

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

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| In the Matter of   | ) |                      |
|  | ) |                      |
| Amendment of the Commission's Space<br>Station Licensing Rules and Policies                                    | ) | IB Docket No. 02-34  |
|  | ) |                      |
| 2000 Biennial Regulatory Review --<br>Streamlining and Other Revisions of<br>Part 25 of the Commission's Rules | ) |                      |
|  | ) |                      |
| Governing the Licensing of, and<br>Spectrum Usage by, Satellite Network<br>Earth Stations and Space Stations   | ) | IB Docket No. 00-248 |
|  | ) |                      |

**NOTICE OF PROPOSED RULEMAKING  
AND FIRST REPORT AND ORDER**

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## I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (*Notice*), we invite comment on revisions to the licensing process for orbital locations or spectrum used for the provision of international or global satellite communications services in an effort to develop a record that will aid us in fashioning rules to streamline that process.<sup>1</sup> In turn, we expect that the adoption of appropriate rules would facilitate innovation, significantly reduce administrative burdens on applicants, and expedite the provision of beneficial services to the public, including new services to rural and unserved areas. In this First Report and Order, we adopt rules allowing us to issue satellite and earth station licenses with 15-year license terms, rather than the current 10-year terms.

## II. BACKGROUND

### A. Satellite Industry

2. The satellite industry is a crucial component of the global communications marketplace. For example, satellite technology facilitates provision of Internet services, and it likely will continue to play an increasingly important role in this area. Satellite facilities also constitute a major component of the wireless backbone infrastructure for voice and data communications, and provide an important opportunity to create another competitive platform for delivery of broadband services. Satellite facilities are especially well suited for extending these services to rural and unserved areas.<sup>2</sup> Similarly, satellites are key to wide-area distribution of the video signals of over-the-air broadcasts and cable systems to other satellite systems and directly to consumers. Satellite systems have also recently been used to provide data and voice services to mobile and handheld portable devices.

3. There are now well over 200 U.S.-licensed commercial satellites in operation. The United States has licensed more commercial satellites than any other administration. The success of the U.S. satellite industry is due, at least in part, to the Commission's current satellite licensing process, developed in the early 1980s.<sup>3</sup> That process allows operators the flexibility to design

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<sup>1</sup> Under the Communications Act, a license must be issued by the Commission before a satellite can be operated. 47 U.S.C. § 301.

<sup>2</sup> See FWCC Request for Declaratory Ruling on Partial-Band Licensing of Earth Stations in the Fixed-Satellite Service that Share Terrestrial Spectrum, *First Report and Order*, IB Docket No. 00-203, 16 FCC Rcd 11511 (2001) (*FWCC/Onsat First Report and Order*).

<sup>3</sup> The Commission first published rules governing the licensing of satellite services in the early 1970s. See Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities, *First Report and Order*, 22 FCC 2d 86 (1970); *Second Report and Order*, 35 FCC 2d 844 (1972); *modified*, 38 FCC 2d 665 (1972). See also Western Union Telegraph Company, 38 FCC 2d 1197 (1973); Comsat General Corporation, 42 FCC 2d 677 (1973) (examples of satellite licenses issued under these procedures). At the time the Commission's initial licensing rules were in effect, assuming that an entity met the Commission's financial and other licensing requirements, it could be reasonably assured that it would receive a license. This amounted to a de facto first-come, first-serve licensing approach because there

competitive systems, while promoting multiple entry. Although the Commission's licensing process was successful in the past, we believe that it needs improvement to remain successful in the future. Among other things, we need to expedite our satellite licensing process to help ensure that the United States will continue to meet its International Telecommunication Union (ITU) treaty obligations. We also expect that expediting the satellite licensing process will enable us to reduce the number of satellite applications pending before the Commission more rapidly than might be possible under our current procedure.

4. Below, we describe the current licensing process, and then explain our reasons for considering revising it. Subsequently, in Section III., we seek comment on two proposals for revising our satellite licensing procedures: a "first-come, first-served" alternative to processing rounds, and a proposal to modify and streamline the current process. In Sections IV. and V., we invite comment on other ways to improve the satellite licensing process which would be consistent with either of the options discussed in Section III. Finally, in Section VI., we revise Part 25 to allow 15-year license terms for space station and earth station licenses.

## **B. Current Licensing Procedure**

5. Currently, we issue satellite licenses pursuant to "processing rounds," a procedure by which we combine into groups and process together mutually exclusive applications to operate satellites in a particular frequency band. The processing round licensing procedures involve multiple, often quite intricate and time-consuming steps.<sup>4</sup>

6. The typical process is as follows: First, a lead application for a particular service in a specific band is filed. A lead application can be filed at any time. We do not establish specific time periods during which satellite license applicants are required to file lead applications. After initial staff review determines that the application is acceptable for filing, we issue a public notice setting a deadline for petitions to deny to be filed against the lead applicant. A deadline for reply comments also is established. As a further matter, we announce a "cut-off" date, a deadline for other interested parties to file any additional mutually exclusive applications to be considered, along with the lead application, as part of a group.<sup>5</sup> Next, we afford an opportunity for petitions to deny and replies to be submitted with regard to all applications filed subsequent to the lead application.

7. If service rules are needed, the Commission initiates and completes a notice-and-comment rulemaking proceeding to adopt rules that take into account the state-of-the-art of technology and innovation displayed in the applications. Once the service rules are adopted, all of the satellite applicants are afforded an opportunity to amend their applications to conform to

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seemed to be adequate spectrum and orbital slots available to meet all desired service needs. Later, it became apparent that there might not be adequate spectrum or orbital slots available for all desired satellite uses. In response, the Commission revised its satellite license processing rules to adopt the processing round procedure that is generally followed today. *See, e.g., Filing of Applications for New Space Stations in the Domestic Fixed Satellite Service, Memorandum Opinion and Order, 93 FCC 2d 1260 (1983) (1983 Cut-Off Order).*

<sup>4</sup> The exceptions to this general procedure are licenses for Direct Broadcast Satellite (DBS) and Digital Audio Radio Satellite (DARS) licenses, which have been issued pursuant to another procedure. This proceeding does not address the DBS or DARS licensing procedures.

<sup>5</sup> *See, e.g., 1983 Cut-Off Order, 93 FCC 2d 1260.*

the new service rules. The amended applications are placed on public notice, and the comments and replies filed regarding those amendments are considered. We subsequently act on the applications.

8. Furthermore, applications that raise potential national security issues or which impact Government-used frequency bands can also cause further delay because of the need for interagency coordination. In some of those cases, the coordination process is not completed within the 30-day comment period. Sometimes, the interagency coordination process takes 120 days or more from the filing of the application. Although this occurs more often in transfer of control proceedings than in new satellite license applications, it is still a potential cause of delay in processing satellite license applications. This could become more of an issue in the future as a result of our adoption of a framework to permit non-U.S.-licensed satellites to access the U.S. market, consistent with U.S. commitments to the World Trade Organization (WTO).<sup>6</sup>

9. The process can take longer when no frequency bands have been allocated domestically or internationally for a proposed service. In cases where no international allocation exists, after technical review of proposed service requirements but before any service rule proceeding is initiated, the United States must develop and submit proposals and negotiate with as many as 189 member states at International Telecommunication Union (ITU) World Radio Conferences (WRCs) to have a WRC adopt an international frequency allocation for the service. WRCs are held approximately every two or three years. As a result, the domestic and international frequency band allocation process can delay a satellite license grant by three years or more, depending on whether such an allocation can be considered on the next WRC agenda. In these situations, the initial application(s) remain in a pending status and the processing round procedures described above are delayed until the frequency bands have been allocated internationally and the Commission has amended its domestic Table of Frequency Allocations<sup>7</sup> to establish a domestic allocation for the service. In those cases, we continue to review the satellite applications under the license procedures described above, to the extent possible. However, we can make only limited progress in our licensing process until the international and domestic frequency allocation processes are completed. Thus, the allocation process can extend substantially the time needed to issue satellite licenses.

10. After the procedures noted above are completed, we determine the qualifications of the applicants. Applications lacking the requisite qualifications specified in the Communications Act and the Commission's rules are dismissed. If there are enough orbital locations and/or there is sufficient spectrum available to accommodate all of the remaining applicants' proposed satellite systems, we issue licenses at that point. If, as is often the case, there are not enough orbital locations and/or there is not sufficient spectrum available to accommodate all the qualified applicants, we afford the applicants an opportunity to negotiate "mutually agreeable" compromises so that all the applications can be granted. Those negotiations can require several months or even years of effort. On occasion, applicants have not been able to reach mutually

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<sup>6</sup> We adopted this framework in *DISCO II*. See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II*), recon. 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*), recon. denied 16 FCC Rcd 19794 (2001) (*DISCO II Second Reconsideration Order*). For a detailed summary of the *DISCO II* framework, we refer the reader to *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (paras. 4-5).

<sup>7</sup> 47 C.F.R. § 2.106.

agreeable compromises, and the Commission has had to mandate a solution using information available on the progress of the negotiations between the parties.<sup>8</sup>

### C. Need for Change

11. Under our current procedure, it can take several years to issue satellite licenses. For several reasons, we would like to explore ways to expedite this procedure. First, delays in issuing licenses impose economic costs on society. Second, the current procedure, developed in the early 1980s, is not well suited to the technologically advanced, new satellite services of today. Third, revisions in ITU procedures have heightened the need for a faster licensing procedure. Fourth, good spectrum policy demands completion of licensing as rapidly as possible, in order to expedite the use of scarce spectrum resources by licensees or the reassignment of spectrum returned to or reclaimed by the Commission. Fifth, the Commission is committed to improving its procedures whenever possible to further the public interest. We discuss each of these factors in detail below.

#### 1. Economic Costs

12. The current procedure has at times resulted in long delays in licensing new satellite systems. For example, in the second processing round for low earth orbit (little LEO) applicants, the first application was filed in 1993. However, licenses were not issued until five years later in 1998.<sup>9</sup> With respect to big LEO licenses, the applications were filed in 1997. Yet, it was not until four years later in 2001 that licenses were issued.<sup>10</sup> Some of the delay is necessary to effectuate our cut-off filing procedures in each case. In other cases, delay is the result of the length of time applicants devote to trying to reach mutually agreeable solutions. Other sources of delay are based on international allocation factors. Delays of this kind can result in a significant reduction in the value of those systems. As a consequence of the delays in the current licensing system, potential satellite customers are denied a service they might choose to purchase, and companies wishing to provide satellite services are denied the ability to earn revenues and profits from the sale of their services. The lack of this service imposes real costs on both consumers and suppliers of the service. Economists consider the "consumer surplus" and the "producer surplus" from the provision of goods and services. Consumer surplus is a measure of the value received by consumers beyond what they pay to purchase those goods and services, and producer surplus is a measure of the revenues producers receive beyond the costs of providing a service.<sup>11</sup>

13. Consider a satellite system that will generate future benefits including both profits and consumer benefits greater than the cost of those services to the consumer. Generally, there will be significant costs in the development of the satellite system and there will be some delay in the realization of benefits associated with that satellite system. If there is a delay in licensing a

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<sup>8</sup> See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, IB Docket No. 99-81, 15 FCC Rcd 16127 (2000) (2 GHz Order).

<sup>9</sup> See Final Analysis Communication Services, Inc., *Order and Authorization*, 13 FCC Rcd 6618, 6619-20 (para. 3) (Int'l Bur. 1998).

<sup>10</sup> See The Boeing Company, *Order and Authorization*, 16 FCC Rcd 13691 (Int'l Bur. 2001).

<sup>11</sup> Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization*, Second Edition (New York: Harper Collins College Publishers, 1994), at 104-07.

system, there will be a delay in both the cost associated with developing the satellite system and the benefits that will be realized.

14. Using the formula for the net present value of a stream of net benefits,<sup>12</sup> we can calculate the cost of delay for each million dollars in annual expected net benefits, including both consumer and producer benefits, that the satellite system will generate. The cost of delay will depend on the length of delay as well as the amount of time between licensing and launch of services. For example, if a system would come into service three years after licensing,<sup>13</sup> the present value of the cost of a two year delay in licensing would be approximately \$1.7 million for each million dollars of expected net annual benefits, assuming an interest rate of 5 percent.<sup>14</sup>

## 2. Development of Technology

15. Our desire to revise our satellite licensing procedure is also driven by the development of new technology and new satellite services. Our current procedure was developed in the early 1980s, and in many cases has not fit well with newer satellite services. When the current procedure does not fit well with new satellite service applications, it is generally because the new service has needed a new frequency allocation, and this requires a potentially complex rulemaking proceeding. Those complexities are compounded in processing rounds for licenses for new mobile satellite services (MSS) and non-geostationary satellite orbit (NGSO) constellations, because these services often need new frequency allocations for feeder links<sup>15</sup> or intersatellite links, in addition to the service band links. We discuss these issues in more detail below.

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<sup>12</sup> Stephen A. Ross, Randolph W. Westerfield and Jeffrey Jaffee, *Corporate Finance*, Fourth Edition (Chicago: McGraw-Hill Companies, Inc., 1996), at 79.

<sup>13</sup> Under standard industry practice, it generally takes two to three years to construct and launch a satellite. See, e.g., Application of Comsat Corp., *Order*, 12 FCC Rcd 12059, 12075 n.68 (Int'l Bur., 1997) ("It has been our experience that it takes an average of two years to construct and launch a satellite...."). However, Section 25.145(f) of the Commission's rules requires Ka-band GSO FSS licensees "[1] to begin construction of [their] first satellite within one year of grant, [2] to begin construction of the remainder within two years of grant, [3] to launch at least one satellite into each of [their] assigned orbit locations within five years of grant, and [4] to launch the remainder of [their] satellites by the date required by the International Telecommunication Union to assure international recognition and protection of those satellites." 47 C.F.R. § 25.145(f). See also Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Report and Order*, CC Docket No. 92-297, 12 FCC Rcd 22310, 22334-35 (para. 61) and n.77 (1997) (*Ka-Band Service Rules Order*). For a system that would come into service five years after licensing, the cost of a two-year delay in licensing would be approximately \$1.5 million per \$1 million in expected annual benefits.

<sup>14</sup> At a higher interest rate, the present value of the costs of delay would be smaller. For example, at a 10 percent interest rate, the present value of the cost of delay would be approximately \$1.4 million.

<sup>15</sup> "Feeder links" are radio links that transmit a user's messages in both directions between the system's satellites and the gateway earth station that connects the MSS network with the public switched telephone network.

16. Generally, we consider space station applications using the processing round approaches that were initially developed in the early 1980s for the fixed satellite service systems using the geostationary satellite orbit (GSO).<sup>16</sup> We established this approach because it is one way to insure that all mutually exclusive applications are processed fairly and that authorizations are granted equitably. This approach, however, has been extended to other satellite services, such as MSS and NGSO constellations. Over time, it has become more and more difficult to resolve the issues raised by the mutually exclusive MSS and NGSO applications in a service rulemaking. These difficulties stem in part from the advent of the new technologies over the last decade, which has resulted in many space station applications for use of frequency bands that were not allocated for the proposed new services. In addition, many of the proposed services had not had sharing criteria developed nor service rules to authorize the proposed systems.

17. The difficulties of addressing MSS and NGSO applications in processing rounds are compounded by the fact that new satellite system designs are comprised of various constellation designs and of different frequency bands that are needed to support the service links in both the up and down link directions, different feeder links in both the up and down link directions, and intersatellite links. All of these frequency band combinations have created a multifaceted licensing mosaic. For example, a processing round cutoff date established for the service link frequency bands of an MSS system applies only to the mutually exclusive applications in the service link frequency band. The specific cutoff date does not fully address the mutually exclusive situation that may have been created in the proposed feeder link bands, or the intersatellite link bands where the affected parties may have been different than those established in the service link frequency bands. Furthermore, there have been cases in which different applicants have requested authority to use different frequencies for feeder links or intersatellite links, even though they have requested authority to use the same service band frequencies. Also, in some instances, the service link bands may have been allocated for the proposed services but the feeder link and the intersatellite link frequencies may not have been. In those cases, the Commission could not act on the applications until it completed proceedings to adopt the relevant service rules and to allocate any frequency bands needed for service links, feeder links, or intersatellite links.

18. This mosaic has resulted in the Commission granting piecemeal authorizations. Each portion of the application was granted on a frequency band basis, with some parts of the applications not being authorized until one or two years later when the resultant allocations and service rules were adopted. Thus, the licensing process that had been established primarily for addressing geostationary FSS in the C-band and the Ku-band has been stretched to accommodate other satellite services which had multiple frequency band requirements, and so affected each frequency band differently. Consequently, complete individual application authorizations were delayed, in some instances for several years, to address all of the different frequency bands that were requested in a specific space station or satellite system application.

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<sup>16</sup> One exception is replacement satellites. We have usually acted on applications for replacement satellites as they are filed, without consolidating them into a processing group. Loral Space & Communication Ltd., f/k/a Orion Atlantic, L.P., for Authority to Launch and Operate a Hybrid Ku-band/C-band Satellite System at the 37.5° W.L. Orbit Location, *Memorandum Opinion and Order*, 16 FCC Rcd 12490, 12492 (para. 7) (Int'l Bur. 2001); GE American Communications, Inc., *Order and Authorization*, 10 FCC Rcd 13775, 13775-76 (para. 6) (Int'l Bur. 1995) (*GE Americom Replacement Order*); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995).



### 3. Revision of ITU Procedures

19. Another relevant point is our ITU Treaty obligations, which have changed significantly for satellites during the last decade; *i.e.*, ITU filing requirements for different satellite services have changed. Significantly, the required time to bring satellite systems into use has been shortened by two years. Thus, satellite operators must bring their systems into use in seven years instead of nine, or else the licensing country loses filing date priority status for the satellite network with respect to subsequent dates of filing by other administrations. Furthermore, requests for coordination of satellite networks with other relevant administrations must now be filed with the ITU within two years after receipt of required advance publication information. The coordination request has system design information that is usually very specific to the satellite system to be implemented. Consequently, it must reflect the system that is to be licensed to use the specific frequency bands and orbit locations. In addition, different frequency bands and different services in many cases have different ITU filing requirements. These requirements affect the Commission's ability to file on behalf of U.S. applicants advance publication information, coordination requests, and notifications with the ITU in a timely manner so as to support effectively U.S. satellite system applications and the subsequent Commission authorizations for use of the different frequency bands.<sup>17</sup>

20. In addition, U.S. satellite systems should be authorized as quickly as possible, to provide the protection of the date priority for the authorized satellite system within the ITU coordination process. Date priority is becoming more and more important as more U.S. satellite operators seek access to mutually exclusive orbit locations and frequency bands, and as systems licensed by other countries are implemented and compete for access to different markets, including the U.S. market. The ITU recently implemented cost recovery fees associated with certain filings, and issues surrounding payment of these fees may create a need to license U.S. satellite systems prior to submitting the filing to the ITU. Otherwise, there is a risk that a licensee will refuse to pay the ITU fees in a timely manner. There is also a potential for an applicant to pay these fees but in the long run not receive Commission authorization, or to pay the fees and to create the appearance of prejudging a Commission authorization decision. In all these cases, U.S. date priority within the ITU process could be lost.

