the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

* * * * *

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—[the effective date of the final rule].

(1) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the upper payment limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

3.Amend § 447.321 as follows:

a. Revise paragraphs (b) through (d).

b. Revise paragraph (e)(1)(ii).

c. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

d. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).

e. Revise paragraph (f).

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(c) *Exception—Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Public Law 93–638).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—[the effective date of the final rule].

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 16, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 6, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–29327 Filed 11–20–01; 11:00 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[IB Docket No. 95–91; DA 01–2570]

Authorization of Satellite Digital Audio Radio Service Terrestrial Repeater Networks

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: With this document, the Federal Communications Commission seeks to augment the record concerning terrestrial repeaters in the Satellite Digital Audio Radio Service. Comments are sought on the proposals set out in the document to seek resolution of issues identified in the record that have not yet been directly addressed by commenters. The comments filed in response to this document and those currently in the record will be used to develop specific rules for the use of terrestrial repeaters in SDARS.

DATES: Comments are due December 14, 2001. Reply comments are due December 21, 2001.

ADDRESSES: Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). (*See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998)). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, IB Docket No. 95–91. Parties filing comments on paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. An additional copy of all pleadings should also be sent to Rockie Patterson, International Bureau, FCC Room 6–B524, 445 12th Street, SW., Washington, DC 20554. One copy of all comments should also be sent to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of all filings are available for public inspection and copying during regular business hours at the FCC's Reference Information Center, 445 12th Street, SW., Washington, DC, telephone 202–857–3800; facsimile 202–857–3805.

FOR FURTHER INFORMATION CONTACT: Rockie Patterson, Satellite Engineering

Branch, Satellite and Radio communication Division, International Bureau, 202–418–1183.

SUPPLEMENTARY INFORMATION: This is a summary of Report No. SPB–176, DA 01–2570, released on November 1, 2001. The full text of this document is 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. 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*.

Summary

In March 1997, the Commission adopted service rules for satellite digital audio radio service (SDARS) authorizations in the 2320–2345 MHz frequency band. (*See* 62 FR 11083 (March 11, 1997)). In conjunction with the service rules, the Commission issued a Further Notice of Proposed Rulemaking (*See* 62 FR 19095 (April 18, 1997), seeking comment on the proposed use of SDARS repeaters which some applicants intended to implement, as necessary, in urban canyons and other areas where it may be difficult to receive DARS signals transmitted by a satellite. At that time, no information was in the record on the specific operations of the SDARS repeaters and several issues concerning the licensing and regulation of the repeaters were unresolved. Since the Further Notice, the Commission has received detailed technical information on the SDARS repeaters and significant comment from the Wireless Communications Service (WCS), Multipoint Distribution Service (MDS), Instructional Television Fixed Service (ITFS) licensees and the SDARS licensees on terrestrial repeater licensing. By this document, we seek to augment the record on the specific proposals described below for the resolution of issues identified in the record that have not yet been directly addressed by commenters.

Proposals

We seek comment on an approach that defines a compensation methodology for SDARS licensees to pay for the components necessary for WCS licensees to eliminate the effects of blanketing interference to their receivers. *See* 47 CFR 27.58. We seek comment on this approach and on any variation or alternatives that commenters have proposed in this proceeding. We also include for comment various alternatives for a long-term solution to the potential blanketing interference between SDARS and WCS licensees with stations close to high power repeaters. We seek comment on provisions that would address the effect of SDARS operations on MDS and ITFS licensees. Commenters should support their views with concrete analysis and documentation.

I. Repeater Requirements

We seek comment on the sufficiency of an approach that would require SDARS repeaters to meet the following:

A. Definitions.

1. Low Power Repeaters (LPRs) are limited to an EIRP less than or equal to 2 kW.

2. High Power Repeaters (HPRs) are limited to an EIRP greater than 2 kW and less than or equal to 40 kW.

B. Authorized transmissions.

SDARS repeaters shall be used only to transmit the complete programming, and only that programming that is also transmitted by an authorized DARS satellite and in such a way that the satellite signal and the terrestrial repeater signal are received nearly simultaneously by SDARS subscriber receivers.

