

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
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Amendment of Part 2 of the )  
Commission's Rules to Allocate the Band )  
33-36 GHz to the Fixed-Satellite Service for )  
Federal Government Use )

**MEMORANDUM OPINION AND ORDER**

**Adopted:** January 19, 2001

**Released:** January 26, 2001

By the Commission: Commission Furchgott-Roth dissenting and issuing a statement. Former Chairman Kennard did not participate in the final consideration of this item.

1. By this action, we are amending the Commission's Table of Frequency Allocations by adding a new footnote, US360, to permit use of the band 33-36 GHz by the Federal Government fixed-satellite service (FSS), space-to-Earth.<sup>1</sup> An existing footnote, G117, is also being revised to denote that the Federal Government's use of this band is limited to military systems.<sup>2</sup> We take this action at the request of the Administrator, National Telecommunications and Information Administration ("NTIA") for the purpose of advancing, supporting, and accommodating the national defense.<sup>3</sup>

2. On January 12, 2001, the Administrator, NTIA, requested that the Commission add a United States footnote to the United States Table of Frequency Allocations, 47 C.F.R. § 2.106, that would allocate the band 33-36 GHz on a primary basis to the Federal Government fixed-satellite service (space-to-Earth).<sup>4</sup> NTIA states that this matter involves military functions, as well as specific national security interests of the United States, that the reallocation is essential to fulfill requirements for Federal Government space systems to perform satisfactorily, and that these Department of Defense ("DoD") requirements cannot be accommodated in frequency bands currently allocated for Federal Government fixed-satellite service (space-to-Earth). NTIA indicates that the Federal Government footnote G117 will

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<sup>1</sup> The new US360 footnote reads as follows: "In the band 33-36 GHz, the Government fixed-satellite service (space-to-Earth) is also allocated on a primary basis. Coordination between Government fixed-satellite service systems and non-Government systems operating in accordance with the United States Table of Frequency Allocations is required."

<sup>2</sup> G117 currently reads as follows: "In the bands 7.25-7.75 GHz, 7.9-8.4 GHz, 17.8-21.2 GHz, 30-31 GHz, 39.5-40.5 GHz, 43.5-45.5 GHz, and 50.4-51.4 GHz, the Government fixed-satellite and mobile-satellite services are limited to military systems." The revision adds the 33-36 GHz band to this footnote.

<sup>3</sup> See 47 U.S.C. § 151.

<sup>4</sup> Letter from Gregory L. Rohde, Administrator, NTIA to William E. Kennard, Chairman, FCC, dated January 12, 2001. Section 305(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 305(a), authorizes the President to assign frequencies to Federal Government stations. This authority has been delegated to the Assistant Secretary of Commerce for Communications and Information, who also serves as the Administrator, NTIA. See Pub. Law 102-538, 106 Stat. 3533 (1992). The Commission administers non-Federal Government spectrum and NTIA administers Federal Government spectrum. See 47 C.F.R. § 2.105 (a).

be modified to limit Federal Government fixed-satellite use of this band to military systems. NTIA also requests expedited consideration, and that the rules be amended without public notice or comment due to the near-term national security interests. The new United States footnote proposed by NTIA reads as follows:

USXXX In the band 33-36 GHz, the Government fixed-satellite service (space-to-Earth) is also allocated on a primary basis. Coordination between Government fixed-satellite service systems and non-Federal Government systems operating in accordance with the United States Table of Frequency Allocations is required.

3. Nationally, the band 33-33.4 GHz is shared Federal Government and non-Federal Government spectrum that is allocated to the radionavigation service on a primary basis.<sup>5</sup> In the sub-band 31.8-33.4 GHz, ground based radionavigation aids are permitted only where they are used in cooperation with airborne or shipborne radionavigation devices.<sup>6</sup> Non-Federal Government airborne radionavigation devices are licensed under Part 87 of the Commission's Rules.<sup>7</sup> This allocation, however, is currently unused by non-Federal Government licensees.

4. The band 33.4-36 GHz is allocated to the radiolocation service<sup>8</sup> on a primary basis for the Federal Government and on a secondary basis for non-Federal Government use.<sup>9</sup> However, all non-military radiolocation devices operating in this band are secondary to the military services, except for the sub-band 34.4-34.5 GHz, where weather radars on board meteorological satellites for cloud detection are authorized to operate on an equal basis with military radiolocation devices.<sup>10</sup> In the sub-band 34.2-34.7 GHz, an additional allocation is made for space research service (deep space, Earth-to-space) at Goldstone, California.<sup>11</sup> In the band 33.4-36 GHz, non-Federal Government radiolocation is permitted under Part 90 of the Commission's Rules.<sup>12</sup> There is currently only limited non-Federal Government use

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<sup>5</sup> Radionavigation is defined as radiodetermination used for the purpose of navigation, including obstruction warning. Radiodetermination, in turn, is the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by mean of the propagation properties of radio waves. *See* 47 C.F.R. § 2.1.