### 4. Spectrum Efficiency

21. Spectrum is a limited resource. Similarly, the geostationary satellite orbit can accommodate only a finite number of satellites operating in any frequency band. Therefore, it is important to adopt rules and policies that promote the maximum use of these limited vital resources. By exploring ways to issue satellite licenses more quickly, we can reduce the amount of time orbit and spectrum resources lie fallow.

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<sup>17</sup> There have been cases where the United States has lost or almost lost date priority within the ITU process. *See* Columbia Communications Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15569 (para. 7) (Int'l Bur. 2000) (*First Columbia Milestone Order*) (describing case in which the United States almost lost ITU date priority for the Ku-band licensed to Loral at the 47° W.L. orbit location.)

## 5. Public Interest

22. In order to serve the American public, the Commission, as an institution, must be efficient, effective, and responsive. The challenges of reaching these goals at the Commission are complicated by the sweeping, fast-paced changes that characterize the industries it regulates. Given the important role the satellite industry plays in the U.S. and world economy, the public interest demands that we continually review our procedures and improve them whenever possible. In addition, as explained further below, the Supreme Court has recognized that the Commission must have authority to adopt rules to further the public interest.<sup>18</sup> Thus, for the reasons discussed above, including but not limited to maintaining our rightful date priority within the ITU process, we must consider possible means to expedite the satellite licensing process to further the goals of good government and to be responsive to the needs of the satellite industry and its customers.

23. In light of this discussion, and our responsibility to further the public interest, convenience, and necessity,<sup>19</sup> we are committed to acting on satellite applications as quickly as our processes will allow. We have made considerable progress recently in reducing the number of satellite applications pending before the Commission. However, if we can expedite the satellite licensing process, we will be able to reduce the number of pending satellite applications at a faster rate in the future. As a result, the pernicious economic effects of delay and the risk of losing date priority within the ITU process will be alleviated more rapidly than might be possible under our current procedure.

### D. Summary

24. It is essential that we conduct a technical review of applications before we act on them. Nevertheless, there are a number of factors other than our technical review that can slow down the satellite licensing process, including the need for international and domestic frequency allocations, the adoption of service rules, the current procedures for processing rounds, international coordination requirements, and the extension of the processing round procedure to non-FSS applications. For the reasons discussed in Section II.C. above, we believe that it would further the public interest to make the satellite licensing process as streamlined as possible without limiting our ability to protect against harmful interference to adjacent satellite systems.

25. The international allocation process is not within the Commission's control. In addition, a rulemaking attempting to address all the issues within our control, such as service rule proceedings, would be very large and unwieldy. Accordingly, we initially focus our attention on revising the space station licensing process. This is the most recent of many proceedings we have conducted over the years to streamline our satellite and earth station licensing rules.<sup>20</sup>

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<sup>18</sup> See Section III.B.9., *citing* United States v. Storer Broadcasting Co., 351 U.S. 192, 202-04 (1956) (*Storer*); National Broadcasting Co. v. United States, 319 U.S. 190, 230 (1943).

<sup>19</sup> 47 U.S.C. § 309(a).

<sup>20</sup> Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacing and to Revise Application Processing Procedures for Satellite Communications Services, *First Report and Order*, CC Docket No. 86-496, 6 FCC Rcd 2806 (1991); Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Report and Order*, IB Docket No. 95-117, 11 FCC Rcd 21581 (1996) (*1996 Streamlining Order*).

Specifically, in Section III. below, we invite comment on two alternatives. One option is a first-come, first-served procedure similar to that adopted by the Commission for FM radio and television stations in 1985.<sup>21</sup> The other option involves adopting procedures to modify and streamline the current process. In addition, in Section IV., we propose expanding our information requirements to enable us to expedite our application review process. In Section V., we invite comment on issues raised by other proposals to streamline the satellite licensing process, such as revising our milestone requirements, eliminating the anti-trafficking policy, and streamlining the process for replacement satellite licenses.

### III. REFORM OF SATELLITE LICENSING PROCEDURE

#### A. Introduction

26. We invite comment on two alternatives for revising our satellite processing procedure. The first option is a first-come, first-served approach, based in large part on the procedure we used for FM radio and television licenses from 1985 to 1998, when we obtained auction authority for these services.<sup>22</sup> The second option is to reform and streamline our current processing round procedure. As a preliminary matter, we invite comment on which of these general approaches would provide a better means for revising the satellite licensing process. Parties commenting on this general issue should explain why they believe that one option is better than the other at meeting our policy goal of expediting the satellite licensing process. Furthermore, we seek general comment on whether or to what extent either of the proposals set forth below has any effects on satellite operators' incentives or abilities to provide service to rural areas, or on our ability to encourage service to rural areas.

27. Below, we seek detailed comment on issues raised by both these proposals. We discuss the first-come, first-served option in more detail because this is the first time we have considered adopting it formally with respect to satellite licenses, and therefore it raises several issues that must be resolved in the event we adopt this proposal.

#### B. First-Come, First-Served

##### 1. Background

28. Prior to 1985, the Commission used "cut-off" procedures to process applications to provide broadcast FM service. These cut-off procedures were very similar to the satellite procedures described above. In this regard, the cut-off procedures for the FM service involved a

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<sup>21</sup> Amendment of the Rules Concerning Cut-Off Procedures for FM and TV Broadcast Stations, *Report and Order*, MM Docket No. 84-750, FCC 85-125, 50 Fed. Reg. 19936, 19941-42 (paras. 33-36) (May 13, 1985) (*TV and FM Broadcast Order*), *recon. denied*, 50 Fed. Reg. 43157 (Oct. 24, 1985), *aff'd without published opinion sub nom.* Hilding v. FCC, 835 F.2d 1435 (9th Cir. 1987), *reprinted at* 58 Rad. Reg. 2d 776 (1985). In *Hilding*, the Court rejected the petitioner's challenge of the broadcast first-come, first-served rule because it found that the Commission reasonably concluded that its rules balanced the competing public interest concerns better than alternative rules proposed by the petitioner.

<sup>22</sup> See Implementation of Section 309(j) of the Communications Act, Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, MM Docket No. 97-234, 13 FCC Rcd 15920 (1998).

lead application, a public notice that invited the filing of applications mutually exclusive with the lead application, amendments, and petitions to deny and replies.<sup>23</sup>

29. In 1985, the Commission determined, *inter alia*, that the FM cut-off procedures delayed service to the public and resulted in substantial costs to the Commission and the lead applicant.<sup>24</sup> It therefore replaced the cut-off procedures "with an alternative processing system designed to expedite authorization of new or expanded service to the public."<sup>25</sup> The new processing system was called "first come, first served."<sup>26</sup>

30. In the FM service, first come, first served is a two-part procedure. First, when a channel is added to the Table of Allotments,<sup>27</sup> a 30-day application filing "window" is opened. This window begins 30 days after the announcement of the channel allotment is published in the Federal Register, and closes 60 days after that announcement date.<sup>28</sup> All applications filed during the filing window are considered together.<sup>29</sup> Second, if no acceptable applications are filed during the filing window, any applications filed after the window is closed are considered on a first-come, first-served basis.<sup>30</sup> In other words, the first acceptable application cuts off the rights of subsequently filed applications.<sup>31</sup> Those subsequent applications are kept on file and considered in the order they are filed in the event that all earlier-filed applications are denied.<sup>32</sup> Once an application is granted, all other parties filing subsequent applications are informed by letter that their applications have been dismissed.<sup>33</sup>

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<sup>23</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19937 (para. 8).

<sup>24</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19938 (para. 9). These concerns were further punctuated by an anticipated influx of applications for 689 new FM channels. *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 29). See also Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, *Report and Order*, BC Docket No. 80-90, 94 FCC 2d 152 (1983).

<sup>25</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19936 (para. 1).

<sup>26</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19937 (para. 1).

<sup>27</sup> The Table of Allotments is a list of permissible FM and TV stations prescribed in the Commission's rules. See 47 C.F.R. §§ 73.202 (FM radio), 73.606 (television). This is discussed further below.

<sup>28</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19940-41 (paras. 28-29).

<sup>29</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 30).

<sup>30</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 33). The Mass Media Bureau issues a public notice announcing when the first-come, first-served procedure becomes applicable to a particular channel. In other words, it announces that no applications were filed during the window, or that all the applications filed during the window were found unacceptable for filing or were denied. Operation of "First Come/First Serve" FM Broadcast Application Processing System, *Public Notice*, FCC 86-265 (released May 22, 1986), *reprinted at* 51 Fed. Reg. 23764 (July 1, 1986).

<sup>31</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 33).

<sup>32</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941-42 (para. 34).

<sup>33</sup> See, e.g., Letter from Dennis Williams, Chief, FM Branch, Audio Services Division, Mass Media Bureau, to Mr. and Mrs. James Stargel (file no. 8920-ALM).

31. The success of first-come, first-served and related measures in the FM service was dramatic and substantial.<sup>34</sup> The Commission's experience with this first-come, first-served procedure in the broadcast area may provide a potentially sound, efficient basis for revising our satellite licensing process. Below, we invite comment on appropriate procedural revisions consistent with a first-come, first-served approach, with certain modifications to make it fit satellite licenses. In particular, we do not include a filing window in our proposed satellite first-come, first-served procedure. This is because FM radio and television are planned services. In other words, the permissible FM and TV stations are allotted in the Commission's rules.<sup>35</sup> If an individual wished to construct a new FM or TV station, it would have to file a petition for rulemaking to revise the Table of Allotments, and show that the proposed new station would not cause harmful interference to any previously licensed station. Most satellite services are not planned services.<sup>36</sup> There is no Table of Allotments for satellite service in the Commission's rules. Therefore, as explained further below, we do not believe that a filing window is necessary for most satellite licenses.<sup>37</sup>

## 2. General Framework

32. We seek comment on replacing satellite processing rounds with a first come, first served procedure. Under this approach, only the first-filed acceptable application for a particular geostationary satellite orbit (GSO) satellite license would be considered. Similarly, only the first-filed acceptable application for a particular non-geostationary orbit (NGSO) satellite system license would be considered. Therefore, we will be able to resolve the issues raised by the first-filed application(s) more quickly and easily than we could if we had to act on those issues in conjunction with many other applications.

33. In cases where frequencies have been allocated for the proposed service, and we have adopted service rules, we would issue a public notice inviting comment on the lead application. Subsequently filed mutually exclusive applications would be included in a queue according to their date of filing. If for any reason we cannot grant the lead application, we would dismiss the lead application and begin consideration of the next application in the queue and continue this process until we can grant an application.

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<sup>34</sup> During the first three years after the Commission adopted a first-come, first-served procedure for broadcast applications, from 1985 to 1988, the number of broadcast applications received per year increased by 54 percent. Although the first-come, first-served procedure did not prevent our backlog from increasing during this period, it enabled us to decrease our backlog subsequently, from a peak of about 2500 to about 600 in 1991, the lowest level at that time since 1977. *See* Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications, *Notice of Proposed Rulemaking*, MM Docket No. 91-347, 6 FCC Rcd 7265, 7266 (paras. 9-10) (1991).

<sup>35</sup> *See* 47 C.F.R. §§ 73.202 (FM radio), 73.606 (television).

<sup>36</sup> The exception is Direct Broadcast Satellite (DBS) service, also known as Broadcast Satellite Service (BSS). DBS is a planned service. The Table of Allotments appears in the ITU Radio Regulations rather than our rules. *See* ITU Radio Regulations, Appendices S30 and S30A. We refer to the BSS Band Plan in Section 100.13(b) of our rules, 47 C.F.R. § 100.13(b).

<sup>37</sup> *See* Section III.B.3.

34. After we issue a license, we would keep the subsequently filed applications on file. If at any time the licensee loses its license, for failure to meet a milestone or for any other reason, the next application in the queue would be considered. If and when the licensee places its satellite or satellites in operation, we propose returning the later-filed applications to those applicants. We also propose allowing the applicants to request the fees associated with its application to be returned, no later than 15 days after a public notice stating that the licensee has placed its satellite or satellites into operation. We have similar provisions in our rules for applications filed under our TV and FM first-come, first-served procedure.<sup>38</sup> In addition, we invite comment on allowing an applicant to request the return of the application fee if it voluntarily withdraws its application before it is placed on public notice. After we place the application on public notice, we would begin our consideration of the application, and returning the application fee would no longer be appropriate at that point.

35. In cases where there is a frequency allocation for the proposed service, but we have not adopted service rules, we would identify the lead application and place all subsequently filed applications in a queue. However, we would not act on any of the applications until we have adopted service rules. Once the service rules have been adopted, we would permit the applicants to amend their applications. In this regard, we also propose revising our rules to allow applicants a specified, limited time to amend their applications, such as 40 days after publication of the revised service rules in the Federal Register, or 10 days after the effective date of those rules, whichever is later. This should give applicants sufficient time to amend their applications. After that amendment window has expired, we would issue a public notice inviting comment on the earliest-filed application. Thereafter, we would follow the procedures noted in paragraphs 33 and 34 above.

36. We anticipate that we could use the service rules proceeding to address any issues that may arise regarding promotion of multiple service providers, if possible. In other words, we could use the service rules proceeding to determine how much spectrum is needed to provide the service at issue. If we determine that a service provider needs no more than 100 MHz, for example, then we could limit licenses granted pursuant to the procedures described in paragraph 33 to 100 MHz each. In this case, if 500 MHz of spectrum were allocated to a particular service, we would issue licenses to the first five qualified applicants in the queue. We invite interested parties to propose methods or criteria for determining the amount of spectrum needed to provide a service.

37. In cases where there is no international or domestic frequency allocation for the proposed service, we would require parties to file an application. The application would remain pending until the frequencies were allocated. In the past, the Commission used the satellite system applications received in processing rounds as justification to pursue an international allocation for the service, and we would expect to continue this practice. Once frequencies have been allocated, we would follow the same procedure noted above in paragraphs 33 through 36.

38. Some MSS services use feeder links, which are radio links that transmit a user's messages in both directions between the system's satellites and the gateway earth station that connects the MSS network with the public switched telephone network.<sup>39</sup> Other satellite services employ inter-satellite service links, by which satellites in a constellation may communicate with

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<sup>38</sup> See 47 C.F.R. § 1.1113(c).

<sup>39</sup> See 2 GHz Order, 15 FCC Rcd at 13156 (para. 68).

each other.<sup>40</sup> Feeder links and inter-satellite links use different frequency bands than the service link bands, and in some cases, applicants have applied for authority to use feeder links or inter-satellite links before frequencies were allocated to those non-service band links. Under our first-come, first-served procedure, we propose allowing parties planning to use feeder links or inter-satellite links to continue this practice. In other words, if an applicant seeks authority to operate in service bands and in feeder links or inter-satellite links, we would follow the procedure described above in paragraphs 32 through 36 for the service band, regardless of whether frequencies have been allocated for the feeder links or inter-satellite links. We would issue licenses once the service band frequencies have been allocated and service rules have been adopted, regardless of whether frequencies have been allocated for feeder links or inter-satellite links. Finally, we propose considering amendments to pending service band satellite applications and modifications to licenses to add feeder link authority or inter-satellite link authority to the application or license. Applicants will be on notice, however, that we will not extend milestones simply because allocations for feeder links or inter-satellite links have not been made.<sup>41</sup>

39. Also, in cases where two applicants request mutually exclusive feeder link or inter-satellite link authority, we would consider the applications in the order that they are placed in the queue under the procedure described above in paragraphs 33 through 37. We realize that this may result in granting service band authority and feeder link authority to different parties. However, in most cases where an applicant is not authorized to use the feeder link frequencies it requested, it should be able to apply for and be granted authority to operate in other feeder link frequencies. That feeder link assignment should meet the applicant's needs as well or almost as well as its original request. We solicit comment on this analysis.

40. We believe that this procedure would further the public interest because it would reduce the time needed to process a satellite license application, thereby expediting the provision of useful services to the public, including but not limited to service to rural and unserved areas. In particular, by focusing on the merits of each application individually and according to their date of filing to the extent necessary, we believe that we would be able to act in a much more efficient and expeditious manner.

41. Some observers may criticize a first-come, first-served approach as overemphasizing speed of service at the expense of diversity of, and competition among, satellite operators.<sup>42</sup> On one hand, some observers may assert that larger satellite operators are more likely than smaller operators to be able to complete and file their applications first. On the other hand, in addition to the improvements in speed of service, a first-come, first-served approach for satellite licenses could benefit smaller satellite operators by eliminating a large portion of the legal expenses needed to maintain an application throughout the laborious processing round procedure. Also, as long as new companies see opportunities to provide profitable satellite services, we should continue to receive applications from both existing and new companies. Given all of the above,

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<sup>40</sup> See *2 GHz Order*, 15 FCC Rcd at 13156 (para. 68); PanAmSat Licensee Corp. Application for Authority to Construct, Launch, and Operate a Ka-Band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations 58° W.L. and 125° W.L., *Memorandum Opinion and Order*, 16 FCC Rcd 11534, 11535 (para. 4) (2001) (*PanAmSat Ka-band License Cancellation Review Order*) (petition for review pending).

<sup>41</sup> *PanAmSat Ka-band License Cancellation Review Order*, 16 FCC Rcd at 11538-40 (paras. 14-18).

<sup>42</sup> See *TV and FM Broadcast Order*, 50 Fed. Reg. at 19940 (para. 26).

we seek comment on this first come, first served proposal, including the extent to which the first-come, first-served option encourages or discourages competition among satellite operators, and provision of service to rural and unserved areas.

### 3. Filing Window

42. As part of its procedure for broadcast licenses, the Commission included a 30-day filing window. All applications filed during that window were considered together on a consolidated basis, while the first-come, first-served procedure applied only to applications filed after the close of the window.<sup>43</sup>

43. Although our broadcast first-come, first-served procedure included a filing window, we do not believe that a filing window is required for our first-come, first-served proposal for satellite license applications. That is because, unlike FM radio, most satellite services generally are not planned services.<sup>44</sup> As explained above, generally, the Commission does not determine when to make an orbital location and associated frequency band available for licensing in a particular frequency. Rather, we allow the private sector to take the initiative in determining whether, and when, to file an application and for which satellite uses to apply. In other words, applicants can seek authority to operate a satellite at any time, without waiting for the Commission to invite applications.<sup>45</sup>

44. We do not see the need to adopt any filing window mechanism in a first-come, first-served procedure for satellite applications for either GSO or non-GSO systems. This is because a filing window in these circumstances would tend to duplicate one of the greatest sources of delay in the current processing round procedure. Specifically, it would tend to require us to consider together several mutually exclusive applications. However, under our first-come, first-served proposal, a single satellite application filed on a given day will be treated as a processing round of one, which would cut off the filing rights of applications filed on any subsequent day. We seek comment on this analysis. (We address issues raised by two or more mutually exclusive applications filed on the same day in Section III.B.4. below.)