C. Eligibility and frequencies.

Authorization to operate SDARS repeaters is granted only to licensees of SDARS systems with operational space stations. An SDARS licensee shall locate repeater frequency assignments in the center of its exclusively licensed frequency band, with the edge of the repeater band being no less than four megahertz from the edge of the SDARS spectrum at 2320 MHz and 2345 MHz.

D. Emission limits.

1. SDARS repeater out-of-band emission levels shall comply with 47 CFR 25.202(f) within the 2320–2332.5 MHz and 2332.5–2345 MHz frequency bands.

2. Below 2320 MHz and above 2345 MHz, the power of any SDARS repeater emission shall be attenuated below the peak equivalent isotropically radiated power (P_{eirp}) within the assigned frequency band(s) of operation between 2320 MHz and 2345 MHz, measured in watts, by a factor not less than 75 + 10log (P_{eirp}) dB, where P_{eirp} is measured in watts.

3. Compliance with the previous provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth.

II. Prior Approval

We seek comment on SDARS licensees obtaining prior Commission approval to operate: (1) Any SDARS repeater that exceeds the power levels and/or proximity restrictions specified in existing international agreements with Canada and Mexico covering the use of SDARS frequency bands, except that Commission approval shall not be required for SDARS repeaters already coordinated successfully with Canada or Mexico; (2) any SDARS repeater that fails to comply with the requirements of 47 CFR 17.4 of the Commission's rules; (3) any SDARS repeater that will have significant environmental effects, as defined by 47 CFR 1.1301 through 1.1319 of the Commission's rules. We seek comment on the feasibility of this requirement.

III. Low Power Repeater (LPR) Operations

A. *LPR Operation.* We seek comment on permitting an SDARS licensee to operate an unlimited number of LPRs without prior coordination as of the effective date of the Commission Order adopting final rules governing SDARS repeaters and where prior approval is not required.

B. *Notification of LPRs to WCS, MDS/ITFS licensees.* We seek comment on imposing a notification requirement on SDARS licensees to provide notice to any WCS, MDS, or ITFS licensee that may be operating in the vicinity of an LPR brought into operation after the final SDARS rules are effective. At least 30 days prior to commencing operations from any new LPR transmitting station, or with increased power from any existing LPR up to 2 kW EIRP, the SDARS licensee shall notify all WCS, and MDS/ITFS licensees in or through whose licensed service area they intend to operate, and provide the technical parameters of the SDARS terrestrial repeater transmission facility.

C. *LPR interference to MDS/ITFS receivers.* To provide parity with the requirements imposed on WCS licensees to remedy blanketing interference caused to MDS/ITFS receivers (*See* 47 CFR 27.58), as proposed by several commenters in this proceeding, we seek comment on requiring SDARS licensees to remedy any blanketing interference caused to MDS/ITFS receivers from LPRs. We also seek comment on requiring the SDARS licensees to bear the full financial obligation to remedy interference from

their repeaters to MDS/ITFS block downconverters if all of the following conditions are met:

(1) The complaint is received by the SDARS licensee prior to February 20, 2002;

(2) The MDS/ITFS downconverter was installed prior to August 20, 1998;

(3) The SDARS terrestrial repeater station transmits at 50W or more peak EIRP; and

(4) The MDS/ITFS downconverter is located within a SDARS terrestrial repeater's free space power flux density contour of −34 dBW/m².

We also seek comment on the following concepts: that if the SDARS licensee cannot otherwise eliminate any interference that its repeater causes to MDS/ITFS reception, then that SDARS licensee must cease operations from the offending LPR facility. If SDARS licensees collocate their repeater antennas on the same tower, they shall assume shared responsibility for remedying interference complaints within the area determined by the −34 dBW/m² power flux density contour, unless the offending station can be readily determined and then that station operator shall assume full financial responsibility. If the complainant is also entitled to compensation from one or more licensees in the Wireless Communications Service pursuant to 47 CFR 27.58, we seek comment on whether the cost should be shared equally among all WCS and SDARS licensees that cause such interference.