<sup>6</sup> US69 reads as follows: "In the band 31.8-33.4 GHz, ground-based radionavigation aids are not permitted except where they operate in cooperation with airborne or shipborne radionavigation devices."

<sup>7</sup> *See* 47 C.F.R. §§ 87.173 (b) and 87.187(x).

<sup>8</sup> Radiolocation is defined as radiodetermination used for purposes other than those of radionavigation. *See* description, note 5 *supra*. *See also*, 47 C.F.R. § 2.1.

<sup>9</sup> US110 reads as follows: "In the bands 3100-3300 MHz, 3500-3650 MHz, 5250-5350 MHz, 8500-9000 MHz, 9200-9300 MHz, 9500-10000 MHz, 13.4-14.0 GHz, 15.7-17.3 GHz, 24.05-24.25 GHz, and 33.4-36.0 GHz, the non-[Federal] Government radiolocation service shall be secondary to the Government radiolocation service and to airborne Doppler radars at 8800 MHz, and shall provide protection to airport surface detection equipment (ASDE) operating between 15.7-16.2 GHz.

<sup>10</sup> G34 reads as follows: "In the band 34.4-34.5 GHz, weather radars on board meteorological satellites for cloud detection are authorized to operate on the basis of equality with military radiolocation devices. All other non-military radiolocation in the band 33.4-36.0 GHz shall be secondary to the military services."

<sup>11</sup> US252 reads as follows: "The bands 2110-2120, 7145-7190 MHz, and 34.2-34.7 GHz are also allocated for Earth-to-space transmissions in the space research service, limited to deep space communications at Goldstone, California."

<sup>12</sup> *See* 47 C.F.R. § 90.103(b).

of the band 33.4-36 GHz. The majority of these uses are limited to speed control and testing and development purposes.

5. Based on the representations of NTIA that the reallocation is essential to fulfill requirements for Federal Government space systems to perform satisfactorily and that these DoD requirements cannot be accommodated in frequency bands currently allocated for Federal Government fixed-satellite service (space-to-Earth) use, we find that the public interest will best be served by accommodating NTIA's request and adding United States footnote US360 to, and amending Federal Government footnote G117 of, the Table of Frequency Allocations. Upon review of the Commission's records, there appears to be little, if any, impact on non-Federal Government services.<sup>13</sup>

6. Further, we take this action without notice and comment procedures. Section 553 of the Administrative Procedure Act (APA) states that rulemaking proceedings are required "except to the extent that there is involved— (1) a military or foreign affairs function of the United States."<sup>14</sup> The Commission's Rules, moreover, state that rule changes including any military, naval, or foreign affairs functions of the United States "will ordinarily be adopted without prior notice."<sup>15</sup> The APA also includes a good cause exception to rulemaking requirements when such procedures are "impracticable, unnecessary, or contrary to the public interest."<sup>16</sup> As a general matter, we firmly believe that public notice requirements are an essential component of our legal authority. In this instance, however, we find that it is appropriate to take this action without public notice because this matter involves the exercise of military functions of the United States based on specific national security needs and that good cause exists that notice and public procedures are unnecessary and contrary to the public interest.<sup>17</sup> Additionally, due to the near term national security requirements noted by NTIA, we find good cause to expedite this request and make the amendments effective immediately upon publication in the Federal Register.<sup>18</sup>

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<sup>13</sup> We also take this opportunity to make the non-substantive revision of adding "MHz" to the 2110-2110 band reference in footnote US252. For completeness, we also note that footnote S5.551, which states that radars located on spacecraft may be operated on a primary basis in the sub-band 35.5-35.6 GHz, which was suppressed at the 1997 World Radiocommunication Conference, will be a subject of a separate proceeding.

<sup>14</sup> 5 U.S.C. § 553(a)(1).

<sup>15</sup> 47 C.F.R. § 1.412(b)(1).

<sup>16</sup> 5 U.S.C. § 553(b)(3)(B).

<sup>17</sup> See 5 U.S.C. § 553 (a)(1), (b)(3)(B); 47 C.F.R. § 1.412(b)(1), (c); *Bendix Aviation Corp. v. F.C.C.*, 272 F.2d 533 (D.C. Cir. 1959), *cert. denied sub nom. Aeronautical Radio, Inc. v. U.S.*, 361 U.S. 965 (1960).