### 4. Selection Among Mutually Exclusive Applications

45. If we adopt the first come, first served proposal, we will need to establish some procedure for cases in which two or more mutually exclusive space station applications are filed on the same day. Below, we invite comment on mandatory electronic filing for satellite applications.<sup>46</sup> If we adopt mandatory electronic filing for satellite license applications, we seek comment on considering the applications in the chronological order that they are filed as part of any first-come, first-served procedure we may adopt. For purposes of determining the order in which we consider applications, we propose looking to the actual time that the application is

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<sup>43</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19940-41 (paras. 28-30).

<sup>44</sup> As we noted above, the exception to this general rule is the DBS service. The ITU has adopted a plan for DBS service, and the United States has been given a limited number of assignments for the service. *See* ITU Radio Regulations, Appendices S30 and S30A.

<sup>45</sup> *See* Section II.B. *supra* (explaining that the current satellite application procedure begins with a lead application from a member of the public).

<sup>46</sup> Section V.D.



received in our IBFS electronic filing system, to the nearest thousandth of a second, regardless of whether we receive the application after the close of business or during a weekend.<sup>47</sup> Because it seems very unlikely at best that two applicants would submit their applications at the same thousandth of a second, we believe that this approach will enable us to avoid any mutually exclusive situations that might otherwise arise. Furthermore, we believe that a mandatory electronic filing requirement for satellite applications is potentially more fair to all potential applicants than a process that permits paper applications. However, if commenters can show that basing priority on thousandths of a second might disadvantage applicants based further away from Washington, D.C. because of the time needed to route applications through the Internet, we will consider proposals from those commenters in this proceeding to base priority on the time of receipt of the filing rounded to the nearest minute. We invite comment on all these issues.

46. In the event that we adopt a first-come, first-served procedure in which we may need to consider two or more satellite applications together, we would propose a second-tier selection mechanism of imposing a mandatory sharing mechanism on competing applicants. Specifically, we propose dividing the available spectrum by the number of mutually exclusive applicants to be considered together. This is the approach we adopted in the *2 GHz Order*. We further propose not assigning a particular frequency band segment to any applicant.<sup>48</sup> The first applicant to launch its satellite, or one of its satellites in the case of an NGSO constellation, will be allowed to choose which frequency band segment it will be authorized to use.<sup>49</sup> The applicant would be required to notify the Commission of its selection by requesting a modification of its license.<sup>50</sup>

47. In the *2 GHz Order*, we concluded that this band segmentation approach is equally applicable to GSO and NGSO systems.<sup>51</sup> We tentatively conclude that this approach should not be limited to 2 GHz systems, but should be applied to satellite systems in other frequency bands. Regardless of whether we consider together two mutually exclusive applications for collocated GSO satellites, two NGSO satellite constellations, or one GSO and one NGSO system, neither licensee should cause harmful interference into the other satellite system because both systems will be authorized to operate in different band segments. We base this tentative conclusion on existing satellite technical and operations rules, including our limitations on out-of-band emissions in Section 25.202(f) of our rules.<sup>52</sup> In other words, we believe that our current rules are adequate to prevent harmful interference into another satellite system operating in an adjacent

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<sup>47</sup> In other words, an application filed at or before 11:59 PM on any given calendar day will not be treated as if it was filed on the following business day for purposes of determining the place of the application in the queue.

<sup>48</sup> *2 GHz Order*, 15 FCC Rcd at 16138 (para. 16).

<sup>49</sup> *2 GHz Order*, 15 FCC Rcd at 16138 (para. 16).

<sup>50</sup> *See 2 GHz Order*, 15 FCC Rcd at 16138 (para. 16) (allowing licensees to select frequency band segment at the time they bring the first satellite in their systems into operation).

<sup>51</sup> *2 GHz Order*, 15 FCC Rcd at 16138 (para. 16).

<sup>52</sup> 47 C.F.R. § 25.202(f).

frequency band segment. This is consistent with our conclusion in the *2 GHz Order*.<sup>53</sup> We seek comment on this analysis.

48. The *2 GHz Order* did not specify any policy regarding cases in which a licensee is not able to implement its system. Rather, we stated that we would decide whether to redistribute the spectrum or allow new entrants at the time any license is cancelled.<sup>54</sup> Here, we propose adopting a policy of redistributing the spectrum to the licensee or licensees remaining in operation, as part of any first-come, first-served procedure we may adopt, on a going forward basis. This process seems likely to put the spectrum into use providing service more quickly than any other alternative.

49. Finally, if for any reason we decide not to adopt our mandatory electronic filing proposal below, we seek comment on considering all electronically filed space station applications filed on a particular day before all paper applications filed on that day. If two or more paper applications were filed on the same day, we could impose the mandatory sharing mechanism discussed above.

50. Some parties might argue that our proposed selection mechanisms would preclude negotiations among mutually exclusive licensees, and that in many cases, those negotiations could result in a better arrangement for all applicants. We disagree that our proposed selection mechanisms would preclude or even discourage negotiations. Many economists have demonstrated that creating clearly defined initial rights encourages rather than discourages subsequent negotiations.<sup>55</sup> Thus, adopting a procedure that enables us to define the operating authority of satellite licensees very clearly should facilitate negotiations among those licensees.<sup>56</sup> Furthermore, if the applicants reach an agreement that differs from an equal division on the available spectrum among the applicants before we issue licenses, we would consider their agreements. Nevertheless, as an additional alternative, we seek comment on allowing some amount of time, such as 60 days after the record closes on the applications, for the parties to negotiate a solution. If the applicants could not reach an agreement by that time, we would divide the available spectrum equally among the applicants.

## 5. Safeguards Against Frivolous or Speculative Applications

51. When the Commission adopted its first-come, first served procedure for TV and FM broadcast licenses, it also adopted precautions to counteract any incentives that might result in an

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<sup>53</sup> *2 GHz Order*, 15 FCC Rcd at 16194-95 (para. 157) (concluding that no additional restrictions on out-of-band emissions were warranted at that time, but noting that we had invited comment on considering out-of-band emission issues in an ITU working group).

<sup>54</sup> *2 GHz Order*, 15 FCC Rcd at 16139 (para. 18). We emphasize that we are not addressing this 2 GHz issue in this proceeding, nor are we addressing any similar issues raised in any proceeding in which we have issued licenses in the past.

<sup>55</sup> See, e.g., Howard A. Shelansky and Peter W. Huber, *Administrative Creation of Property Rights to Radio Spectrum*, 14 J.L. Econ. 581-607 (1998); R.H. Coase, *The Problem of Social Cost*, 3 J.L. Econ. 1-44 (1960); Richard A. Posner, *Economic Analysis of Law* (Boston: Little, Brown and Co., 1972) at 10-40.

<sup>56</sup> Below, we propose eliminating our anti-trafficking policy. This should further encourage negotiations.

influx of license applications, some or many of which might be frivolous or speculative.<sup>57</sup> Accordingly, we invite comment on measures to discourage speculative or frivolous satellite applications in the event that we adopt a first-come, first-served approach. First, the *TV and FM Broadcast Order* placed a limit on the number of applications that any applicant could have pending before the Commission.<sup>58</sup> We also note that our rules currently limit the number of additional orbital locations in each frequency band for satellite operators with previously authorized but unlaunched satellites in that band.<sup>59</sup> Therefore, we seek comment on limiting pending new license applications of all applicants in any first-come, first-served procedure we may adopt, and on what the limit should be. In other words, once the applicant has reached this limit, we would not consider any additional applications unless the applicant withdrew one of its previously filed applications. We invite comment on setting this limit at five GSO orbital locations per applicant, and one NGSO satellite constellation per applicant, in each frequency band. We also solicit comment on whether this requirement should be limited to pending applications, or whether we should also preclude licensees with more than five previously authorized but unlaunched GSO satellites or more than one licensed by unimplemented NGSO systems in any frequency band from applying for additional satellite licenses.

52. If we limit the number of orbit locations or constellations that an applicant can have pending, we must also invite comment on determining who is an "applicant" for purposes of this limit. We have not considered adopting such attribution rules for satellite operators in the past.<sup>60</sup> We propose basing this requirement on the standard that we adopted for determining eligibility for the "new entrant" bidding credit in auctions for commercial broadcast service licenses. In that context, we defined an "attributable interest" as one in which the equity (including all stockholdings, whether voting or non-voting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder.<sup>61</sup> In this context, we propose adopting a rule that would prohibit a party from filing a satellite application if it holds more than 33 percent of the total asset value of applicants with applications for five GSO orbital locations, and one NGSO satellite system, in any frequency band, pending before the Commission.

53. Furthermore, we propose prohibiting applicants from allowing other entities to assume their place in any queue. Without this prohibition, it is possible that some parties would file satellite applications simply to obtain a place in a queue to sell to another party willing and

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<sup>57</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19939 (paras. 19-20).

<sup>58</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19940 (para. 24), *citing* Storer Broadcasting Co., 43 FCC 1254, 1256 (1953).

<sup>59</sup> "Each applicant found to be qualified pursuant to this section may be assigned no more than one additional orbital location beyond its current authorizations in each frequency band in which it is authorized to operate, provided that its in-orbit satellites are essentially filled and that it has no more than two unused orbital locations for previously authorized but unlaunched satellites in that band." 47 C.F.R. § 25.140(f).

<sup>60</sup> *See e.g.*, Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band, *Order*, 16 FCC Rcd 14389, 14396 (para. 19) (Int'l Bur., 2001) (*Second Round Ka-band Orbital Assignment Order*).

<sup>61</sup> 47 C.F.R. 73.5008(c); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Memorandum Opinion and Order*, MM Docket No. 97-234, 14 FCC Rcd 12541 (1999).

able to implement its proposed satellite system. This would be a large loophole in our safeguards against speculative satellite applications. Similarly, to prevent applicants from bypassing this prohibition by merging with another company or transferring control of its business, we propose treating such transactions as major amendments that cause any pending applications filed by that applicant to be treated as a new application for purposes of determining processing order. In other words, we do not propose a blanket prohibition on such transfers that otherwise meet the requirements of our rules. Rather, we propose moving the pending applications of the parties in the transaction to the end of the relevant queue. We would not expect adoption of this proposal to deter a significant number of legitimate business transactions. In most cases in which the parties to the transaction have assets or provide services, the effects of the transaction on their pending satellite applications would appear to be a small consideration, especially given that they would have a limited number of pending applications under our proposed rules. We solicit comment on this proposal and assumption.

54. Finally, with respect to NGSO systems, we propose determining in the context of service rules proceedings the amount of spectrum that is sufficient from a technical perspective to enable the service provider to provide its proposed service. We also propose adopting rules that would allow us to limit licensees to that amount of spectrum. Without this proposed requirement, the first applicant for a particular NGSO system could possibly seek authority to use so much spectrum that granting its application without revision would unreasonably preclude other parties from attempting to enter the market. This would not be a good result. In another context, we have determined that our regulatory policies should not impede competitive market entry.<sup>62</sup> Accordingly, we invite comment on whether it is necessary to have provisions in Part 25 our rules to enable us to reduce the amount of spectrum requested by an NGSO license applicant in cases where granting the application as filed might create an unreasonable barrier to competitive market entry.

## 6. Amendments

55. When the Commission adopted the first-come, first-served procedure for broadcast license applications, it adopted rules allowing amendments to applications only for 30 days after the release of a public notice listing the license applications filed during the 30-day window.<sup>63</sup> Furthermore, the Commission concluded that amendments to an application that create a conflict with any other application filed prior to the amendment would cause the underlying application to lose its "status" relative to applications behind it in the queue.<sup>64</sup>

56. We currently have similar provisions in our satellite licensing rules. Section 25.116 states that a major amendment to a satellite license application causes that application to be treated like a new application. Thus, major amendments filed after the cut-off date cause the underlying application to be removed from the processing round.<sup>65</sup> Generally, a "major

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<sup>62</sup> See Access Charge Reform, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262, 14 FCC Rcd 14221, 14263-64 (para. 79) (1999) (*Incumbent LEC Pricing Flexibility Order*).

<sup>63</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 31).

<sup>64</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 31).

<sup>65</sup> 47 C.F.R. § 25.116(c).

amendment" is one that increases the potential for interference.<sup>66</sup> Accordingly, if we adopt our first-come, first-served proposal, we would revise Section 25.116 to make clear that filing a major amendment to a license application would cause the applicant to lose its status relative to other mutually exclusive applications filed prior to the amendment. We also seek comment on defining transfers of control as a major amendment that would cause the applicant to lose its status relative to other mutually exclusive applications filed prior to the time the transfer of control application is filed. We believe this is necessary to prevent speculation in places in the queue, as explained further above.<sup>67</sup> In addition, an applicant who files an application that does not meet our information requirements should not be allowed to amend its application to come into compliance and maintain its status relative to later-filed applicants. Accordingly, we propose prohibiting such amendments in the context of any first-come, first-served proposal we adopt. We seek comment on these proposals. We also invite additional proposals for clarifying our definition of "major amendment" in Section 25.116(b) of our rules.

## 7. Modifications

57. Modifications are changes to a licensee's operating authority after the license has been granted. Modifications to space station licenses are governed by Section 25.117(d) of our rules, which specifies only information requirements.<sup>68</sup> We place all space station modification applications on public notice before we consider them. We propose the following modification rules in conjunction with our first-come, first-served proposal. In cases where we granted the original application as part of a mandatory sharing arrangement to resolve a mutually exclusive situation, we propose not considering any modification seeking to increase bandwidth. In these cases, we presumably authorized the current licensees for the service in question to use all the bandwidth available, and so it would not be possible to authorize any licensee to use any additional bandwidth.<sup>69</sup>

58. For modifications to all other satellite licenses, we propose retaining our current procedure, if the modification application is not mutually exclusive with any pending new license application. If the modification application is mutually exclusive with any pending new license application, we propose placing the modification application behind other applications with priority in the queue, and behind any other previously filed conflicting application. The modification application would be placed in the queue behind previously filed new license applications, but would be considered before any subsequent new license or modification applications. This proposal would effect only modifications to licensed satellite system that would cause those existing satellite systems to become mutually exclusive with a pending application for a proposed satellite system. Examples of such modification requests would be to relocate a GSO satellite to a new orbital location, or to add a Ku-band payload to a licensed C-band satellite.

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<sup>66</sup> 47 C.F.R. § 25.116(b)(1).

<sup>67</sup> Section III.B.5.

<sup>68</sup> 47 C.F.R. § 25.117(d).

<sup>69</sup> We emphasize that, under all our proposals, we intend to retain our current policy that modification applications are business decisions under the control of the licensee and therefore do not warrant milestone extensions. See *PanAmSat Ka-band License Cancellation Review Order*, 16 FCC Rcd at 11538 (para. 13).

## 8. Hybrids

59. Hybrid satellites are satellites designed to operate in more than one frequency band. We do not wish to discourage deployment of hybrid satellites because there are cost benefits in implementing several service bands on a single space platform.<sup>70</sup> We believe that our proposed first-come, first-served procedure and selection mechanisms for mutually exclusive applications may accommodate hybrid satellites more easily than processing rounds. Therefore, facilitating hybrid satellite deployment, which would enable satellite operators to reduce their costs and the rates they charge for satellite services, is another public interest benefit that may flow from the adoption of our proposals.

60. We envision consideration of hybrid satellite applications under our proposed first-come, first-served procedure as follows.<sup>71</sup> In cases where the applicant is first in the queue in both frequency bands, we can simply grant the application. In cases where the applicant is first in the queue in only one frequency band, we can grant the applicant authority to operate in that band, and deny it authority to operate in the other band. In cases where there is a mutually exclusive situation in one or both of frequency bands at issue, our proposed mandatory sharing selection mechanism would allow us to grant the applicant authority to operate in a portion of the mutually exclusive band.

61. In cases where only one of the frequency bands has not been allocated for the service, or where we have adopted service rules for only one of the bands, we would grant authority to operate in that band. The application would remain pending with respect to the band without the international or domestic frequency allocation or service rules, as described in Section III.B.2. However, we do not contemplate extending the milestones in the license granted in one band because the frequency allocation or service rules proceeding in the other band is still pending. Filing one hybrid satellite application rather than two single-band satellite applications is a business decision within the control of the applicant, and such business decisions do not warrant milestone extensions.<sup>72</sup>

## 9. Legal Analysis

62. The processing round process was developed in response to *Ashbacker*, a 1945 Supreme Court case.<sup>73</sup> In *Ashbacker*, the Court interpreted the hearing requirement in Section 309 of the Communications Act<sup>74</sup> to require the Commission to consider two mutually exclusive applications, both of which had been accepted for filing, in a comparative hearing before granting

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<sup>70</sup> See, e.g., *Ka-band Service Rules Order*, 12 FCC Rcd at 22322 (para. 31).

<sup>71</sup> To simplify this discussion, we assume that the application is acceptable for filing, and seeks authority to operate in two frequency bands.

<sup>72</sup> See American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation, *Memorandum Opinion and Order*, 2 FCC Rcd 4431, 4435 (paras. 30-31) (*AT&T Order*); *PanAmSat Ka-band License Cancellation Review Order*, 16 FCC Rcd at 11538 (para. 13) (incorporating new hybrid capabilities into satellite design does not justify construction commencement milestone extension).

<sup>73</sup> *Ashbacker v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*).

<sup>74</sup> 47 U.S.C. § 309.

one and denying the other.<sup>75</sup> At the time the Commission adopted the current processing round procedure, in 1983, it interpreted *Ashbacker* as permitting a cut-off procedure to preserve the rights of all existing applicants and all potential future qualified space station license applicants with concrete proposals for satellite systems.<sup>76</sup>

63. Subsequently, however, the Commission recognized that the first-come, first-served procedure also meets the *Ashbacker* requirements.<sup>77</sup> Specifically, in the *TV and FM Broadcast Order*, the Commission observed that *Ashbacker* allows it to promulgate regulations limiting the filing rights of competing applicants.<sup>78</sup> At the same time, *Ashbacker* leaves to the Commission's discretion the circumstances under which applications are considered mutually exclusive.<sup>79</sup>

64. We also observe that the Supreme Court's discussion in *Storer* is consistent with our first-come, first-served proposal.<sup>80</sup> In *Storer*, a broadcast license applicant argued that Section 309 required the Commission to consider its application even though granting the application would cause the applicant to exceed the Commission's limit on the number of broadcast stations that could be held by one party.<sup>81</sup> The Court held that the hearing requirement in Section 309 does not require the Commission to consider applications that are inconsistent with its rules. To interpret Section 309 otherwise would eliminate the Commission's rulemaking authority necessary for the orderly conduct of its business, and would preclude the Commission from adopting rules to further the public interest.<sup>82</sup> We believe that the first-come, first-served procedure would further the public interest by facilitating the United States administration in meeting its international regulatory deadlines.<sup>83</sup> If our current process makes it difficult to meet international regulatory deadlines, it could place U.S.-licensed satellite operators at a disadvantage relative to other satellite operators, and place the United States' leadership position in this industry at risk. Thus, under *Storer*, Section 309 of the Communications Act does not prohibit us from adopting a first-come, first-served procedure for satellite licenses.