IV. High Power Repeater (HPR) Operations

We seek comment on the following compensation methodology that will apply to SDARS licensees operating HPRs. This concept establishes a safe harbor in which SDARS licensees would not be required to coordinate with or compensate WCS licensees to resolve blanketing interference that may be caused to WCS receiving stations from SDARS repeaters. It also establishes ''zones'' outside of this safe harbor in which WCS licensees would be entitled to compensation to resolve interference from HPR operations. The methodology includes a schedule for providing compensation. We seek comment on this proposal and its implementation as well as any variations of this concept as set forth below. Specifically, we solicit comment on whether or not compensation should be provided for consumer premises equipment (CPE) and on whether or not there should be a limit of the SDARS licensees' financial liability.

A. *Permitted HPR Operations.* We seek comment on whether SDARS licensees should be permitted to operate HPRs at locations with technical parameters as limited by the Commission in the XM and Sirius STA Orders (*See* DA 01–2172 and DA 01–2171 (rel. September 17, 2001)) for 18 months after the effective date of the final rules and whether, within 15 days from the release date of these rules, the SDARS licensees should be required to file with the Commission technical information on HPRs that have been moved to an alternate location, reduced in power, or no longer in operation as a result of interference concerns with WCS, MDS or ITFS facilities prior to the release date of the final SDARS repeater rules.

B. *Safe Harbor.* We seek comment on whether SDARS licensees should have any obligation to coordinate with WCS stations, including WCS customer premises equipment, located within the power level contour that would be generated by a 2 kW EIRP LPR, and using free space loss and the specified receive system threshold characteristics of the affected WCS licensee, as follows:

Maximum LPR EIRP (kW)	LPR EIRP (dBm)	Maximum safe harbor distance from LPR to edge of contour (miles)			
		−25 dBm contour	−35 dBm contour	−45 dBm contour	−58 dBm contour
2	63	0.16	0.50	1.56	6.97

Free space path loss is defined as: $Loss_{dB}$ = 32.5 + 20log(distance in km) + 20log(frequency in MHz)

C. *Liability Zone.* We seek comment on whether SDARS licensees should be required to coordinate in good faith with WCS licensees with respect to WCS stations located outside of the Safe Harbor but located within the Liability Zone defined by the power level contour generated by the actual HPR EIRP, and using free space loss and the specified receive system threshold characteristics of the ''affected'' WCS licensee (*i.e.*, the affected licensee is that licensee with one or more stations inside the Liability Zone). At any stage in the 18-month period following the effective date of the SDARS repeater rules, an SDARS licensee may elect to reduce its HPR power level to any level that would reduce its Liability Zone. The edge of the Liability Zone shall not extend beyond the distances from the HPR according to the following:

HPR EIRP (kW)	HPR EIRP (dBm)	Maximum liability zone distance from HPR to edge of contour (miles)			
		25 dBm contour	−35 dBm contour	−45 dBm contour	−58 dBm contour
40	76	0.70	2.20	6.97	31.13

Free space path loss is defined as: $Loss_{dB}$ = 32.5 + 20log(distance in km) + 20log(frequency in MHz)

These tables are intended to provide generic rules that take into account the fact that the technical parameters of WCS systems may vary. The Safe Harbor and Liability Zone sizes depend upon the overload threshold of the affected WCS receiver. The tables provide the range of sensitivities of the WCS receivers to be deployed as stated in the record. For example, if the WCS licensee deploys receivers that overload at −25dBm, the first table indicates that the Safe Harbor maximum radius distance will be 0.16 miles. If the SDARS repeater operates at 40 kW with an omni-directional antenna, the second table indicates that the Liability Zone will have a maximum radius of 0.70 miles. If the SDARS licensee uses a 10 kW repeater, the Liability Zone radius would be calculated using the free space path loss formula to be 0.35 miles.