<sup>18</sup> 5 U.S.C. § 553(d)(3).

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), the MEMORANDUM OPINION AND ORDER is hereby ADOPTED. Additionally, IT IS FURTHER ORDERED that the amendments to Part 2 of the Commission's Rules, 47 C.F.R. Part 2, as set forth in the Appendix, are effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**Appendix: Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 2 as follows:

**PART 2 -- FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

- a. Revise pages 75 and 76.
- b. Revise footnote US252 and add footnote US360.
- c. Revise footnote G117.

The addition and revisions read as follows:

**§ 2.106 Table of Frequency Allocations.**

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
32-32.3 FIXED S5.547A INTER-SATELLITE RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth)  S5.547 S5.547C S5.548			32-32.3 INTER-SATELLITE US278 RADIONAVIGATION US69 SPACE RESEARCH (deep space) (space-to-Earth) US262  S5.548	32-32.3 INTER-SATELLITE US278 SPACE RESEARCH (deep space) (space-to-Earth) US262  S5.548	
32.3-33 FIXED S5.547A INTER-SATELLITE RADIONAVIGATION  S5.547 S5.547D S5.548			32.3-33 INTER-SATELLITE US278 RADIONAVIGATION US69  S5.548		Aviation (87)
33-33.4 FIXED S5.547A RADIONAVIGATION  S5.547 S5.547E			33-33.4 RADIONAVIGATION US69  US360 G117		
33.4-34.2 RADIOLOCATION  S5.549			33.4-36 RADIOLOCATION US110 G34	33.4-36 Radiolocation US110	Private Land Mobile (90)
34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space)  S5.549					
34.7-35.2 RADIOLOCATION Space research S5.550  S5.549					
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION  S5.549					
35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)  S5.549 S5.551A					

36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)  S5.149	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)  US263 US342		
37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-38 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-37.6 FIXED MOBILE	
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth)		37.6-38.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	Satellite Communications (25)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth)	38-38.6 FIXED MOBILE		
	38.6-39.5	38.6-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	Auxiliary Broadcasting (74) Fixed Microwave (101)
	US291	US291	
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth)	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)	
	US291 G117	US291	

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UNITED STATES (US) FOOTNOTES

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US252 The bands 2110-2120 MHz, 7145-7190 MHz, and 34.2-34.7 GHz are also allocated for Earth-to-space transmissions in the space research service, limited to deep space communications at Goldstone, California.

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US360 In the band 33-36 GHz, the Government fixed-satellite service (space-to-Earth) is also allocated on a primary basis. Coordination between Government fixed-satellite service systems and non-Government systems operating in accordance with the United States Table of Frequency Allocations is required.

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FEDERAL GOVERNMENT (G) FOOTNOTES

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G117 In the bands 7.25-7.75 GHz, 7.9-8.4 GHz, 17.8-21.2 GHz, 30-31 GHz, 33-36 GHz, 39.5-40.5 GHz, 43.5-45.5 GHz, and 50.4-51.4 GHz, the Government fixed-satellite and mobile-satellite services are limited to military systems.

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## DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

*Re: Amendment of Part 2 of the Commission's Rules to Allocate the Band 33-36 GHz to the Fixed-Satellite Service for Federal Government Use, Memorandum Opinion and Order*

The national security exception to the Administrative Procedure Act is just that -- an exception to the rule.<sup>19</sup> That rule forms the foundation of our national administrative law framework. It guarantees the right of American citizens to participate in government decision-making. Indeed, it guarantees the fundamental right to be heard. The exceptions to the APA should be invoked only in the most extraordinary of circumstances. This case does not pass that test. While the national security uses of this band are clearly important, I see no reason why NTIA's January 12, 2001 letter could not have been put out for a brief public comment period.<sup>20</sup> The corresponding short delay would still have allowed the Commission to complete its processes within weeks of receipt of the letter and still allowed for the public to have its say. I am particularly sensitive to this issue because the Commission has encountered substantial difficulties in the past by too readily invoking this exemption.<sup>21</sup> In the end, we may have still made the requested change to the National Table of Frequency Allocations. But that is not really the point. The point is that our public interest mandate is difficult to fulfill without the public.

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<sup>19</sup> See 5 U.S.C. § 553(a)(1), (b)(3)(B).

<sup>20</sup> Indeed, I find it strange that a public letter from NTIA cannot be put out for public comment.

<sup>21</sup> See *In re Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 25 GHz Band and to Allocate the 24 GHz Band from Fixed Service*, Memorandum Opinion and Order, ET Docket No. 97-99, 13 FCC Rcd. 15,147 (1998).