65. We also believe that the *Arinc* case does not preclude consideration of our first-come, first-served proposal.<sup>84</sup> *Arinc* remanded a Commission rule requiring mutually exclusive

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<sup>75</sup> *Ashbacker*, 326 U.S. at 330-31.

<sup>76</sup> *1983 Cut-Off Order*, 93 FCC 2d at 1261 (para. 2), *citing Ashbacker*, 326 U.S. 327.

<sup>77</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19938-39 (para. 16).

<sup>78</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19939 (para. 16), *citing Ashbacker*, 326 U.S. at 333 n.9.

<sup>79</sup> *See TV and FM Broadcast Order*, 50 Fed. Reg. at 19939 (para. 16), *citing* MCI Airsignal International, Inc., FCC 84-397 (released Aug. 17, 1984).

<sup>80</sup> *Storer*, 351 U.S. 192.

<sup>81</sup> *Storer*, 351 U.S. at 193.

<sup>82</sup> *Storer*, 351 U.S. at 202-04, *citing, e.g.,* National Broadcasting Co. v. United States, 319 U.S. 190, 230 (1943).

<sup>83</sup> *See* Section II.C., *supra*.

<sup>84</sup> *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir., 1991) (*Arinc*).

applicants to join a consortium, questioning the Commission's statutory authority to resolve mutually exclusive situations by adopting a rule foreclosing individual license applications.<sup>85</sup> Our proposal here is distinguishable from *Arinc* in that we do not propose foreclosing any applicant from filing any application at any time. Rather, we propose adopting rules establishing the circumstances under which we would consider applications to be mutually exclusive. Furthermore, even if the court's decision in *Arinc* were relevant, we note that many of the fundamental legal premises underlying that decision have been affected by subsequent amendments to the Communications Act. In *Arinc*, the court stated that the Act embodies a congressional policy that "comparable consideration ... is the process most likely to serve the public."<sup>86</sup> Congress, however, has since modified the Act to make available to the Commission alternatives to comparative licensing schemes. Congress's dissatisfaction with comparative hearings was prominently evidenced, for example, in its decision in 1993 to give the Commission permissive authority to resolve mutually exclusive license applications by auctioning spectrum licenses in certain radio services,<sup>87</sup> as well as in its expansion in 1997 of the Commission's auction authority. In 1997, Congress amended Section 309(j) by requiring that all mutually exclusive applications for initial licenses, including those for broadcast services, "shall" be auctioned except in certain cases not relevant here.<sup>88</sup> We note also that in adopting Section 309(j), Congress provided that the Commission should continue to avoid or reduce the likelihood of mutual exclusivity among applications when the Commission finds that it is in the public interest to do so.<sup>89</sup> These enactments are a clear indication that Congress does not consider the comparative hearing processes to be the exclusive means of effectuating the public interest. Moreover, consistent with these mandates, in the past the Commission has concluded that licensing mechanisms for international satellite services that avoid mutual exclusivity serve the public interest.<sup>90</sup> Thus, as the Commission explained in its decision on remand from *Arinc*, the

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<sup>85</sup> *Arinc*, 928 F.2d at 450-53.

<sup>86</sup> *Arinc*, 928 F.2d at 450.

<sup>87</sup> See Omnibus Budget Reconciliation Act of 1993 (OBRA-93), Pub. L. 103-66, 107 Stat. 312, 387 (1993), § 6002(a) (codified at 47 U.S.C. § 309(j)). Congressional dissatisfaction with comparative hearings is clear in the legislative history of OBRA-93. Congress stated, for example: "The Committee finds that in many respects the FCC's current licensing methods for assigning spectrum have not served the public interest. Comparative hearings frequently have been time consuming, causing technological progress and the delivery of services to suffer." H.R. Rep. 111, 103rd Cong., 1st Sess. 248 (1993).

<sup>88</sup> See Balanced Budget Act of 1997 (OBRA-97), Pub. L. 105-33, 111 Stat. 251 (1997), § 3002(a) (codified at 47 U.S.C. §§ 309(j), 397).

<sup>89</sup> See 47 U.S.C. §§ 309(j)(3), 309(j)(6)(E).

<sup>90</sup> The Commission reached this conclusion because, *inter alia*, the licensing of such satellite services requires international coordination; the inability of U.S. auctions to confer global licenses might prevent market entry by satellite providers interested in global service; and coordinated, multilateral-transnational auctions are not feasible. See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5239-40 (para. 65) (1999). We note that Congress has recently excluded international and global satellite services from among the many services subject to the competitive bidding process now required by the Act. See Section 647 of the Communications Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 765f. This exclusion was prompted by concerns similar to those expressed by the Commission, particularly the concern that concurrent or successive auctions in the numerous countries in which U.S.-owned global satellite service providers seek licenses could place significant financial burdens



Commission historically has never used comparative hearings to select among satellite applicants.<sup>91</sup>

66. We note that the *TV and FM Broadcast Order* adopted a filing window as part of the first-come, first-served procedure adopted in that proceeding.<sup>92</sup> The Commission did not conclude, however, that a filing window is necessary to meet the requirements of *Ashbacker*, and we do not believe that such a conclusion would be correct. So long as all applicants fully meeting all pertinent licensing requirements have an equal opportunity for initial consideration and an opportunity for hearing if their application is denied, there is no basis for concluding that the procedure denies any applicant its rights to a hearing under Section 309 of the Communications Act. We believe that, because the first-come, first-served procedure we propose for satellite applications in this *Notice* provides such equal opportunities, it meets the requirements of the Communications Act and *Ashbacker*.

### C. Modification and Streamlining of Current Procedure

#### 1. Background

67. As an alternative to the first-come, first-served option discussed above, we propose modifying the current processing round procedure to eliminate a significant source of delay. In Section II.B. above, we describe the current satellite licensing process. Once we have allocated frequencies and adopted service rules, we can begin consideration of the satellite application. First, we initiate a processing round by establishing a cut-off date for mutually exclusive applications to be considered together with the lead application. Subsequently, in cases where sufficient spectrum is not available to accommodate all the proposed satellite systems, we encourage the applicants to negotiate "mutually agreeable" compromises so that all the applications can be granted.

68. Those negotiations can require several months or even years of effort. One recent example is the second Ka-band GSO processing round. The International Bureau (Bureau) initiated this processing round in October 1997.<sup>93</sup> The applicants began meeting informally to

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on providers of such services and thus threaten the viability and availability of global and international satellite services. See Report of Committee on Commerce, Communications Satellite Competition and Privatization Act of 1998, H.R. Rep. No. 494, 105th Cong., 2d Sess. 64-65 (1998). However, there is nothing in the ORBIT Act that suggests that Congress favors the use of comparative hearings or processing rounds instead.

<sup>91</sup> For example, the Commission stated that, because of the significant time required for construction and launch and rapidly developing satellite technology, the considerable time involved in comparative hearings would likely cause a substantial delay in service to the public unless the Commission adopted more pragmatic, timely approaches to licensing. Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision for Various Common Carrier Services, *Final Decision on Remand*, 7 FCC Rcd 266, 269 (para. 20) (1992), *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

<sup>92</sup> *TV and FM Broadcast Order*, 50 Fed. Reg. at 19940-41 (paras. 28-32).

<sup>93</sup> See Satellite Policy Branch Information: Satellite Application Accepted for Filing in the 18.8-19.3/28.6-29.1 and 19.7-20.2/29.5-30 GHz Bands; Cut-off Established for Additional Applications in the 18.8-19.3 and 28.6-29.1 GHz Bands; *Public Notice*, Report No. SPB-105 (Int'l Bur., Sat. and Rad. Div., released Oct. 15, 1997).

develop a consensus orbital assignment plan in December 1998. The applicants submitted two separate plans in August 2000 about a year and a half later, and a revised "majority plan" in November 2000.<sup>94</sup> The Bureau issued licenses in August 2001.<sup>95</sup>

69. Thus, while the negotiation among applicants in processing rounds is not the only source of licensing delay, it can be a significant source of delay. The first-come, first-served option discussed above is one possible means of eliminating negotiation delays, by avoiding the need for processing rounds. Another option is to revise the processing round procedure so that the delay caused by negotiations is eliminated or minimized. Accordingly, below, we invite comment on revisions to the processing round procedure to facilitate or expedite processing round negotiations. Alternatively, we seek comment on revisions that eliminate the need for such negotiations.

## 2. Facilitating Processing Round Negotiations

70. We invite comment on a number of means to facilitate negotiations in the context of processing rounds. First, we invite comment on allowing some amount of time, such as 60 days after the record closes on applications filed on the cut-off date, for the parties to negotiate a plan to accommodate all the applicants. If the parties could not reach an agreement by that time, we would determine which applications should be given preference over others based on specific criteria. The Commission's rules already place a limit on the number of orbital locations at which each licensee is allowed to operate satellites.<sup>96</sup> We seek comment on additional criteria in this section below. In particular, we seek comment on whether to adopt all these criteria or only certain select criteria. We also invite comment on whether we should place more weight on some of these criteria relative to others.

71. First, we invite comment on favoring new entrants over existing licensees, or licensees currently operating fewer satellites over licensees currently operating more satellites. Both of these proposals would arguably result in facilitating new entry into the satellite market, which may benefit satellite service customers by helping to promote a greater choice of service provider.

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<sup>94</sup> See Letter from James U. Troup, Counsel for CAI Data Systems, *et al.*, to Magalie Roman Salas, Secretary, Federal Communications Commission (dated Aug. 11, 2000) (Majority Plan); Letter from James U. Troup, Counsel for CAI Data Systems, *et al.*, to Magalie Roman Salas, Secretary, Federal Communications Commission (dated Aug. 11, 2000) (Minority Plan); Letter from James U. Troup, Counsel for CAI Data Systems, *et al.*, to Magalie Roman Salas, Secretary, Federal Communications Commission (dated Nov. 1, 2000) (Revised Majority Plan).

<sup>95</sup> *Second Round Ka-band Orbital Assignment Order*, 16 FCC Rcd 14389. See also, *e.g.*, GE American Communications, Inc., Application for Modification of Authorization to Construct, Launch and Operate a Ka-Band Satellite Service in the Fixed Satellite Service, *Memorandum Opinion and Order*, 16 FCC Rcd 14306 (Int'l Bur. 2001); Pacific Century Group, Inc., Letter of Intent as a Foreign Satellite Operator to Provide Fixed Satellite Services in the Ka-band to the United States, *Order*, 16 FCC Rcd 14356 (Int'l Bur. 2001); PanAmSat Corporation, Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 16 FCC Rcd 14367 (Int'l Bur. 2001).

<sup>96</sup> 47 C.F.R. §§ 25.140(e), (f).

72. Another possibility is to give a preference to satellite operators who have not missed a milestone in the past five years. Below, we seek comment on several proposals to strengthen our milestone requirements and to streamline their enforcement.<sup>97</sup> As explained further below, strengthening milestone requirements is important because it encourages licensees to complete construction of their satellite systems in a timely manner. Also, in cases where the licensee is unwilling or unable to proceed with construction, launch, and operation, milestone requirements facilitate reassignment of the license. Granting a preference to applicants who have not missed any milestones would further encourage compliance with those milestones, in addition to facilitating completion of processing rounds.

73. We also seek comment on giving a preference to applicants who have made more progress toward providing service. The Commission's rules permit applicants to proceed with construction of their satellite systems at their own risk.<sup>98</sup> Thus, applicants may begin construction of their satellites before they apply for a license with the Commission. Encouraging applicants to begin construction as soon as possible would help expedite service to the public.

74. An another possible selection criterion is to consider an applicant's commitment to provide service to rural or unserved areas. In addition to providing an additional means to resolve mutually exclusive cases in processing rounds, this approach could provide an additional incentive for applicants to provide service to unserved areas.

75. Finally, we solicit comment on giving a preference in a processing round to the applicants that file earlier than competing applicants. In other words, if an applicant submits its application two days before the cut-off date, and another applicant files a mutually exclusive application on the cut-off date, we would give a preference to the applicant who filed first. This should be an easily administered, bright line rule.

76. In summary, we invite comment on establishing a 60-day deadline for negotiations of a mutually agreeable solution in a processing round. Parties advocating a longer or shorter period should explain their reason with particularity. We also seek comment on all the proposals above for selecting among applicants in the event that they do not reach an agreement within the period. We could adopt all of these criteria, or only certain ones. We invite comment on the weight to be placed on each of the criteria we adopt.

77. In addition to the above, we seek comment whether the pleading cycle for petitions to deny, oppositions, and replies to a lead application should run concurrently with the pleading cycle for competing applications. In other words, after mutually exclusive applications are filed in response to a cut-off date announcement, petitions to deny, oppositions, and replies would be filed in response to all applications, including the lead application, under the same pleading cycle.

### 3. Mandatory Sharing Mechanism

78. As an alternative to the processing round selection criteria we discuss in Section III.C.2. above, we seek comment on a mandatory sharing mechanism based on the method we used in the *2 GHz* proceeding<sup>99</sup> as a means for selecting among mutually exclusive satellite

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<sup>97</sup> Section V.B.

<sup>98</sup> 47 C.F.R. § 25.113(b); *1996 Streamlining Order*, 11 FCC Rcd at 21583-85 (paras. 6-9).

<sup>99</sup> *2 GHz Order*, 15 FCC Rcd at 16138 (para. 16).

applications in a processing round approach. Under this approach, once we receive a lead application, we would issue a public notice establishing a cut-off date for additional applications to be considered together with the lead application. After the cut-off date has passed, we would dismiss any applications that are not "acceptable for filing."<sup>100</sup> After we have placed the remaining applications on public notice, and reviewed any petitions to deny, oppositions, and replies, we would deny any applications that do not demonstrate that the applicant is qualified to operate a satellite system under the Commission's rules. If spectrum sufficient to accommodate the remaining applicants is not available, we would divide the available spectrum equally among the applicants. As another alternative, we could allow some amount of time, such as 60 days after the record closes on the applications filed before the cut-off date, for the parties to negotiate a plan to accommodate all the applicants. If the parties could not reach an agreement by that time, we would divide the available spectrum equally among the applicants.

#### 4. Fungibility Policy

79. The Commission has historically maintained a policy of treating orbital locations as fungible in the context of processing rounds as one means of resolving mutually exclusive situations in the context of processing rounds.<sup>101</sup> The fungibility policy is applied where it is not possible to assign to each participant in a processing round the exact orbital location that is requested. In those situations, rather than simply deny that application, some other location is assigned to that applicant.

80. In addition to the proposals we set forth above to expedite negotiations, we propose streamlining processing rounds by eliminating the fungibility policy. Working to find a way to accommodate each applicant as much as possible can substantially increase the time needed to complete a processing round. This has become more complicated in recent years because of the current three-year backlog in publishing ITU submissions. As a result of the ITU backlog, it is difficult to determine whether we are assigning an applicant to an orbit location that has been encumbered by an ITU filing from another country. It is also difficult to determine whether we would be able to coordinate the proposed satellite system at the newly assigned orbit location with other countries. Eliminating the fungibility policy would eliminate the need to make these determinations. Thus, by relying on applicants to take responsibility for requesting orbit locations that are not encumbered by another country's ITU submission, we can complete processing rounds more quickly.

81. We note that eliminating the fungibility policy might raise issues in cases where two or more applicants in a processing round ask for the same orbital location, because we would no

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<sup>100</sup> In other words, we would dismiss applications that do not meet all the applicable information requirements.

<sup>101</sup> For example, in the *1980 Assignment Order*, the Commission explained that it retained authority to make and change orbital assignments, and noted that the location requested by an applicant is not dispositive of the location to which it will be assigned. *Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service, Memorandum Opinion and Order*, 84 FCC 2d 584, 601 (para. 45) (1981) (*1980 Assignment Order*). Later, in the *Separate Systems Order*, the Commission concluded that it should also retain this flexibility with respect to international separate systems. It also noted that, even though some satellite operators may consider some portions of the arc more desirable or essential than others, this does not affect the fungibility policy. *Separate Systems Order*, 101 FCC Rcd at 1176 n.168.

longer assign one of the applicants to another location. We have a number of options for addressing that issue. We could select one of the applicants based on the criteria we proposed in Section III.C.2. above. We could split the spectrum among the applicants. We could also designate this issue for hearing. We solicit comment on all these options.

## 5. Summary

82. As an alternative to the first-come, first-served option discussed in Section III.B., we propose modifications to streamline and expedite the current processing round procedure. We propose placing a time limit on negotiations. Furthermore, we seek comment on two alternatives to facilitate issuing licenses in cases where negotiations fail: (1) establishing criteria for selecting among applicants in a processing round; and (2) dividing the available spectrum equally among all the qualified applicants in the processing round. We also seek comment on streamlining processing rounds by eliminating the fungibility policy and combining comment periods.

83. We invite parties to provide other proposals for revising the Commission's processing round procedures. Parties may identify parts of the processing round procedure that could be streamlined or eliminated, without affecting the Commission's ability to protect current licensees from receiving harmful interference.

## IV. TECHNICAL INFORMATION REQUIREMENTS

### A. Background

84. It is possible that our review of satellite applications under either option discussed in Section III would be expedited if we adopted a more detailed and standardized application form. Accordingly, we seek comment on expanding our satellite license information requirements. Our current rules and policies already require space station applications to include all the information set forth in Section 25.114.<sup>102</sup> Furthermore, as the International Bureau (Bureau) emphasized in its *1998 Streamlining Public Notice*, we continue to expect satellite applications to be substantially complete when they are filed.<sup>103</sup> In other words, the applications must be complete in substance, and must provide all the information required in the application form.<sup>104</sup>

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<sup>102</sup> 47 C.F.R. § 25.114.

<sup>103</sup> International Bureau to Streamline Satellite and Earth Station Processing, *Public Notice*, Report No. SPB-140 (released Oct. 28, 1998) (*1998 Streamlining Public Notice*). This public notice is also available through Westlaw at 1998 WL 747982 (F.C.C.). Specifically, the Bureau ended its practice of reviewing routine earth station applications in detail to evaluate the accuracy or merits of specific information in an application prior to placing it on public notice. Rather, the Bureau now reviews applications to determine whether they are "acceptable for filing," or simply whether they include all the information required by the Commission's rules. The more detailed technical review is conducted after the Bureau finds that the application is acceptable for filing and has placed it on public notice. In the past, before we adopted this policy of returning deficient applications, an application would sometimes lack necessary technical information. This fact was communicated to the applicant and an opportunity was provided for one or more perfecting amendments to be filed. Thus, although we have taken steps in the past to improve our current procedures, they are still very time-consuming.