D. *Blanketing interference to WCS stations.* We seek comment on whether a WCS station located within the Liability Zone is considered to potentially receive blanketing interference from the notified HPR(s) and the affected WCS licensee is entitled to compensation according to the Compensation Schedule. Under this approach, SDARS and WCS licensees would be expected to coordinate in

good faith to avoid interference problems and to allow the greatest operational flexibility in each other's operations. To remedy actual blanketing interference to WCS stations already in operation or planned for operation in the 18-month period, either by compensation or power reductions, the licensees must, in as expeditious a manner as possible, exchange information about WCS station deployment (*e.g.*, the number of base stations planned to be in operation in the 18 months following the effective date of the SDARS rules; the station locations within the Liability Zone in order of anticipated deployment, if known; the technical characteristics of those stations; and the estimated reasonable cost to resolve interference to the WCS stations receiving blanketing interference from the specified HPR(s)).

E. *Compensation Schedule.* If an SDARS licensee is notified by an affected WCS licensee that it is receiving blanketing interference within the Liability Zone that prevents the provision of commercial service, the SDARS licensee shall immediately pay the reasonable costs of eliminating or mitigating such interference. This is similar to what the Commission has required of WCS licensees to do for MDS/ITFS licensees and of new FM broadcast licensees to do for complainants. (*See* 47 CFR 17.58, 73–318). The SDARS licensee shall compensate the WCS licensee for the cost of the components to protect its station receivers from blanketing interference caused by the HPRs (*e.g.*, filters for base stations or RF Automatic Gain Control for CPE). The following schedule sets forth the timeframes during which WCS licensees' interference complaints shall be remedied and the prorated financial liability of SDARS licensees following the effective date of the rules governing SDARS repeaters:

0 to 6 months—SDARS licensee pays 100% of components for base stations;

6 to 12 months—SDARS licensee pays 50% of components for base stations;

12 to 18 months—SDARS licensee pays 25% of components for base stations;

after 18 months—SDARS licensee has no financial liability.

Under this approach, for 18 months after the final rules are effective, the SDARS HPR operations would be limited to the locations and parameters identified in the STA requests. The population of HPRs would be frozen. After the 18 month period, any new HPR would have to be coordinated with affected WCS operations or would be limited in maximum power, as described below in section V., B. SDARS licensees would be obligated to abide by the final rules to ensure future protection to WCS licensees.

We seek comment on the appropriateness of including the cost of resolving interference to WCS CPE in the Compensation Schedule. We seek comment on the time within which SDARS licensees must mitigate interference to WCS CPE and whether or not we should require SDARS licensees to pay any compensation or provide compensation for up to 18 months for WCS CPE. We seek further comment on whether the SDARS licensees should be required to provide filters for WCS base stations or to pay all the costs associated with eliminating the interference for both base stations and CPE, including labor, as well as on any other aspects of possible interference mitigation. Moreover, we seek comment on whether the SDARS licensee's monetary liability to WCS licensees should be limited to a particular amount. If so, what is that amount and the rationale for it? We also generally seek comment on whether the resolution of interference should be left to the SDARS and WCS licensees.

F. *Blanketing interference to MDS/ITFS receivers.* Similar to the approach for SDARS licensees to remedy blanketing interference caused to MDS/ITFS receivers from LPRs until February 20, 2002 in Section III. C., we seek comment on applying this approach with regard to HPRs. Specifically, we seek comment on whether SDARS licensees should bear the full financial obligation to remedy interference to MDS/ITFS block downconverters if all of the following conditions are met:

(1) The complaint is received by the SDARS licensee prior to February 20, 2002;

(2) The MDS/ITFS downconverter was installed prior to August 20, 1998; and

(3) The MDS/ITFS downconverter is located within a SDARS HPR station's free space power flux density contour of -34 dBW/m^2.

We seek comment on requiring that if the SDARS licensee cannot otherwise eliminate interference caused to MDS/ITFS block downconverters, the SDARS licensee must reduce its power or cease operations from the offending SDARS HPR station. If SDARS licensees collocate their antennas on the same tower, they shall assume shared responsibility for remedying interference complaints within the area determined by the -34 dBW/m^2 power flux density contour, unless an offending station can be readily determined in which case the offending SDARS should be required to assume full financial responsibility. If the MDS/ITFS complainant is also entitled to compensation from one or more licensees in the Wireless Communications Service pursuant to § 27.58, the cost shall be shared equally among all WCS and SDARS licensees with stations causing such interference.

