removing paragraph (g)(3) to read as follows:

* * * * *

(e)(1) In the event that there is insufficient spectrum in the frequency band available to accommodate all the qualified applicants in a processing round, the available spectrum will be divided equally among the licensees whose applications are granted pursuant to paragraph (d) of this section, except as set forth in paragraph (e)(2) of this section.

(2) In cases where one or more applicants apply for less spectrum than they would be warranted under paragraph (e)(1) of this section, those applicants will be assigned the bandwidth amount they requested in their applications. In those cases, the remaining qualified applicants will be assigned the lesser of the amount of spectrum they requested in their applications, or the amount of spectrum that they would be assigned if the available spectrum were divided equally among the remaining qualified applicants.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1843 and 1852

RIN 2700–AE35

NASA Federal Acquisition Regulation Supplement: Remove NASA FAR Supplement Clause Engineering Change Proposals (2016–N030)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to remove the Engineering Change Proposals (ECPs) basic clause with its Alternate I & II and associated information collection from the NFS.

DATES: *Effective:* November 30, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, telephone 202–358–4560.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the **Federal Register** at 81 FR 54783 on August 17, 2016, to amend the NFS to remove contract clause 1852.243–70, Engineering Change Proposals (ECPs)