<sup>104</sup> In *Salzer v. FCC*, the Court overturned the Commission's adoption of the more stringent "complete and sufficient" standard it had adopted for reviewing low-power television applications. The Court held that the Commission has authority to adopt this standard of review, but that the Commission was not sufficiently clear in its explanation of its information requirements. *Salzer v. FCC*, 778 F.2d 869

Applications that are not substantially complete will not be deemed "acceptable for filing," and so will be returned to the applicant rather than placed on public notice.

85. In addition, in the *Part 25 Earth Station Streamlining NPRM*, we proposed adding Schedule S to our satellite application filing form, FCC Form 312.<sup>105</sup> Schedule S was designed to collect technical data for space station applications in a standardized format. We stated that developing a standardized format for space station technical data might facilitate developing a database for information on space station licenses and applications, such as frequency bands.<sup>106</sup> We also indicated that such a database might enable us to respond to queries from the public more quickly.<sup>107</sup> We did not propose standardizing all space station information requirements because we tentatively concluded that applicants should be allowed the flexibility to provide some information required by Section 25.114 in narrative form.<sup>108</sup> Finally, we proposed revising Section 25.114 to make it consistent with Schedule S.<sup>109</sup>

86. Below, we review the record we have developed regarding Schedule S, and we conclude that we include Schedule S as part of FCC Form 312 to collect some satellite application information in a standardized format.<sup>110</sup> We defer adoption of Schedule S, however, so that we can consider proposals for new and revised information requirements in light of the other licensing process proposals herein.

## B. Schedule S

87. Loral Space & Communications Ltd. (Loral) supports adding Schedule S to FCC Form 312.<sup>111</sup> The Satellite Industry Association (SIA) supports Schedule S, but wants space station applicants to have the option of filing more detailed information in the narrative portions of their applications.<sup>112</sup>

88. We conclude that we will include a Schedule S in the satellite license application form. This should facilitate the development of a database that should enable us to respond to

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(D.C. Cir., 1985). We emphasize that we are not proposing any changes to the "substantially complete" standard we currently use for satellite license review.

<sup>105</sup> 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Notice of Proposed Rulemaking*, IB Docket No. 00-248, 15 FCC Rcd 25128, 25191-25201 (App. C) (2000) (*Part 25 Earth Station Streamlining NPRM*).

<sup>106</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (paras. 72-73).

<sup>107</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (para. 74).

<sup>108</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (para. 74).

<sup>109</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (para. 74).

<sup>110</sup> For a list of commenters in the *Part 25 Earth Station Streamlining* proceeding, see Appendix A.

<sup>111</sup> Loral Comments at 12.

<sup>112</sup> SIA Reply at 18-19.

queries from the public more quickly.<sup>113</sup> It should also make it easier to monitor trends developing in the satellite industry. We will also revise Section 25.114 to be consistent with Schedule S.<sup>114</sup> Finally, consistent with SIA's recommendation, we will continue to require space station license applicants to file certain information in narrative form, and permit applicants to file additional information in the narrative portions of their applications.<sup>115</sup> We defer the effectiveness of Schedule S and revisions to Section 25.114, however, so that we can consider the proposals below to revise and expand the information requirements of space station license applicants.

### C. Revised and New Information Requirements

89. First, as noted above, we did not propose standardizing all space station information requirements because we tentatively concluded that applicants should be allowed the flexibility to provide some information required by Section 25.114 in narrative form.<sup>116</sup> As part of our proposed hard look approach, we invite comment on expanding Schedule S to standardize more of the Section 25.114 information requirements than we contemplated in the *Part 25 Earth Station Streamlining NPRM*. For example, we propose a more detailed collection of the NGSO system information required currently in Section 25.114(c)(6)(ii). In addition, we invite comment on eliminating the separate information requirements for non-voice NGSO MSS applications in Section 25.142(a)(1), so that all NGSO applications will be subject to the same information requirements as set forth in Section 25.114. We also propose using Schedule S to collect more detailed data on digital and analog emission modulation characteristics, currently required by Section 25.114(c)(8). In addition, we propose including in Schedule S data on tracking, telemetry and control (TT&C) facilities and the physical characteristics of spacecraft, now required by Sections 25.114(c)(11) and (12), respectively. Our proposed Schedule S as revised is set forth in Appendix C of this NPRM.

90. In addition, we propose expanding our information requirements. For example, we currently require space station applicants to submit antenna gain contour diagrams, but we do not specify any particular format in our rules.<sup>117</sup> We propose requiring space station applicants to provide the antenna gain pattern contour diagrams in the .gxt format required in submissions to the ITU. Requiring the .gxt format would ensure that applicants have taken at least one preliminary step towards preparing a necessary ITU submission. More importantly, the .gxt format would enable the Commission to extract data from antenna gain contour diagrams and conduct analyses. This would be very helpful in determining whether the proposed satellite would comply with the Commission's technical rules.

91. We further propose collecting more precise data on power flux density (PFD). Section 25.208 establishes PFD limits in several frequency bands, and in general, the PFD limits for angles of arrival between 5° and 25° above the horizontal plane is a function of the angle of

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<sup>113</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (paras. 72-74).

<sup>114</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (para. 75).

<sup>115</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (para. 74).

<sup>116</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25152 (para. 74).

<sup>117</sup> 47 C.F.R. §§ 25.114(c)(7).

arrival.<sup>118</sup> We currently require PFD calculations in space station applications, but not in any particular format.<sup>119</sup> Requiring more detailed PFD information in applications might help discourage some applicants from filing frivolous applications, and it would definitely enable us to expedite our review of space station applications. Therefore, we invite comment on requiring space station applicants to specify PFD values at angles of arrival equal to 5, 10, 15, 20 and 25 degrees.

92. Finally, we propose expanding Schedule S so that space station license applicants can provide information on polarization isolation, polarization switching, and alignment of polarization vectors relative to the equatorial plane. This information is necessary to determine whether the space station will meet requirements currently in Section 25.210 of our rules.<sup>120</sup> We also propose mandating that applicants certify that they will comply with the service area requirements of Sections 25.143, 25.145, and 25.208,<sup>121</sup> and the out-of-band emission requirements of Section 25.202.<sup>122</sup>

93. We propose requiring all satellite applicants to complete FCC Form 312, including the more detailed version of Schedule S proposed in this *Notice*, and to provide information in accordance with Section 25.114. By requiring more detailed and standardized information in satellite applications, we intend to facilitate our review of applications, thereby identifying defective applications more quickly. We also intend to require this information of applicants filing in cases in which there is no international or domestic frequency allocation for their planned services. We recognize that some of the information that is required by Section 25.114 might not be applicable to proposed satellites that are intended to operate in frequency bands not allocated to the proposed service at the time the application is filed. Nevertheless, unless applicants are required to provide all this information, it may be too easy for them to file frivolous or "sham" applications.<sup>123</sup> When we adopt service rules for satellites in a new frequency band, we will revise Section 25.114 if necessary to include information requirements relevant for that band, and give applicants an opportunity to amend their applications to provide the needed information.

94. We currently require applicants to pay all filing fees before we will consider their applications. In addition, if the applicant pays by check, we do not consider those fees paid unless the check clears within 13 days of the date the application is filed. We plan to keep these requirements regardless of whether we modify processing rounds or adopt some first-come, first-served procedure. However, in the event that we adopt the first-come, first-served option, for

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<sup>118</sup> See 47 C.F.R. §§ 25.208(a), (b), (c)(2), (d)(2), (f).

<sup>119</sup> 47 C.F.R. §§ 25.114(c)(10).

<sup>120</sup> 47 C.F.R. §§ 25.210(a), (i).

<sup>121</sup> 47 C.F.R. §§ 25.143(b)(ii), 25.143(b)(iii), 25.145(c)(1), 25.145(c)(2), 25.208.

<sup>122</sup> 47 C.F.R. §§ 25.202(f).

<sup>123</sup> Deterring frivolous applications is important regardless of whether we adopt a first-come, first-served procedure or modify the current procedure. However, we note that these information requirements are comparable to the "hard look" policy the Commission included as part of its broadcast license first-come, first-served approach. At that time, the Commission adopted its hard look policy specifically to deter frivolous or sham applications. *TV and FM Broadcast Order*, 50 Fed. Reg. at 19939-40 (paras. 19-24).



purposes of considering priority of applications, we propose looking to the date and time the application was filed, as explained above, rather than the date the applicant's check clears. If the check does not clear, we would not give the applicant a chance to send a new check, but instead would return the application and consider the next application in the queue.

#### D. Full Frequency Reuse

95. Part 25 includes several "2° spacing" requirements for geostationary satellite orbit satellites. The Commission instituted its 2° orbital spacing policy in 1983 to maximize the number of satellites in orbit.<sup>124</sup> Under the 2° spacing framework, the Commission assigns adjacent in-orbit co-frequency satellites to orbit locations 2° apart in longitude.<sup>125</sup> FCC Form 312 requests most, but not all, the information that is required to demonstrate that the proposed satellite will meet all the applicable 2° spacing requirements. Accordingly, we propose expanding Schedule S to collect all the information needed to determine compliance with 2° spacing requirements.

96. Included in the Commission's 2° spacing policy are the full frequency reuse requirements. For example, a space station operating in the conventional C-band<sup>126</sup> is required to have a capacity equivalent to that provided by a space station having transponders that use 864 MHz of a 1000 MHz (with two-times frequency reuse) assignment and provide a total power of 192 watts.<sup>127</sup> Essentially, full frequency reuse doubles the capacity of a space station. Thus, our full frequency reuse requirements are important for ensuring that scarce orbit and spectrum resources are used efficiently.<sup>128</sup>

97. Our full frequency reuse policy for the conventional C-band and Ku-band is codified in Sections 25.210(e), (f), and (g) of our rules.<sup>129</sup> In conjunction with the information requirements we propose above, we take this opportunity to propose clarifications to these rules. First, we propose clarifying that these requirements apply to the conventional C-band and Ku-band. Second, we propose revising Section 25.210(f) based on the language we used for Ka-band

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<sup>124</sup> Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order*, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (released Aug. 16, 1983); *reprinted at* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983) (*Two Degree Spacing Order*).

<sup>125</sup> *See Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25132 (para. 7).

<sup>126</sup> The conventional C-band is the 3700-4200 MHz and 5925-6425 MHz bands.

<sup>127</sup> *Two-Degree Spacing Order*, 54 RR 2d at 598 n. 67. *See also* Establishment of Satellite Systems Providing International Communications, *Report and Order*, CC Docket No. 84-1299, 101 FCC 2d 1046, 1168-69 (para. 248) (1985) (*Separate Systems Order*).

<sup>128</sup> Systematics General Corporation, *Memorandum Opinion and Order*, 103 FCC 2d 879, 881-82 (paras. 6-9) (1985). *See also* Columbia Communications Corporation, *Memorandum Opinion, Order, and Authorization*, 7 FCC Rcd 122, 123 (para. 15) (1991); *First Columbia Milestone Order*, 15 FCC Rcd at 15572 (para. 13).

<sup>129</sup> 47 C.F.R. §§ 25.210(e), (f), (g). The conventional Ku-band is the 11.7-12.2 GHz and 14.0-14.5 GHz bands.

full frequency reuse requirements in Section 25.210(d).<sup>130</sup> Specifically, we propose revising Section 25.210(f) to read as follows: "All space stations in the Fixed Satellite Service in the 3700-4200 MHz, 5925-6425 MHz, 11.7-12.2 GHz, and 14.0-14.5 GHz bands shall employ state-of-the-art full frequency reuse either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams." We seek comment on whether our proposal effectively takes account of the current state of the art in satellite technology and expected future developments. Finally, we also seek comment on whether we should apply these full frequency reuse requirements to extended C-band and extended Ku-band satellites.

## V. OTHER ISSUES

### A. Background

98. In addition to the adoption of Schedule S discussed above, there are several other proposals which should make our satellite application process more efficient and thus help speed provision of service to the public, regardless of whether we adopt the first-come, first-served option or modify the current procedure. We invite comment on these proposals below.

### B. Financial Qualifications and Milestones

99. We invite parties to discuss whether we should streamline our space station licensing procedure by eliminating the financial qualification requirements. In lieu thereof, we propose to rely on strenuous enforcement of our milestone requirements.

100. The Commission's rules require applicants for most U.S. space station licenses to show that they are technically, legally, and financially qualified to operate a space station.<sup>131</sup> To be "financially qualified," the applicant must show generally that it has the financial resources to construct and launch a satellite, and to operate it for one year.<sup>132</sup> Examination of an applicant's financial qualifications is used as a tool to ensure that the orbit-spectrum resource is not tied up by entities unable to fulfill their plans, and also to discourage the filing of speculative applications. Further, determination of an applicant's financial ability is made to ensure that service is promptly made available to users.<sup>133</sup>

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<sup>130</sup> 47 C.F.R. §§ 25.210(d). The term "Ka-band" generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz.

<sup>131</sup> See, e.g., 47 C.F.R. § 25.140(b).

<sup>132</sup> See 47 C.F.R. § 25.114(c)(13) and rules cited therein.

<sup>133</sup> See Amendment to the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, *Second Report and Order*, Gen. Docket No. 84-689, 104 FCC 2d 650, 663 (para. 23) (1986) (*RDSS Second Report and Order*). See also Establishment of Satellite Systems Providing International Communications, *Report and Order*, CC Docket No. 84-1299, 101 FCC 2d 1046, 1164 (para. 233) (1985); Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, *Memorandum Opinion and Order*, GEN Docket No. 84-1234, 4 FCC Rcd 6029, 6032-33 (para. 29) (1989); Norris Satellite Communications, Inc., *Order and Authorization*, 7 FCC Rcd 4289, 4291 (para. 11) (1992).

101. Once it has met these threshold requirements, the licensee must commence construction, complete construction, and launch its satellite by the "milestone" deadlines specified in its license. The milestone schedule is used to ensure that licensees construct and launch their systems in a timely manner. Requiring licensees to make and fulfill realistic construction and launch commitments prevents increasingly scarce orbital resources from being warehoused by licensees. Such warehousing could hinder the availability of services to the public at the earliest possible date by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.<sup>134</sup>

102. As is apparent from the above, our financial qualification requirements and our milestone policy serve very similar purposes. Both are designed to ensure that applicants are positioned to provide service to the public in a timely manner. However, the financial qualification requirement provides only a preliminary and therefore possibly imprecise assessment of whether an applicant is able to proceed with construction, launch, and operation.<sup>135</sup> Alternatively, the milestone policy provides a potentially more reliable means to monitor licensees to ensure that they remain both able and willing to proceed with construction, launch, and operation throughout the satellite construction process. Accordingly, we believe that we can eliminate the duplicative financial qualification requirements and rely exclusively on our milestone policy to ensure that licensees provide service in a timely fashion.

103. We note that the Commission decided to eliminate financial qualification requirements for mobile satellite service (MSS) operators in the 2 GHz band, in part because strict enforcement of milestone requirements would ensure timely system construction and service deployment.<sup>136</sup> In addition, the Commission established a milestone for completion of Critical Design Review (CDR), or in other words, completion of the design phase of implementation and commencement of physical construction.<sup>137</sup> We invite comment on whether we should adopt rules specifying milestone requirements for all satellite services similar to the milestones adopted in the *2 GHz Order*.<sup>138</sup> (Those milestones are set forth in the table below.) We also seek comment on whether we should establish separate milestones for geostationary and non-geostationary satellites.

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<sup>134</sup> *First Columbia Milestone Order*, 15 FCC Rcd at 15571 (para. 11); National Exchange Satellite, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 1990, 1991 (para. 8) (Com. Car. Bur. 1992) (*Nexsat Order*), citing MCI Communications Corporation, *Memorandum Opinion and Order*, 2 FCC Rcd 233 (1987) (*MCI Order*).

<sup>135</sup> We also note that we have often granted waivers of our financial qualification rules in cases where all the pending satellite license applications could be accommodated and there is room for additional entry. *See, e.g., Second Round Ka-band Orbital Assignment Order*, 16 FCC Rcd at 19392-93 (paras. 11-12).

<sup>136</sup> *2 GHz Order*, 15 FCC Rcd at 16150-51 (para. 48).

<sup>137</sup> *2 GHz Order*, 15 FCC Rcd at 16178-79 (para. 108).

<sup>138</sup> *2 GHz Order*, 15 FCC Rcd at 16177-78 (para. 106).

|                                    | NGSO | GSO |
|------------------------------------|------|-----|
| Contract                           | 1    | 1   |
| CDR                                | 2    | 2   |
| Commence Construction              | 2.5  | 3   |
| Launch <sup>139</sup>              | 3.5  | 5   |
| Bring Entire System Into Operation | 6    | 6   |

(Milestones are stated in number of years after authorization.)

104. Further, we invite comment on whether we should adopt interim or additional milestone requirements, in addition to construction commencement, construction completion, and launch, and CDR milestone adopted in the *2 GHz Order*. As an alternative to the milestone requirements we propose above, we invite comment on requiring that licensees spend a certain amount of money on the construction of its satellite system each year. That amount could be based on a percentage of the total projected costs of the satellite at the time the application is filed, for example. We expect that any interim milestone we adopt would be an easily administered, bright-line test. It would defeat the purpose of our milestone requirements if it took a disproportionate amount of time to determine whether the licensee has met its milestone.

105. We also invite comment on streamlining enforcement of our milestones. Our rules currently provide for automatic cancellation of a license when the licensee fails to meet a milestone, unless the licensee files a timely request for extension of the milestone.<sup>140</sup> The test for determining whether a milestone extension is warranted is a fairly bright-line test. Extensions of the milestone schedule are granted only when delay in implementation is due to circumstances beyond the control of the licensee.<sup>141</sup> However, the test for determining whether a licensee has met its construction commencement milestone is whether it has entered into a binding, non-contingent satellite construction contract.<sup>142</sup> This test can require interpretation of construction

<sup>139</sup> Non-geostationary systems must launch their first two satellites within 3.5 years of authorization. Geostationary systems must launch their first satellite within 5 years of authorization. *2 GHz Order*, 15 FCC Rcd at 16177-78 (para. 106).

<sup>140</sup> See 47 C.F.R. § 25.160.

<sup>141</sup> *Columbia Milestone Order*, 15 FCC Rcd at 15571 (para. 11), *recon. denied* 16 FCC Rcd 10867 (Int'l Bur. 2001); *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8); *MCI Order*, 2 FCC Rcd 233; Hughes Communications Galaxy, *Order and Authorization*, 5 FCC Rcd 3423, 3424 (Com. Car. Bur. 1990). See also, e.g., *Advanced Communications Corporation, Memorandum Opinion and Order*, 11 FCC Rcd 3399, 3417 (para. 45) (1995) (delays related to negotiations with potential investors do not constitute adequate justification for extension of milestones); *MCI Order*, 2 FCC Rcd at 234 (para. 7) (mergers do not justify extension of milestones); *AT&T Order*, 2 FCC Rcd at 4433-34 (paras. 21-23) (neither negotiation of construction contract nor existence of in-orbit satellite at orbit location in question justify extension of milestones).