V. Operation of HPRs after the compensation schedule to WCS/MDS/ITFS licensees no longer applies

In addition to a methodology to limit interference and establish compensation to WCS and MDS/ITFS licensees, we seek comment on how to facilitate the future deployment of HPRs. We seek comment on whether to establish a power cap and a notification process for HPRs. We also request comment on a possible requirement that operator-to-operator agreements among SDARS and WCS/MDS/ITFS licensees be established before an SDARS licensee would be permitted to commence further HPR operations or other similar alternatives. Specifically, we seek comment on the following:

A. *MDS/ITFS Receivers.* We seek comment on imposing a requirement on SDARS licensees to provide notice to any MDS/ITFS licensee that may be operating in the vicinity of an HPR station: at least 90 days prior to commencing operations from any new HPR, the SDARS licensee shall notify all MDS/ITFS licensees, in or through whose licensed service area an SDARS licensee intends to operate, of the technical parameters of the SDARS terrestrial repeater transmission facility.

B. *WCS Stations.* We seek comment on how to regulate HPRs after the 18-month compensation period described previously has expired. One alternative would be to place a power cap on HPRs and establish a notification process for them similar to that proposed for MDS/ITFS receivers. Under this approach, all existing HPRs would be grandfathered and the power cap would apply to new repeaters after expiration of the compensation schedule in the approach described previously. Prior to commencing operation from any new HPR, the SDARS licensee would be required to provide a 90-day notice to WCS licensees. We specifically seek comment on what an appropriate power cap should be in the range of 2 kW to 40 kW. For example, is a 9 kW EIRP level (39.5 dBW, which is midway between the 2 kW (33 dBW) and 40 kW (46 dBW) powers established in the record as acceptable to WCS/MDS/ITFS licensees and desired by SDARS licensees, respectively) appropriate to apply to future HPRs? Would this power cap distribute equally among WCS and

SDARS licensees the responsibility to manage their operations in the presence of each other's service and provide for the ability of all services to deploy expeditiously? If applied to existing repeaters, what transition period would be necessary or appropriate?

Another alternative would be to permit HPR operations at power levels up to 40 kW EIRP only after prior agreement among SDARS and affected WCS licensees has been reached. In this case, each SDARS licensee would be required to exchange information with affected WCS licensees about its repeater deployment and technical parameters. The SDARS licensee would be required also to take all practical steps to locate additional HPRs in areas that will mitigate the potential for blanketing interference to WCS operations. Prior to commencing operation of an additional HPR, the SDARS licensee would be required to certify to the Commission that it has completed coordination of the HPR with all affected WCS licensees. We seek comment on these options and any other alternatives for the deployment of HPRs after the 18-month period has expired.

VI. Radio Frequency (RF) Safety

In February 1997, the Commission adopted rules for Wireless Communications Services. (*See* 62 FR 9636 (March 3, 1997)). In that Report and Order, the Commission modified § 1.1307(b) of its rules to require applicants proposing to operate fixed terrestrial stations in the 2305–2320 MHz and 2345–2360 MHz frequency bands to perform routine environmental evaluations if their station's EIRP exceeds 1640 Watts. *See* 47 CFR 1.1307(b), Table 1. We now seek comment on modifying this Section of the Commission's rules to accommodate SDARS repeaters governed by part 25, which will operate in the 2320–2345 MHz frequency bands. The proposal is based on suggestions offered by the DARS and WCS licensees. We seek comment on the proposed modification to Table 1 in § 1.1307 particularly from the standpoint of RF safety to the public. We specifically propose that actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared, are greater than 2000 W EIRP for satellite DARS terrestrial repeaters.

Procedural Matters: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments limited to the issues raised in this document no later than December 14, 2001 and reply comments no later than December 21, 2001. Because the DARS repeaters STAs expire on March 18, 2002 or on the implementation of permanent rules for repeater operations, whichever occurs first, we must adhere to the schedule set forth in this document and do not contemplate granting extensions of time. Comments should reference IB Docket No. 95–91 and should include the DA number on the front of this document, DA 01–2570. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). (*See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).) Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, IB Docket No. 95–91. Parties filing comments on paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, D.C. 20554. An additional copy of all pleadings should also be sent to Rockie Patterson, International Bureau, FCC Room 6–B524, 445 12th Street, SW, Washington, D.C. 20554. One copy of all comments should also be sent to the Commission's copy contractor, Qualex International, 445 12th Street, SW, Room CY–B402, Washington, D.C. 20554. Copies of all filings are available for public inspection and copying during regular business hours at the FCC's Reference Information Center, 445 12th Street, SW, telephone 202–857–3800; facsimile 202–857–3805.

For *ex parte* purposes, this proceeding continues to be a ''permit-but-disclose'' proceeding, in accordance with § 1.1200(a) of the Commission's rules, and is subject to the requirements set forth in § 1.1206(b) of the Commission's rules.

The Commission's Consumer Information Bureau Reference Information Center shall send a copy of this document, Including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (RFA) (*see* 5 U.S.C. 603), the Bureau has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the International Bureau's document Requesting Further Comment on Selected Issues Regarding the Authorization of Satellite Digital Audio Radio Service Terrestrial Repeater Networks (SDARS document). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the document provided. The Bureau will send a copy of the SDARS document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the SDARS document and IRFA (or summaries thereof) will be published in the **Federal Register**.

2. Need for and Objections of the Proposed Rules. This SDARS document seeks comments on specific proposals to resolve issues regarding the proposed use of satellite digital audio radio service (SDARS) terrestrial repeaters in conjunction with SDARS systems.

The Bureau intends to evaluate whether the proposed rules will facilitate the efficient implementation of SDARS while seeking to limit or mitigate interference to terrestrial operators. The proposals define a compensation methodology for SDARS licensees to pay for the components necessary for WCS licensees to eliminate the effects of blanketing interference to WCS receivers. It also seeks comment on provisions that would resolve potential interference to MDS and ITFS licensees.

3. Legal Basis. This SDARS document is adopted pursuant to sections 1, 4(i), 4(j), 303(c), 303(f), and 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 151(i), 154(i), 154(j), 303(c), 303(f) and 303(g).

4. Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' or ''small concern'' under Section 3 of 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. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of

1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

SDARS. The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit broadcast satellite operators. Therefore, the applicable definition of small entity is the definition under Small Business Administration (SBA) rules applicable to the Communications Services, Not Elsewhere classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. There are only two SDARS providers authorized to provide service in the DARS spectrum band, XM Radio, Inc. and Sirius Satellite Radio, Inc. While neither has implemented nationwide service, both entities have financing of over $100 million. In addition, the DARS licensees have significant partnership interests with large corporations: General Motors in XM Radio, Inc. and DiamlerChrysler in Sirius Satellite Radio. Because of the above and the high implementation and operating costs for SDARS systems, we do not believe either DARS licensee qualifies as a small entity.

Wireless Communications Services (WCS). This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

Multipoint Distribution Service (MDS). The Commission refined the definition of ''small entity'' for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity is described in the Commission's Report and Order concerning MDS auctions, and has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTA's). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority owned and four winners indicated that they were women owned businesses. MDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of IRFA, there are 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

Instructional Television Fixed Service (ITFS). There are presently 2,032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. We do not, however, collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

5. Description of Projected Reporting, Record keeping and Other Compliance Requirements. Under the proposals licensees, such as WCS, MDS and ITFS, potentially affected by the operation of SDARS repeaters will have to undertake a minimal engineering analysis to determine whether it has operations within the liability zone or the safe harbor as defined in the SDARS document. This analysis can be completed using the technical information provided by the DARS licensees and basic commercially available software. Thus, there may be minimal costs to these licensees associated with conducting the engineering study. As noted, resolution of any actual interference would be at the expense of the DARS licensee provided the WCS, MDS or ITFS licensees are in the established vicinities and file timely complaints as set forth in the SDARS document.

Compliance requirements for the DARS licensees, if it is determined that there is actual interference, include contacting the affected licensee and remedying the interference. The remedy may involve weighing options such as reducing the repeater's power or compensating the affected licensees by providing equipment and labor to alter the affected licensee's receivers. Costs to the DARS licensees may relate to engineering studies, cost analyses and expenses in equipment and labor. These costs may be determined on a case-by-case basis.