<sup>142</sup> See, e.g., *PanAmSat Licensee Corp. Memorandum Opinion and Order*, 15 FCC Rcd 18720, 18723 (para. 9) (Int'l Bur. 2001) (*PanAmSat Ka-band License Cancellation Order*). By "non-contingent contract," we have always meant that there will be neither significant delays between the execution of the contract and the actual commencement of construction, nor conditions precedent to construction. *Norris Satellite Communications, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 22299, 22303-04 (para. 9) (1997) (*Norris Review Order*), *PanAmSat Ka-band License Cancellation Review Order*, 16 FCC Rcd at 11539 (para. 16).

contracts, and so can take time to administer. In addition, many construction contracts are submitted under requests for confidential treatment, and addressing those requests also takes time. We invite proposals for streamlining our enforcement of construction commencement milestones. We also invite proposals for bright-line, easily administered tests for the other milestones we propose here.

106. Furthermore, we propose several measures, in addition to our current milestone policies, to strengthen those requirements. Currently, failure to meet a milestone results only in cancellation of the license.<sup>143</sup> We could strengthen our milestone requirements by codifying them in our rules, and imposing forfeiture penalties for failure to meet the milestones. We could further strengthen our milestone requirements by prohibiting the licensee from applying for another satellite license, or applying for a license to operate a space station in that band, or to operate at that orbit location in the case of GSOs. This prohibition could be permanent, or for a certain number of years. Another option is to prohibit that licensee from filing another space station application until it has met some requirement designed to show that it would be able to meet all its milestone requirements if it were granted another space station license. We invite suggestions for what this showing should include.

107. Finally, we seek comment on establishing incentives for implementing satellite systems before the launch milestone deadline. One possibility is to extend the satellite license term by some amount, such as two years, if the licensee launches its first satellite by at least a certain number of months before the applicable launch milestone. We invite comment on this proposal, and we invite parties to propose other incentives.

108. In summary, by eliminating the duplicative financial qualification requirements, we hope to streamline the license application review process. By strengthening the milestone requirements, we hope to identify licensees that are not proceeding with the implementation of their systems in a timely manner more quickly than we can under our current procedures, so that their licenses can be cancelled and reassigned more expeditiously. We also seek comment on providing incentives for launching satellites before the applicable launch deadline. We invite comment on these proposals, and we invite other proposals.

### C. Trafficking in Licenses

109. Trafficking in licenses or "bare" licenses<sup>144</sup> is forbidden by Commission rules for many satellite services.<sup>145</sup> "Trafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use."<sup>146</sup> In conjunction with our proposals above for strengthening our milestone

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<sup>143</sup> See, e.g., Morningstar Satellite Company, L.L.C., *Memorandum Opinion and Order*, 15 FCC Rcd 11350 (Int'l Bur., 2000); *PanAmSat Ka-band License Cancellation Order*, 15 FCC Rcd 18720.

<sup>144</sup> A "bare" license is a license to operate a communications facility when no facility has been constructed.

<sup>145</sup> See, for example, 47 C.F.R. § 25.145(d)(1) that states that "'Trafficking' in bare licenses issued pursuant to paragraph (b) of this section is prohibited, except with respect to licenses obtained through a competitive bidding procedure." See also *NetSat 28 Company, L.L.C., Order and Authorization*, 16 FCC Rcd 14471, 14476 (para. 12) (Int'l. Bur., 2001) (*NetSat 28 Transfer Order*) (pet. for recon. pending).

<sup>146</sup> See 47 C.F.R. § 1.948(i)(1) (definition of "trafficking" applied to wireless licenses).

requirements, we seek comment on whether we should eliminate the anti-trafficking rule for satellite licenses.

110. The Commission bases this prohibition on trafficking on two concerns: the first is that an entity might obtain a license without any intention to build facilities and operate a communications service, but only in order to resell the bare license in order to make a profit. Such unjust enrichment would benefit the seller of the license, but would not necessarily provide any benefit to the public. Indeed, many persons see such unjust enrichment to be unfair, and some persons might even believe that it would be inefficient. The second concern is that if an entity receives a license, and then does not construct facilities and operate a communications service but merely resells the bare license, during that period of time, the frequency spectrum assigned through the license would not be put to any use, and the public would be deprived of whatever valuable service might have otherwise been provided by some other entity.

111. On the other hand, it may be that the existing satellite anti-trafficking rules may well prevent a satellite license from getting in the hands of the entity that values it the most and would, in fact, put it to its highest valued use in the shortest amount of time. Thus, there may be many situations in which it would be efficient to allow an entity that applied for and received a satellite license to turn around and resell that license at any time, provided that the purchaser meets the milestones in the original license. For example, it may be that overall macroeconomic conditions have changed, or the level of competition in the market place has changed or that consumer or business tastes have changed. In that case even though the original licensee fully intended to provide a service, that license holder may now find that it no longer has a viable business plan. Thus, from the point of view of the license holder, and also from the point of view of the public at large, it may be desirable to allow the license to be sold quickly to another party who has another business plan or adequate financial resources and will be better able to serve customers, be they business customers or individual consumers. In addition, we have determined in the past that a license transfer or assignment does not warrant a milestone extension,<sup>147</sup> and we plan to retain this policy. Thus, facilitating sales of satellite licenses with the original milestone schedule would result in provision of service to the public more quickly than cancellation of the license and issuing a new license with a new milestone schedule.

112. Communications satellite systems or networks are technically very complex and expensive to design, build and launch. A single geostationary satellite can easily cost several hundred million dollars to design, build and launch.<sup>148</sup> Moreover, there are significant business risks associated with providing satellite services ranging from launch failure to failure of a satellite communications network to function correctly, to making mistaken projections of

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<sup>147</sup> *MCI Order*, 2 FCC Rcd at 234 (para. 7); *First Columbia Milestone Order*, 15 FCC Rcd at 15571 n.35; Columbia Communications Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 16496, 16500-01 (para. 12) (Int'l Bur. 2000) (*Second Columbia Milestone Order*), *PanAmSat Ka-band License Cancellation Review Order*, 16 FCC Rcd at 11538 (para. 13).

<sup>148</sup> "It typically costs approximately \$225 million to build and launch a satellite and takes three to four years to lease it out." Salomon Smith Barney, *Industry Note: Satellite Communications and Towers: The Guide to Fixed Satellite Services* (Nov. 8, 2001), at 1. See also Columbia Communications Corporation, Authorization to Launch and Operate a Geostationary C-band Replacement Satellite in the Fixed-Satellite Service at 37.5° W.L., *Memorandum Opinion And Order*, 16 FCC Rcd 20176 (Int'l. Bur., 2001) (estimating the costs of constructing, launching, and operating satellite for one year to be \$280 million).

business or consumer demand for satellite services, especially for new untried services.<sup>149</sup> Consequently, there are substantial risks to the investors in satellite systems, whether they are equity investors in the satellite companies or banks and other financial organizations that make loans to satellite companies through the purchase of bonds or using other financial debt instruments.

113. If satellite companies are able to sell their licenses, *i.e.* "traffic" in their licenses, even before they have built and operated facilities, the risk of default on loans to bond holders or the non-payment of dividends to equity holders is reduced, and therefore those satellite companies may be more likely in the first place to be able to attract equity capital and to obtain loans at more attractive interest rates. The Commission's unwillingness to allow companies to sell their "bare" license for more than their expenses incurred in obtaining the license to purchasers willing and able to proceed with their business plans may discourage original investment in those organizations. In such cases, companies may be less likely to succeed in the first place, and thus less likely to undertake the initial activity.

114. Moreover, if after obtaining a satellite license, a company discovers that its business plan is not viable, it may be reluctant to return its license to the Commission and receive no compensation. The licensee may also be reluctant to sell the license for no more than its expenses, even if that sale would benefit consumers and society as a whole. Consequently, such a company may hold on to the license for some years without either returning the license to the Commission, going forward on the construction of the satellite system, or selling the license to another company. At the current time, companies may transfer "bare" satellite licenses to other companies, with Commission approval, provided that they do not receive any payment beyond legitimate expenses. If, however, companies knew that they were allowed to earn a profit by selling their license to another company able to meet the milestone schedule in the license, they might be far less reluctant to sell, and a transaction might take place much faster. In that case, the new buyer would obtain the license faster. In addition, because the new buyer wished to operate the licensed facility, and should be in a better position to meet the milestone requirements in the license, it could begin its business more rapidly.

115. In addition, the existence of the anti-trafficking rule likely slows down the approval of satellite license transactions for another reason. Because the sale of bare licenses for a profit is prohibited, but the sale of a bare license for actual expenses is allowed, companies wishing to sell their license may spend substantial time and resources in attempting to structure a transaction in such a way that it will pass the anti-trafficking rule. Moreover, Commission staff will also spend time and resources analyzing transactions to determine that they do not violate the anti-trafficking rule. A number of recent transactions have involved this particular issue.<sup>150</sup> Had the anti-trafficking rule not existed, the applicants could have filed their applications faster and the staff would also have been able to grant them more quickly.

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<sup>149</sup> John C. Tanner, *LEOsats Reinvented; Globalstar and Iridium Satellite, America's Network* (July 15, 2001, Vol. 105, No. 11); Tim Foran, *Satellite Providers Look to Past to Find Future*, *Network World Canada* (Jan. 26, 2001).

<sup>150</sup> *NetSat 28 Transfer Order*, 16 FCC Rcd 14471; Application of VisionStar, Incorporated, Licensee, Shant Hovnanian, Transferor, and EchoStar VisionStar Corporation, Transferee, for Consent to Transfer Control over Authorization to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service at the 113° W.L. Orbital Location, *Order and Authorization*, 16 FCC Rcd 19187 (Int'l Bur., 2001).

116. We also are aware of questions concerning repeal of the anti-trafficking rules. Anti-trafficking rules discourage speculators and prevent unjust enrichment of individuals or companies that have no intention of building facilities and actually operating satellite systems.<sup>151</sup> However, we seek comment on whether our proposed revisions to the Commission's milestone requirements, which would result in forcing licensees to begin construction of their satellite systems almost immediately, which would discourage most speculative applications. In addition, we propose requiring all license purchasers to comply with the milestones in the original license. Under this proposal, the market value of a license will depreciate rapidly if the seller makes no attempt to begin construction of its satellite system. As each milestone date approaches, the risk of failing to meet that milestone increases if the seller has made no efforts to meet the milestone. Consequently, prospective buyers will place less value on that license. Therefore, strict milestone enforcement will make it more difficult for a licensee to profit unreasonably from the sale of a license obtained for speculative purposes.

117. Furthermore, the nature of satellites and satellite services make speculative applications unlikely. A satellite system, especially a satellite network involving multiple satellites, is highly complex technically and costly to develop and build. Our satellite application regulations will continue to require the filing of a technical showing concerning the planned system, as well as the payment of significant filing fees, ranging from \$90,000 to \$300,000. For example, the application fee to file for a GSO space station is currently \$93,375.<sup>152</sup> The application fee for a system of technically identical NGSO space stations is currently \$321,570.<sup>153</sup> We realize that an applicant might spend these sums of money, obtain a license and still be able to sell the license for a very substantial profit. Nevertheless, we doubt that, given costs of these magnitudes, it is likely that the Commission would receive very large numbers of frivolous or entirely speculative applications. Accordingly, we request comment on whether the Commission should repeal its anti-trafficking rules with respect to satellite licenses issued under the strictly enforced milestone requirements we propose above. In particular, we invite comment on whether our analysis strikes a reasonable balance between the competing goals of preventing unjust enrichment and expediting service to the public.

#### **D. Mandatory Electronic Filing**

118. We solicit comment on requiring satellite applicants to file license applications electronically. We have found that electronically filed earth station applications can be processed in about half the time as paper earth station applications.<sup>154</sup> We also expect that we could process electronically filed space station applications more quickly than paper space station applications. We believe that Internet access has become sufficiently common that few if any U.S.-licensed satellite operators will be disadvantaged by mandatory electronic filing.

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<sup>151</sup> Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Report and Order*, CC Docket No. 92-166, 9 FCC Rcd 5936, 6014 (para. 203) (1994); *Ka-band Service Rules Order*, 12 FCC Rcd at 22339-40 (para. 74).

<sup>152</sup> See 47 C.F.R. § 1.1107; <http://www.fcc.gov/fees/2000ibguide.pdf>.

<sup>153</sup> See 47 C.F.R. § 1.1107; <http://www.fcc.gov/fees/2000ibguide.pdf>.

<sup>154</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25153 (para. 76).



## E. Replacement Satellites

119. The Commission has stated that, given the huge costs of building and operating space stations, there should be some assurance that operators will be able to continue to serve their customers.<sup>155</sup> Therefore, the Commission has stated that, when an orbit location remains available for a U.S. satellite with the technical characteristics of the proposed replacement satellite, it will generally authorize the replacement satellite at the same location.<sup>156</sup> It has also acted on applications for replacement satellites as they are filed, without consolidating them into a processing group.<sup>157</sup>

120. We usually grant replacement satellite applications pursuant to Order, however. We propose streamlining this process by grant-stamping unopposed replacement satellite applications with technical characteristics consistent with those of the satellite to be retired.<sup>158</sup> We envision this process to be similar to that we use for unopposed earth station applications. We would simply stamp the application as "granted" and return a copy to the applicant. As an alternative, we could deem unopposed satellite applications granted after a specific amount of time after date for petitions for deny has passed, unless we issue a public notice stating that we need more time to review the application. Under this proposal, once we have decided to allow the application to be deemed granted, we would issue a public notice announcing that fact. We seek comment on limiting this procedure to unopposed replacement satellite applications.<sup>159</sup> We also invite comment on adopting a time period of at least 60 days after the time for oppositions to deny have passed. We believe this time period is reasonable because replacement satellites are

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<sup>155</sup> See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, 3 FCC Rcd 6972, 6976 n.31 (1988) (*1988 Orbit Assignment Order*); Hughes Communications Galaxy, Inc., *Order and Authorization*, 6 FCC Rcd 72, 74 n.7 (1991) (*Hughes Replacement Order*); GE American Communications, Inc., *Order and Authorization*, 10 FCC Rcd 13775, 13775-76 (para. 6) (Int'l Bur. 1995) (*GE Americom Replacement Order*).

<sup>156</sup> *1988 Orbit Assignment Order*, 3 FCC Rcd at 6976 n.31; *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6).

<sup>157</sup> *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995).

<sup>158</sup> We have stated that we will generally authorize replacement satellites provided that the location remains available for assignment to a U.S.-licensed satellite and the technical characteristics of the proposed replacement allow it to be assigned to the location. *Hughes Replacement Order*, 6 FCC Rcd at 74 n.7.

<sup>159</sup> We note that we have procedures for other kinds of international applications in which we grant applications without Orders. For example, applications for international Section 214 authorizations are deemed granted after 14 days, except under certain circumstances. See 47 C.F.R. § 63.12. Moreover, the Commission recently adopted procedures providing for the grant of an application announced as eligible for streamlined treatment within 45 days from the date the International Bureau issues the public notice accepting the application for filing, unless the Commission notifies the applicant in writing that the application has been removed from streamlined processing. See *Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order*, IB Docket No. 00-106, FCC 01-332 (released Dec. 14, 2001) at para. 45. Under these procedures, submarine cable landing license applications qualifying for streamlined treatment may be granted by public notice. *Id.* at para. 48.

new satellites with new technical parameters that must be reviewed.<sup>160</sup> We invite comment on both the grant-stamp and the "deemed granted" proposals.

## F. Non-U.S.-Licensed Satellites

### 1. Background

121. Under the terms of the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Telecom Agreement),<sup>161</sup> 78 WTO Members, including the United States, have made binding commitments to open their markets to foreign competition in satellite services.<sup>162</sup> The Commission concluded that providing opportunities for non-U.S.-licensed satellites to deliver services in the United States would bring U.S. consumers the benefits of enhanced competition.<sup>163</sup> This policy also promotes greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.<sup>164</sup>

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<sup>160</sup> See *1988 Orbit Assignment Order*, 3 FCC Rcd at 6976 n.31; *Hughes Replacement Order*, 6 FCC Rcd at 74 n.7 (We generally authorize replacement satellites provided that the location remains available for assignment to a U.S.-licensed satellite and the technical characteristics of the proposed replacement allow it to be assigned to the location. Thus, replacement satellites need not be exactly the same as the satellites they replace). See also *An Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It, First Report and Order*, Gen. Docket No. 80-741, 100 FCC 2d 976, 1006 (para. 98) (1985) ("Replacement satellites should incorporate appropriate improvements in technology that will inevitably have arisen since the original satellite was first designed, ...."); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.6/2483.5-2500 MHz Frequency Band, *Memorandum Opinion and Order*, CC Docket No. 92-166, 11 FCC Rcd 12861, 12877-78 (paras. 48-50) (1996) (satellite system improvements can be authorized either at the time of license renewal license or through license modifications).

<sup>161</sup> The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement). 33 I.L.M. 1125 (1994). The Marrakesh Agreement includes multilateral agreements on trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Services (GATS) is Annex 1B of the Marrakesh Agreement. 33 I.L.M. 1167 (1994). The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (Fourth Protocol to the GATS).

<sup>162</sup> Fourth Protocol to the GATS, 36 I.L.M. at 363. See also *DISCO II*, 12 FCC Rcd at 24102 (para. 19). The United States made market access commitments for fixed and mobile satellite services. It did not make market access commitments for Direct-to-Home (DTH) Service, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS), and took an exemption from most-favored nation (MFN) treatment for these services as well. See Fourth Protocol to the GATS, 36 I.L.M. at 359. Generally, GATS requires WTO member countries to afford most-favored nation (MFN) treatment to all other WTO member nations. "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country." GATS Article II, paragraph 1. Member nations are permitted to take "MFN exemptions," however, under certain circumstances specified in an annex to GATS. See GATS Annex on Article II Exemptions.

<sup>163</sup> *DISCO II*, 12 FCC Rcd at 24097 (para. 4).

<sup>164</sup> *DISCO II*, 12 FCC Rcd at 24099 (para. 10).