6. 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 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 or reporting requirements under the rule for small entities; (3) use of performance, rather than design standards; and (4) and exemption from coverage of the rule, or any part there of, for small entities.

The proposed rule represents an alternative to extremes presented by the licensees involved in this proceeding and spreads the economic impact and business decisions to resolve interference among the licensees. Our proposed alternatives are based on the actual performance of equipment deployed and would benefit small entities affected by interference from the SDARS use of their terrestrial repeaters by providing assurances that interference to their operations will be resolved by the DARS licensees within the parameters set forth in the SDARS document. In addition, we have sought comment on whether the proposed compensation schedule and associated time frames are sufficient, and especially seek comment from small entities, given that they may be some of the potentially affected licensees.

7. Federal Rules that duplicate, Overlap or Conflict with the Commission's Proposals. None.

List of Subjects

47 CFR Part 1

Environmental impact statements, Satellites.

Federal Communications Commission.

Jennifer Gilsenan,

Branch Chief, Satellite Policy Branch, International Bureau.

Proposed Rule

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(I), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1307 is amended by revising the entry for Satellite Communications in Table 1 to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

TABLE 1—TRANSMITTERS, FACILITIES, AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if
* * * * *	
Satellite Communications (part 25)	Satellite DARS Terrestrial Repeaters: >2000 W EIRP All others included.
* * * * *	

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[FR Doc. 01–29328 Filed 11–21–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[WT Docket No. 01–309; FCC 01–320]

Hearing Aid Compatibility with Public Mobile Service Phones

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a proceeding in which the Commission considers whether to continue or eliminate the exemption of public mobile service phones from legislatively mandated hearing aid compatibility requirements.

DATES: Submit comments on or before January 11, 2002, and submit reply comments on or before February 11, 2002. Written comments on the proposed information collections are due January 22, 2002. Written comments on the proposed information collections must be submitted by the Office Management and Budget (OMB) on the proposed information collections on or before March 25, 2002.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Mindy Littell, 202–418–1310 (voice) or (202) 418–1169 (TTY); or Dana Jackson, Consumer Information Bureau, Disabilities Rights Office, (202) 418–2517 (voice) or 418–7898 (TTY). For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) in WT Docket No. 01–309, FCC 01–320, adopted October 29, 2001, and released November 14, 2001. The complete text of the NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, Qualex International, CY–B402, 445 12th Street, SW., Washington, DC. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to *ecfs@fcc.gov.*

Synopsis of the NPRM

1. In this NPRM, the Commission reexamines the exemption, adopted pursuant to the direction of the Hearing Aid Compatibility Act of 1998 (HAC Act), of public mobile service phones from the hearing aid compatibility requirements of that Act. This NPRM is adopted pursuant to the Commission's obligation under the HAC Act to assess periodically whether the exemptions from the hearing aid compatibility requirement continue to be warranted. Currently, many people who use hearing aids or who have cochlear implants have difficulty finding a digital wireless mobile telephone that functions effectively with those devices because of interference and compatibility problems. A Public Notice was issued in October 2000 seeking comment on a request from the Wireless Access Coalition that the Commission reopen the petition for rulemaking filed in 1995 on behalf of the HEAR–IT NOW Coalition, seeking to revoke the exemption for Person Communications Services (PCS) from the Commission's hearing aid compatibility requirements. The NPRM seeks comment to expand the record thus far in order to establish a reliable, extensive record on which to base its decision to continue, limit, or eliminate the PCS exemption.

2. The HAC Act, as indicated in paragraphs 16 through 18 of the NPRM, mandates that once technical standards for hearing aid compatibility are established, covered telephones must provide internal means for effective use with hearing that are designed to be compatible with telephones that meet such technical standards. (47 U.S.C. 610(b)(1). This portion of the statute appears to require, first, the establishment of technical standards governing wireless hearing aid compatibility. Therefore, the Commission tentatively concludes that, if it removes or limits the exemption for public mobile services, the industry will be required to develop technical standards for compatibility between covered wireless devices and hearing