122. In *DISCO II*, the Commission adopted a framework under which it would consider requests for access to the U.S. market for satellite services by non-U.S.-licensed satellite operators consistent with the U.S. commitments under the WTO Telecom Agreement.<sup>165</sup> In *DISCO II*, the Commission established two procedures by which a satellite provider could bring before it requests to allow a non-U.S. satellite to provide service in the United States.<sup>166</sup> The first procedure is applicable in cases where the non-U.S. satellite operator wishes to participate in a space station processing round. A non-U.S. satellite operator can participate in a processing round by filing a "letter of intent" to use its non-U.S. satellite to provide service in the United States through future earth stations that may or may not be ultimately licensed to it. That letter of intent must demonstrate that the space station will meet all applicable Commission requirements.<sup>167</sup>

123. The second procedure is applicable in cases where the non-U.S. satellite operator seeks immediate access to the U.S. market through an in-orbit satellite, and has initiated international coordination negotiations for that satellite network pursuant to the International Telecommunication Union's (ITU's) international Radio Regulations.<sup>168</sup> Under this procedure, a prospective U.S. earth station operator seeking to communicate with the non-U.S. space station must file an application for an initial earth station license, listing the non-U.S. space station as a "point of communication," and demonstrating that the space station meets all applicable Commission requirements.<sup>169</sup> Further, if an existing earth station licensee seeks to communicate with a non-U.S. satellite, it must file a modification application to add the satellite as a permitted point of communication on its license. This application must be accompanied by a demonstration that the non-U.S.-licensed satellite complies with the Commission's rules. This demonstration is identical to that required of U.S.-licensed space station operators. Subsequent earth station licensees seeking to access that space station as a permitted "point of communication" do not need to provide supporting documentation, provided they communicate using the same technical parameters and under the same conditions as the first earth station applicant.<sup>170</sup> The Commission streamlined this procedure in the *DISCO II First Reconsideration Order*, in which it adopted the Permitted List.<sup>171</sup> We discuss the Permitted List further below.

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<sup>165</sup> In evaluating requests by foreign-licensed satellites to serve the U.S. market, the Commission adopted a public interest framework that considers the effect on competition in the United States, spectrum availability, eligibility and operating (e.g., technical) requirements, and national security, law enforcement, foreign policy, and trade concerns. *See, e.g., DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (paras. 4-5).

<sup>166</sup> *DISCO II*, 12 FCC Rcd at 24174 (para. 188).

<sup>167</sup> *DISCO II*, 12 FCC Rcd at 24173-74 (paras. 184-85, 188).

<sup>168</sup> *DISCO II*, 12 FCC Rcd at 24174 (para. 186).

<sup>169</sup> *See generally* 47 C.F.R. § 25.137. The Commission does not require the foreign space station operator to submit technical information if it has completed the coordination process with the United States, or to submit financial information if the satellite has been launched. *See* 47 C.F.R. § 25.137(b); *DISCO II*, 12 FCC Rcd at 24175-76 (para. 191).

<sup>170</sup> *DISCO II*, 12 FCC Rcd at 24176 (para. 192). The "technical parameters" to which we referred in *DISCO II* include all the technical requirements of Part 25 of the Commission's rules, including but not limited to frequency bands, E.I.R.P., density, polarization, power, and emission characteristics.

<sup>171</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd 7207.

124. Under both of these procedures, each request for U.S. market access must contain the information required in Section 25.114 of the Commission's rules, which governs applications for space station authorizations, with two exceptions.<sup>172</sup> The Commission does not require the non-U.S. space station operator to submit technical information if it has completed the coordination process with the United States, or to submit financial information if the satellite has been launched.<sup>173</sup>

125. In this Section, we seek comment on modifications to the procedures applicable to operators of non-U.S.-licensed satellites seeking access to the U.S. market, to be consistent with the proposed revisions to the procedures for U.S.-licensed satellites we discuss above. We also take this opportunity to propose additional rule revisions to help clarify the requirements of non-U.S.-licensed satellites seeking access to the U.S. market.

## 2. Revision of Framework

126. Currently, non-U.S.-licensed space station operators may participate in a processing round by filing a Letter of Intent.<sup>174</sup> None of the proposed processing round modifications discussed in Section III.C. would require revision of the current Letter of Intent procedure. However, if we replace processing rounds with the first-come, first served procedure we propose in Section III.B. above, we will need to revise the framework for considering requests for market entry by non-U.S.-licensed space station operators. Accordingly, we seek comment on treating Letters of Intent and earth station applications like space station applications for purposes of determining application status. In other words, a Letter of Intent filed by a non-U.S. space station operator would cut off the rights of subsequently filed U.S. space station applications and Letters of Intent filed by other non-U.S. space station operators.<sup>175</sup> We seek comment on this proposal.

127. We also generally require non-U.S.-licensed space station operators to provide all the information we require of U.S. applicants.<sup>176</sup> We propose continuing to do so, under both the processing round modification option and the first-come, first-served option. In particular, we propose applying the same expanded technical information requirements discussed in Section IV. to U.S. and non-U.S. space station operators.<sup>177</sup> This proposal is consistent with our WTO commitments to treat non-U.S. satellite operators no less favorably than we treat U.S. satellite operators.

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<sup>172</sup> See generally 47 C.F.R. § 25.137; *DISCO II*, 12 FCC Rcd at 24174 (para. 188).

<sup>173</sup> See 47 C.F.R. § 25.137(b); *DISCO II*, 12 FCC Rcd at 24175-76 (para. 191).

<sup>174</sup> *DISCO II*, 12 FCC Rcd at 24173-74 (paras. 184-85, 188).

<sup>175</sup> We solicit comment on methods for selecting among mutually exclusive applications in Section III.B.4., *supra*.

<sup>176</sup> 47 C.F.R. § 25.137.

<sup>177</sup> See Section III.B., *supra*.

128. Above, we invite comment on requiring U.S. satellite operators to file applications electronically.<sup>178</sup> We invite comment on whether we should require non-U.S.-licensed satellite operators to file Letters of Intent electronically. Do non-U.S.-licensed satellite operators face circumstances that make electronic filing impractical for them? If we adopt mandatory electronic filing for U.S. satellite operators but not for non-U.S. satellite operators, in what order should we consider a U.S. satellite application and a non-U.S. Letter of Intent filed on the same day?

### 3. Financial Qualifications of Non-U.S. Satellite Operators

129. Currently, non-U.S.-licensed satellite operators who have not launched their satellites must meet our financial qualification rules when requesting access to the U.S. market.<sup>179</sup> In this *Notice*, however, we propose eliminating our financial qualification rules for U.S.-licensed satellites, and strengthening our milestone rules.<sup>180</sup> We tentatively conclude that, in the event that we adopt our financial qualification proposal, we should also eliminate the financial qualification requirement for non-U.S.-licensed satellite operators. We further tentatively conclude that non-U.S.-licensed satellite operators should be required to meet all milestone requirements we adopt for U.S.-licensed satellite operators in this proceeding.<sup>181</sup>

### 4. Information Requirements for Coordinated Non-U.S. Satellites

130. Under *DISCO II*, operators of non-U.S.-licensed satellites are not required to submit certain technical information if they have completed international coordination.<sup>182</sup> In practice, however, it has been very time-consuming or, in some cases, impossible to derive that technical information from international coordination agreements. Accordingly, when a non-U.S.-satellite operator has relied on a coordination agreement and we cannot determine that a non-U.S.-licensed satellite can operate interference-free in a two-degree-spacing environment, we have required U.S.-licensed earth stations operating with that satellite to do so on a non-harmful interference basis.<sup>183</sup>

131. Recent experience in evaluating requests for access by non-U.S. licensed space stations has shown, however, that the exemption from submitting technical information in the case where the coordination process with the United States has been completed may not provide

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<sup>178</sup> Section V.D.

<sup>179</sup> See 47 C.F.R. § 25.137(b); *DISCO II*, 12 FCC Rcd at 24175-76 (para. 191).

<sup>180</sup> Section V.B.

<sup>181</sup> We note that we required Pacific Century Group, Inc. (PCG), a non-U.S.-licensed satellite operator participating in the second Ka-band processing round through a Letter of Intent, to meet the same milestones as other licensees in the second Ka-band processing round. Pacific Century Group, Inc., Letter of Intent as a Foreign Satellite Operator to Provide Fixed Satellite Services in the Ka-band in the United States, *Order*, 16 FCC Rcd 14356, 14364 (paras. 25-26) (Int'l Bur., 2001).

<sup>182</sup> 47 C.F.R. § 25.137(b); *DISCO II*, 12 FCC Rcd at 24175-76 (para. 191). Specifically, we do not require those satellite operators to provide the information specified in Sections 25.114(c)(5) through (11) and (14). See 47 C.F.R. § 25.137(b).

<sup>183</sup> Telesat Canada, Request for Declaratory Ruling or Petition for Waiver on Earth Stations' Use of ANIK E1 and ANIK E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States, *Order*, 15 FCC Rcd 3649, 3654 (para. 14) (Int'l Bur., 1999).

adequate information to allow the Commission to find that the non-U.S. space station meets its technical rules. For example, in many cases, coordination can be completed without the exchange of technical information if the non-U.S. space station is sufficiently far away from U.S. space stations or locations filed at the ITU by the United States. When technical information is exchanged in the coordination process, the information will not necessarily be adequate for a Commission finding of technical compliance with its technical rules since the international coordination negotiation process with the non-U.S. satellite is not subject to our technical rules. When coordination is complete, U.S. access can be granted without a Commission finding of technical compliance as long as the current orbital population remains unchanged. However, we may license a U.S. space station or grant foreign access in the future on an adjacent non-U.S. satellite, either of which could be affected by U.S. services on the non-U.S. space station with prior U.S. access. Since compliant U.S. services have priority over non-compliant U.S. services for access to the U.S. market, the process of either finding compliance, or defining conditions to protect future compliant U.S. services from interference caused by current services over coordinated foreign space stations, has been both labor-intensive and time-consuming. On occasion, this has led to delays in granting access to foreign space stations. To correct this and to facilitate the hard-look approach, we propose to modify our rules to require all non-U.S.-licensed space stations seeking initial access to the United States to submit all satellite-related technical information specified in Part 25, regardless of coordination status.

## 5. Procedures for Modifications of Permitted List Satellite Parameters

132. We noted above that one of the procedures adopted in *DISCO II* for non-U.S. satellite operators seeking access to the U.S. market was to require the satellite operator to file a new earth station application identifying the non-U.S. satellite as a point of communication, or to ask a U.S. earth station operator to modify its license to add the non-U.S. satellite as a point of communication.<sup>184</sup> In the 1999 *DISCO II First Reconsideration Order*, the Commission streamlined this process in two ways. First, it allowed the *operators* of in-orbit non-U.S. satellites offering fixed-satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States. Under *DISCO II*, this request could be made only by an earth station operator. Second, it created the Permitted Space Station List (Permitted List) to facilitate access by the foreign satellite. Once a non-U.S. space station is permitted to access the U.S. market pursuant to a complete *DISCO II* analysis, it is placed on the Permitted List upon the applicant's request. This list includes all satellites with which U.S. earth stations with routinely-authorized technical parameters in the conventional C- and Ku-band (known as "ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.<sup>185</sup> The Permitted List is maintained on our website, and is also available via fax or e-mail.<sup>186</sup>

<sup>184</sup> See Section V.F.1. See also *DISCO II*, 12 FCC Rcd at 24174 (para. 186).

<sup>185</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-16 (paras. 16-20). "ALSAT" means "all U.S.-licensed space stations." Originally, under an ALSAT earth station license, an earth station operator providing fixed-satellite service in the conventional C- and Ku-bands could access any U.S. satellite without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. See *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210-11 (para. 6). The *DISCO II First Reconsideration Order* expanded ALSAT earth station licenses to permit access to any satellite on the Permitted List. *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

<sup>186</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

133. We have placed several satellites on the Permitted List, and have received a number of requests from non-U.S. satellite operators to reflect changes in the operating parameters of their satellites on the Permitted List. Some of these revisions would require a license modification if the satellite were licensed in the United States.<sup>187</sup> We have also received a request to place a replacement satellite on the Permitted List,<sup>188</sup> and to reflect a transfer of control of the satellite on the Permitted List.<sup>189</sup> Accordingly, we take this opportunity to propose procedures to address revisions to the Permitted List and similar situations.

134. First, we address issues raised with respect to non-U.S. satellites on the Permitted List. Placing a satellite on the Permitted List has the legal effect of modifying all ALSAT-designated earth station licenses so that those earth stations are authorized to communicate with that satellite at that orbit location under the terms and conditions on the Permitted List and in the earth station licenses. Thus, for example, if a Permitted List satellite operator relocates its satellite to a new orbital location, it must request a revision of its Permitted List entry to enable ALSAT earth stations to continue communicating with that satellite after the relocation. Furthermore, we must be able to determine that operation of the satellite at the new location would not cause harmful interference to other satellite systems after the relocation. Therefore, in a case where a non-U.S. satellite operator plans to modify its operations, and that modification would require a U.S.-licensed satellite operator to request prior Commission authorization, we propose requiring the non-U.S. satellite operator to file a petition for declaratory ruling including the information required of U.S. satellite operators seeking license modifications. In other words, the non-U.S. satellite operator would be required to provide the same information as required in a new space station application, but only those items of information that change need to be submitted, provided the applicant certifies that the remaining information has not changed.<sup>190</sup>

135. In this *Notice*, we solicit comment on streamlining the procedure for replacement satellite applications.<sup>191</sup> We propose a similar procedure for replacements of non-U.S. satellites on the Permitted List. Specifically, if the non-U.S. satellite operator's orbit location remains available for a satellite licensed by the same Administration that licensed the currently operating satellite, and the proposed replacement satellite will have the same technical characteristics as the currently operating satellite, we will generally include the replacement satellite on the Permitted List. If the petition for declaratory ruling seeking to put the replacement satellite on the Permitted

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<sup>187</sup> See Telesat Canada, Petition for Declaratory Ruling For Inclusion of ANIK F1 on the Permitted Space Station List, *Order*, 15 FCC Rcd 24828 (Intl. Bur., 2000).

<sup>188</sup> European Telecommunication Satellite Organization (EUTELSAT); Petitions for Declaratory Ruling To Add EUTELSAT Satellites ATLANTIC BIRD™ 1 at 12.5° W.L and ATLANTIC BIRD™ 2 at 8° W.L to the Commission's Permitted Space Station List, *Order*, 16 FCC Rcd 15961 (Int'l Bur., Sat. and Rad. Div., 2001).

<sup>189</sup> On March 1, 2001, Empresa Brasileira de Telecomunicações S.A. filed a letter with the Commission indicating that 19.9 percent of its company had been purchased by Societe Europeenne des Satellites S.A., and the company was renamed "STAR ONE S.A." See Satellite Policy Branch Information, *Public Notice*, Report No. SAT-00076 (released July 20, 2001).

<sup>190</sup> 47 C.F.R. § 25.117(d).

<sup>191</sup> Section V.E., *supra*.

List is unopposed, we propose applying the same procedure we adopt for U.S. replacement satellites.

136. We invite comment on a very simple procedure for transfers of control and assignments of non-U.S.-licensed satellites on the Permitted List. Because non-U.S.-licensed satellites are not subject to many of the requirements of the Communications Act, such as the foreign ownership requirements of Section 310, it may not be necessary to subject transfers of control and assignments of non-U.S.-licensed satellites on the Permitted List to the same level of review as transfers of U.S.-licensed satellites. Under this proposal, we would issue a public notice announcing that the transaction has taken place, and invite comment on whether the transaction affects any of the considerations we made when we allowed the satellite operator to enter the U.S. market. We would review any comments filed, and determine whether any commenter raised any concern that would warrant precluding the satellite operator from entering the U.S. market after the change in ownership. We would also review the transaction to determine whether the change in ownership affects any of the determinations we made when we allowed the satellite operator to enter the U.S. market. For example, does the change in ownership raise any national security, law enforcement, foreign policy, and trade concerns?<sup>192</sup> In addition, if control of the satellite were transferred to a non-WTO-country-based operator, we would require the parties to show that the purchaser meets the requirements of the ECO-Sat test.

137. With respect to non-U.S. satellite operators that wish to amend a proposal for a satellite system described in a Letter of Intent, we propose requiring an additional Letter of Intent describing the changes. We also propose treating such letters as we would treat amendments filed by a U.S. satellite applicant. In other words, if the planned changes would increase the potential for interference, the non-U.S. satellite operator would lose its status relative to later-filed applications. We invite comment on this approach. We also seek comment on the effects, if any, of the process for filing modifications of ITU filings on our proposal for amendments of Letters of Intent.

138. As we noted above, non-U.S.-licensed satellite operators do not need to place their satellites on the Permitted List to gain access to the U.S. market. They can also gain access by being added as a point of communication to one or more U.S. earth station licenses. With respect to non-U.S. satellites that are not on the Permitted List, but have access to the U.S. market because one or more U.S. earth station licenses have added the space station as a point of communication, we do not propose any changes to our procedures. In those cases, each earth station operator is required to modify its license to include the modified non-U.S. satellite as a point of communication. We invite comment on retaining this procedure.

## **VI. REPORT AND ORDER: SPACE STATION AND EARTH STATION LICENSE TERMS**

### **A. Background**

139. In the *2 GHz Report and Order*, we observed that the Telecommunications Act of 1996 granted the Commission authority to establish longer license terms for particular classes of satellites, and established 15-year terms for earth stations operating in the 2 GHz band.<sup>193</sup> In the

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<sup>192</sup> See *DISCO II*, 12 FCC Rcd at 24170-72 (paras. 178-82).

<sup>193</sup> *2 GHz Order*, 15 FCC Rcd at 16175 n.359, citing Telecommunications Act of 1996, Pub. L. No. 104-104, Title II, § 203, 110 Stat. 56, 112 (1996) (amending Section 307 of the Communications



*Part 25 Earth Station Streamlining NPRM*, we sought comment on extending the term for all earth station licenses from 10 years to 15 years.<sup>194</sup>

140. In addition, two of the commenters in the *Part 25 Earth Station Streamlining* proceeding, Astrolink and Hughes, recommended expanding the space station license term from ten to 15 years. As explained further below, those comments provide a sufficient record to extend the space station license term. In addition, this proceeding, in which we examine several space station procedural issues, provides a good vehicle for extending the license term. Accordingly, we hereby extend the space station license term as proposed by Astrolink and Hughes, and we extend the earth station license term as we proposed in the *Part 25 Earth Station Streamlining NPRM*. We explain these conclusions further below.

## B. Transmit-Receive and Transmit-Only Earth Stations

141. Several parties support this proposal,<sup>195</sup> and no one opposed it. We conclude that extending the earth station license term will reduce the administrative burdens on earth station operators, without affecting our ability to protect licensees from harmful interference. Accordingly, we extend the earth station license term to 15 years. After these rules take effect, we will give 15-year terms in new earth station licenses, and we will issue 15-year renewal licenses at the time licensees request renewals of their licenses.

142. Globalstar suggests extending all current earth station licenses by five years to implement the license term extension proposal immediately.<sup>196</sup> We decline to adopt Globalstar's proposal. We conclude that it would require excessive administrative resources to reissue all earth station licenses to specify an extended expiration date. We also find that it would be potentially confusing to licensees if the expiration date listed on the face of the license is not the correct date.

## C. Space Stations

143. In its comments, Astrolink recommends extending the space station license term in its comments from 10 years to 15 years.<sup>197</sup> Hughes supports Astrolink's recommendation in its reply, and no one opposes it. In addition, Astrolink and Hughes point out that establishing equivalent license terms for space stations and earth stations would significantly reduce the administrative burdens associated with Ka-band satellite systems.<sup>198</sup> We adopt Astrolink's recommendation. The useful lives of most GSO satellites today are longer than the current 10-

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Act to eliminate ten-year term and creating new Section 307(c)(1) granting the Commission authority to determine license terms for particular classes of stations, including satellite space and earth stations).

<sup>194</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25143-44 (para. 44).

<sup>195</sup> Astrolink Comments at 8; Globalstar Comments at 4; Hughes Comments at 17; WorldCom Comments at 2; PanAmSat Comments at 11; Spacenet Comments at 46; SIA Reply at 6-7; Hughes Reply at 12.

<sup>196</sup> Globalstar Comments at 4.

<sup>197</sup> Astrolink Comments at 9.

<sup>198</sup> Astrolink Comments at 9; Hughes Reply at 12.

year satellite license term. Therefore, we find that extending the satellite license term to 15 years is reasonable.

#### D. Receive-Only Earth Station Registration Term

144. We also solicited comment on extending the registration term for receive-only earth station registrations from 10 years to 15 years. Registration is an optional process for receive-only earth stations operating in the C-band. Registration protects the registered earth station against interference from communications facilities that operate on a co-primary basis in shared frequency bands. Because it was not clear how many registrants use their earth stations for the full ten-year term, we noted that allowing all receive-only earth stations to remain registered for an additional five years may make it more difficult for co-primary services to coordinate their operations with satellite operations.<sup>199</sup>

145. Hughes supports increasing the registration term for receive-only earth stations to 15 years,<sup>200</sup> and no one opposed this proposal. Further, Commission rules require receive-only earth station operators notify the Commission when their terminals are unused for more than six months at a time.<sup>201</sup> Thus, based on the record before us, we extend the registration term for receive-only earth stations from 10 years to 15 years. After these rules take effect, new registrations will carry 15-year terms, and we will issue 15-year renewal registrations at the time existing registrations are renewed.

146. Hughes recommends eliminating the requirement that receive-only earth station operators notify the Commission when their terminals are unused for more than six months at a time.<sup>202</sup> Hughes claims that there is no evidence to suggest that receive-only earth stations are likely to remain unused for more than six months at a time.<sup>203</sup> Hughes claims therefore that this requirement is an unnecessary regulatory burden for earth station operators, and claims that terrestrial operators operating in shared bands do not face any comparable requirement.<sup>204</sup> We do not adopt Hughes's proposal. If Hughes is correct that receive-only earth stations do not usually remain unused for more than six months at a time, then this requirement imposes little if any burden on receive-only earth station operators. In addition, in cases where a receive-only earth station does remain unused for more than six months, it seems reasonable to conclude that the earth station has been abandoned, or would have more appropriately been registered as a temporary-fixed earth station. In either case, other earth station operators or terrestrial wireless operators should not have to coordinate their operations with that earth station.

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<sup>199</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25144 (para. 45).

<sup>200</sup> Hughes Comments at 17. *See also* SIA Reply at 7.

<sup>201</sup> Hughes Comments at 17-18; Hughes Reply at 12. *See* 47 C.F.R. § 25.131(i).

<sup>202</sup> Hughes Comments at 17-18; Hughes Reply at 12. *See* 47 C.F.R. § 25.131(i).

<sup>203</sup> Hughes Comments at 17-18; Hughes Reply at 12.

<sup>204</sup> Hughes Comments at 17-18; Hughes Reply at 12.

## VII. CONCLUSION

147. For the reasons discussed above, we invite comment on two options for revising the current satellite procedure: (1) a first-come, first-served procedure, and (2) modifications to the current processing round procedure. Furthermore, we invite comment on expanding our technical information requirements under both options. We also seek comment on our other proposals to streamline the satellite licensing process. Parties opposing any of these proposals should explain their reasons with particularity. They also should either recommend alternatives or explain in detail why they believe the proposed rule revisions are unnecessary. Finally, interested parties are invited to recommend other ways to reform the satellite licensing process.

## VIII. PROCEDURAL MATTERS

148. *Initial Regulatory Flexibility Analysis.* Appendix D to this document contains the analysis required for the proposals in this *Notice of Proposed Rulemaking* by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603.

149. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>205</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>206</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>207</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>208</sup> 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).<sup>209</sup>

150. In this First Report and Order, the Commission extends the license term of all space station and earth station granted after the effective date of these rules from 10 years to 15 years. The effect of these rule revisions is to reduce the number of times space station and earth station licensees will be required to renew their licenses. This will reduce the administrative burdens of space station and earth station licensees. We expect that this change will be minimal and positive. Therefore, we certify that the requirements of this First Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the First Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of

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<sup>205</sup> The RFA, *see* § 5 U.S.C. S 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>206</sup> 5 U.S.C. § 605(b).

<sup>207</sup> 5 U.S.C. § 601(6).

<sup>208</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

<sup>209</sup> Small Business Act, 15 U.S.C. § 632.

the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

151. *Paperwork Reduction Act.* This NPRM contains proposed new and modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 30 days from the date of publication in the Federal Register; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

152. A copy of any comments on the information collections contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jbHerman@fcc.gov](mailto:jbHerman@fcc.gov) and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to [jthornto@mb.eop.gov](mailto:jthornto@mb.eop.gov).

153. The rule revisions adopted in this First Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and do not contain new and/or modified information collections subject to Office of Management and Budget review.

154. *Ex Parte Presentations.* This is a permit-but-disclose rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Sections 1.1202, 1.1203, and 1.1206(a) of the Commission's Rules, 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

155. *Comment.* Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before 75 days following publication in the Federal Register, and reply comments on or before 105 days following publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

156. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

157. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.

158. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Commission's Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

159. *Additional Information.* For general information concerning this rulemaking proceeding, contact Steven Spaeth, International Bureau, at (202) 418-1539, International Bureau; Federal Communications Commission, Washington, DC 20554.

## IX. ORDERING CLAUSES

160. Accordingly, IT IS 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 Notice of Proposed Rulemaking is hereby ADOPTED.

161. IT IS FURTHER ORDERED that the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

162. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 7(a), 11, 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), 303(r), that this First Report and Order is hereby ADOPTED.

163. IT IS FURTHER ORDERED that Part 25 of the Commission's rules IS AMENDED as set forth in Appendix B.

164. IT IS FURTHER ORDERED that the rule revisions adopted in this First Report and Order will be effective 30 days after a summary of this Order is published in the Federal Register.

165. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this First Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

**APPENDIX A**Parties filing Pleadings in IB Docket No. 00-248Comments (March 26, 2001)

1. Aloha Networks, Inc. (Aloha Networks)
2. Andrew Corporation
3. Astrolink International LLC (Astrolink)
4. GE American Communications, Inc. (GE Americom)
5. Globalstar USA, Inc. and Globalstar, L.P. (Globalstar)
6. Hughes Network Systems, Hughes Communications, Inc., and Hughes Communications Galaxy, Inc. (together, Hughes)
7. Loral Space & Communications Ltd. (Loral)
8. Motient Services, Inc. (Motient)
9. New Skies Satellites N.V. (New Skies)
10. PanAmSat Corporation (PanAmSat)<sup>210</sup>
11. Spacenet, Inc., and StarBand Communications, Inc. (together, Spacenet)
12. Telesat Canada (Telesat)
13. WorldCom, Inc. (WorldCom)

Replies (May 7, 2001)

1. Aloha Networks<sup>211</sup>
2. Astrolink
3. Comtech Mobile Datacom Corp. (CMDCC)
4. GE Americom
5. Hughes
6. National Radio Astronomy Observatory (NRAO)
7. OnSat Network Communications, Inc. (Onsat)
8. PanAmSat
9. Satellite Industry Association (SIA)
10. Spacenet
11. Telesat

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<sup>210</sup> On April 10, 2001, PanAmSat corrected certain minor errors and re-filed its comments.

<sup>211</sup> On May 9, 2001, Aloha Networks corrected certain minor errors and re-filed its reply.

## APPENDIX B

### Rule Changes

For the reasons discussed above, the Federal Communications Commission amends title 47 of the Code of Federal Regulations, part 25, as follows:

#### PART 25 -- SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701-744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

2. Amend § 25.121 by revising paragraphs (a), (b), and (d)(2) to read as follows:

#### § 25.121 License term and renewals.

(a) License Term. Licenses for facilities governed by this part will be issued for a period of 15 years.

(b) The Commission reserves the right to grant or renew station licenses for less than 15 years if, in its judgment, the public interest, convenience and necessity will be served by such action.

\* \* \* \* \*

(d)(1) \* \* \*

(2) For non-geostationary satellite orbit satellites, the license term will begin at 3 a.m. EST on the date that the licensee certifies to the Commission that its initial space station has been successfully placed into orbit and that the operations of that satellite fully conform to the terms and conditions of the space station system authorization. All space stations launched and brought into service during the 15-year license term shall operate pursuant to the system authorization, and the operating authority for all space stations will terminate upon the expiration of the system license.

3. Amend § 25.131 by revising paragraph (h) to read as follows:

#### § 25.131 Filing requirements for receive-only earth stations.

\* \* \* \* \*

(h) Registration term: Registrations for receive-only earth stations governed by this section will be issued for a period of 15 years from the date on which the application was filed. Applications for renewals of registrations must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days before the expiration date of the registration.

\* \* \* \* \*



## ATTACHMENT C

### Revised Schedule S





















Page 10: TT&C  
**FEDERAL COMMUNICATIONS COMMISSION**  
**SATELLITE SPACE STATION AUTHORIZATIONS**  
**FCC Form 312 - Schedule S: (Technical and Operational Description)**

S14. Is the space station(s) controlled and monitored remotely? If YES, provide the location and telephone number of the TT&C control point(s):  YES  NO

**Remote Control (TT&C) Location(s):**

|                        |   |                       |                |
|------------------------|---|-----------------------|----------------|
| S14a. Street Address   |   |                       |                |
| S14b. City             | S14c. County  | S14d. State / Country | S14e. Zip Code |
| S14f. Telephone Number | S14g. Call Sign of Control Station (if appropriate) |                       |                |
| S14a. Street Address   |   |                       |                |
| S14b. City             | S14c. County  | S14d. State / Country | S14e. Zip Code |
| S14f. Telephone Number | S14g. Call Sign of Control Station (if appropriate) |                       |                |
| S14a. Street Address   |   |                       |                |
| S14b. City             | S14c. County  | S14d. State / Country | S14e. Zip Code |
| S14f. Telephone Number | S14g. Call Sign of Control Station (if appropriate) |                       |                |
| S14a. Street Address   |   |                       |                |
| S14b. City             | S14c. County  | S14d. State / Country | S14e. Zip Code |
| S14f. Telephone Number | S14g. Call Sign of Control Station (if appropriate) |                       |                |
| S14a. Street Address   |   |                       |                |
| S14b. City             | S14c. County  | S14d. State / Country | S14e. Zip Code |
| S14f. Telephone Number | S14g. Call Sign of Control Station (if appropriate) |                       |                |

FEDERAL COMMUNICATIONS COMMISSION  
 SATELLITE SPACE STATION AUTHORIZATIONS  
 FCC Form 312 - Schedule S: (Technical and Operational Description)

**S15. SPACECRAFT PHYSICAL CHARACTERISTICS**

|  |                                |  |
|--|--------------------------------|--|
| S15a. Mass of spacecraft without fuel (kg)         | Spacecraft Dimensions (meters) | Probability of Survival to End of Life (%) |
| S15b. Mass of fuel & disposables at launch (kg)    | S15f. Length (m)               | S15i. Payload (%)                          |
| S15c. Mass of fuel at beginning of life (kg)       | S15g. Width (m)                | S15j. Bus (%)                              |
| S15d. Mass of spacecraft and fuel at launch (kg)   | S15h. Height (m)               | S15k. Total (%)                            |
| S15e. Deployed Area of Solar Array (square meters) |                                |  |

**S16. SPACECRAFT ELECTRICAL CHARACTERISTICS**

| Spacecraft Subsystem           | Electrical Power (Watts) At Beginning of Life |             | Electrical Power (Watts) At End of Life |             |
|--------------------------------|---|-------------|---|-------------|
|                                | At Equinox                                    | At Solstice | At Equinox                              | At Solstice |
| Payload (Watts)                | (a)   | (f)         | (k)                                     | (p)         |
| Bus (Watts)                    | (b)   | (g)         | (l)                                     | (q)         |
| Total (Watts)                  | (c)   | (h)         | (m)                                     | (r)         |
| Solar Array (Watts)            | (d)   | (i)         | (n)                                     | (s)         |
| Depth of Battery Discharge (%) | (e)   | (j)         | (o)                                     | (t)         |
|                                |   | %           | %                                       | %           |

**S17. CERTIFICATIONS**

a. Are the power flux density limits of § 25.208 met?  YES  NO  N/A

b. Are the appropriate service area coverage requirements of § 25.143(b)(ii) and (iii), or § 25.145(c)(1) and (2) met?  YES  NO  N/A

b. Are the frequency tolerances of § 25.202(e) and the out-of-band emission limits of § 25.202(f)(1), (2), and (3) met?  YES  NO  N/A

In addition to the information required in this Form, the space station applicant is required to provide all the information specified in Section 25.114 of the Commission's rules, 47 C.F.R. § 25.114.

## APPENDIX D

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided above in Section VIII. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

#### A. Need for, and Objectives of, the Proposed Rules

The objective of the proposed rules is to enable the Commission to process applications for satellite licenses more quickly than it can under its current rules. These rule revisions are needed because delays in the current satellite licensing process may impose economic costs on society, and because recent changes in the International Telecommunication Union procedures require us to issue satellite licenses more quickly in order to meet U.S. international treaty obligations. In addition, the current satellite licensing process is not well suited to some satellite systems employing current technology. Finally, revision of the satellite licensing process will facilitate the Commission's efforts to meet its spectrum management responsibilities.

#### B. Legal Basis

The proposed action is supported by 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).

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rules, if adopted.<sup>2</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</sup> A small business concern is one which: (1) is independently owned and operated;

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<sup>1</sup> *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> 5 U.S.C. § 603(b)(3).

<sup>3</sup> *Id.* § 601(6).

<sup>4</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for

(2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>6</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>7</sup> "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."<sup>8</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>9</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>10</sup> 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 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules proposed in this Notice of Proposed Rulemaking would affect satellite operators, if adopted. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.<sup>11</sup> This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>12</sup> 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under \$10 million. In addition, 24 firms had receipts for that year of \$10 million to \$24,999,990.<sup>13</sup>

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate of the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

With few exceptions, none of the proposed rules in this notice are expected to increase the reporting, record keeping and other compliance requirements of any telecommunications carrier. The exceptions are as follows: (1) We propose requiring space station applicants to provide the

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public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>5</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>6</sup> 5 U.S.C. § 601(4).

<sup>7</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>8</sup> 5 U.S.C. § 601(5).

<sup>9</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>10</sup> *Id.*

<sup>11</sup> "This industry 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." Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

<sup>12</sup> 13 C.F.R. § 120.121, NAICS code 513340.

<sup>13</sup> U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, "Establishment and Firm Size," Table 4, NAICS 513340 (Issued Oct. 2000).

antenna gain pattern contour diagrams in the .gxt format required in submissions to the ITU. (2) We propose requiring space station applicants to specify power flux density (PFD) values at angles of arrival equal to 5, 10, 15, 20 and 25 degrees. (3) We propose expanding Schedule S so that space station license applicants can provide information on polarization isolation, polarization switching, and alignment of polarization vectors relative to the equatorial plan. (4) We propose mandating that applicants certify that they will comply with the service area requirements of Sections 25.143, 25.145, and 25.208, and the out-of-band emission requirements of Section 25.202.

These proposed increased reporting requirements are necessary because we also propose substantially decreasing the administrative burdens associated with the current satellite licensing process. Specifically, there are two options proposed in this Notice of Proposed Rulemaking for reforming the satellite licensing process. Under one of the options, the first-come, first-served approach, there may be an increased incentive to apply for a satellite license merely to sell it. In addition, under both options, we invite comment on eliminating our current method of preventing speculation, the anti-trafficking rule. Therefore, more detailed reporting requirements will be needed in the event that we adopt these proposed license procedure reforms to help us determine whether an applicant is seeking a satellite license merely for speculative purposes. The anti-trafficking rule is more administratively burdensome than the proposed increased data collections.

**E. 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) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. § 603(c).

We have attempted not to foreclose any option. One alternative we have not embraced is the need to adopt any filing window in the event that we adopt a first-come, first-served procedure.<sup>14</sup> We believe that the alternative of a first-come, first-served satellite licensing procedure without a filing window better serves the interests of all possible applicants, including small entity applicants. For instance, for some applicants, the first-come, first-served procedure may be less expensive than maintaining an application throughout the longer processing round procedure under the Commission's current rules.<sup>15</sup> A filing window in a first-come, first-served satellite licensing procedure would tend to duplicate some of the delay inherent in the processing round procedure under the Commission's current rules.<sup>16</sup>

**F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules**

None.

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<sup>14</sup> See para. 44, *supra*.

<sup>15</sup> See para. 41, *supra*.

<sup>16</sup> See para. 44, *supra*.

**SEPARATE STATEMENT OF COMMISSIONER KATHLEEN ABERNATHY****In re: Amendment of the Commission's Space Station Licensing Rules and Policies, Notice of Proposed Rulemaking, IB Docket No. 02-34 (adopted February 14, 2002).**

Today's Notice launches an important dialog about the future of our satellite space station licensing regime. The United States has long been a leader in the satellite arena. There is no doubt, however, that as satellites have become a more ubiquitous and essential component of our nation's and the world's communications networks, our regulatory structures are being tested in new and unforeseen ways. As satellites bring essential competition in the video, voice and broadband marketplaces, today more than ever we must re-examine our licensing approaches to this vital resource. The debate that begins with today's notice will help to shape our response to this changing landscape.

The answers will not be easy to find. Indeed, if they were easy, we would have presumably come up with them long ago. But this work is vital to maintaining our competitive edge. That edge is at risk if our satellite licensing process drags on too long or creates too much uncertainty. In this regard, our current process appears to put our interests at risk. For example, in 1991 David Otten, founder and CEO of Celsat, first came to the FCC with an idea to utilize spectrum in the 2 GHz band for MSS. On July 17, 2001, Celsat got its license. Although we are fortunate that Celsat was able to carry the ball for ten long years before receiving a license, we cannot and must not require license applicants to have such patience and tenacity in order to get a satellite license.

It is unclear exactly what changes to our licensing system will yield the greatest efficiencies and benefits to the public. Therefore, we are seeking comment on two possible alternatives – either a wholesale change to a first-come first-served approach or specific reforms to our existing licensing process. I know that our current approach has weaknesses, but I do not want to trade in this set of problems for a larger set of, as yet, unknown problems with unknown consequences. I strongly encourage the parties to think creatively about these problems, our two proposals, and any other approaches that will achieve our goals.

Two of my five guiding principles as a Commissioner are: (1) the FCC must be humble about what it does and can know; and (2) we are a service-based organization and we should act like it. Here, that means seeking as much information as possible from all the parties so that we can create a process that is fair and prompt. I look forward to working together to make our standard of service quality a reality.