

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

In the Matter of)
)
Amendment of the Commission’s Policies and) IB Docket No. 06-160
Rules for Processing Applications in the)
Direct Broadcast Satellite Service)

REPORT AND ORDER

Adopted: September 26, 2019

Released: September 27, 2019

By the Commission: Chairman Pai and Commissioner Rosenworcel issuing separate statements.

I. INTRODUCTION

1. In this Report and Order (Order), we adopt revisions to our procedures and rules governing the direct broadcast satellite (DBS) service. These revisions align DBS processing procedures with our recently streamlined processing procedures for geostationary orbit (GSO) fixed-satellite service (FSS) satellites and take into account changes in the regulations and provision of satellite communications services since the Commission last examined the licensing provisions for DBS over a decade ago. The changes adopted in this Order will facilitate increased use of spectrum and orbital resources, while protecting existing consumers of satellite television from harmful interference to their service.

II. BACKGROUND

2. The DBS service uses satellites in geostationary orbit to transmit video programming directly to the public and is the principal means of delivering satellite television to the American public. Although DBS operations are similar to those of GSO satellite networks in the FSS, consumer preference for small antennas results in DBS satellites requiring greater separation in orbit in order to avoid interference from one satellite to earth stations receiving from another satellite. Although GSO FSS

1 The DBS service is a radiocommunication service in which signals transmitted or retransmitted by space stations in the 12.2-12.7 GHz frequency band are intended for direct reception by the general public. 47 CFR § 25.103. DBS is the term used in the United States to describe the domestic implementation of the international Broadcasting Satellite Service (BSS) in the 12.2-12.7 GHz frequency bands. BSS is the international term used for a radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. See, e.g., 47 CFR § 2.1.

2 Fixed-satellite service is “a radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas; in some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service; the Fixed-Satellite Service may also include feeder links of other space radiocommunication services.” 47 CFR § 25.103.

3 The two U.S.-licensed DBS providers – DIRECTV and DISH Network – had over 31 million subscribers as of the end of 2017. Communications Marketplace Report, Report, 33 FCC Rcd 12558, 12598, at para. 53, fig. B-1 (2018).

4 For example, both DBS and GSO FSS use satellites operating at an altitude of 35,786 kilometers to transmit to user terminals on the ground, which are generally at fixed locations using parabolic antennas.

satellites serving the U.S. market are required by the Commission's rules to be able to operate (vis-à-vis each other) in the same frequencies, in the same geographic area, with two degrees of satellite separation in the geostationary arc, DBS satellite networks serving the United States have been designed to meet the associated service requirements being no closer than nine degrees apart. Also, unlike spectrum used for GSO FSS operations, DBS spectrum is subject to planned use, on a regional basis, under the regulations of the International Telecommunication Union (ITU).⁵ Under this plan, the United States is assigned eight orbital locations for the provision of DBS, spaced at least nine degrees apart: 61.5° West Longitude (W.L.), 101° W.L., 110° W.L., 119° W.L., 148° W.L., 157° W.L., 166° W.L., and 175° W.L.⁶

3. In 2015, the Commission adopted comprehensive changes to its rules in part 25 that govern the licensing and operation of space and earth stations for the provision of satellite communications services.⁷ These streamlining initiatives, however, did not propose or adopt any changes to the way that DBS service is licensed or regulated.

4. On November 13, 2018, the Commission released a Second Notice of Proposed Rulemaking (*Second Notice*) in this docket, proposing several changes to the rules governing DBS licensing.⁸ Many of these changes had been proposed in a 2006 Notice of Proposed Rulemaking that did not lead to rule changes.⁹ In light of the changes to satellite licensing since 2006, the *Second Notice* proposed changes to the rules for DBS that would align DBS licensing more closely with licensing for other satellite services. Specifically, it proposed applying the same “first-come, first-served” processing procedure to requests to provide DBS that is currently used for processing requests for GSO FSS space stations; proposed extending the license term for DBS to 15 years to match the terms of GSO FSS licenses; and proposed not to adopt additional rules for processing requests for new DBS systems at orbital locations less than nine degrees apart, which had been proposed previously.¹⁰ The Commission also proposed to lift the freeze on requests to use spectrum and orbital resources to provide DBS in the United States after adoption of processing procedures for such requests.¹¹

⁵ The history of DBS in the United States and its international regulation has previously been discussed in this proceeding and will not be repeated here. The provisions of Appendices 30 and 30A of the International Radio Regulations are applicable to the BSS (that is, DBS in the United States) in the frequency bands 11.7-12.2 GHz (Region 3), 11.7-12.5 GHz (Region 1) and 12.2-12.7 GHz (Region 2), and to their associated feeder links in the bands 14.5-14.8 GHz and 17.3-18.1 GHz (Regions 1 and 3) and 17.3-17.8 GHz (Region 2). ITU Region 2 includes North, Central, and South America, and Greenland. See Article 5, Section 1 of the ITU Radio Regulations.

⁶ There are licensed and operating DBS satellites at the 61.5° W.L., 101° W.L., and 119° W.L. orbital locations.

⁷ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 2015 Order*).

⁸ *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, Second Notice of Proposed Rulemaking, 33 FCC Rcd 11303 (2018) (*Second Notice*).

⁹ *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States*, Notice of Proposed Rulemaking, 21 FCC Rcd 9443 (2006) (*2006 Notice*).

¹⁰ *Second Notice*, 33 FCC Rcd at 11305, para. 7.

¹¹ *Id.*

5. In response to the *Second Notice*, five parties in the DBS, FSS, and Multichannel Video Distribution and Data Service (MVDDS) industries filed comments,¹² and four parties filed reply comments.¹³

III. DISCUSSION

6. After examination of the comments received in response to the *Second Notice*, we continue to believe that the public interest would be well served by updating our rules governing the processing and regulation of the DBS service to match the streamlined rules that apply to requests to provide GSO FSS. These rules will apply to any future request to provide DBS service to the United States using the 12.2-12.7 GHz band (space-to-Earth) and associated feeder links in the 17.3-17.8 GHz band (Earth-to-space), including channels not currently licensed at orbit locations assigned to the United States under the ITU Region 2 BSS and feeder-link Plans (Region 2 Plan), as well as DBS service from space stations located at orbital locations not assigned to the United States in the ITU Region 2 BSS and feeder-link Plans. We address each of the resulting specific changes to our rules and policies below and then address the applicability of the new licensing framework to requests to access the U.S. market-by non-U.S. licensed space stations.

A. Adoption of First-Come, First-Served Application Process

7. In the *Second Notice*, we proposed to treat requests to provide DBS under the “first-come, first-served” licensing approach used for GSO-like FSS and to eliminate DBS competitive bidding procedures.¹⁴ The Commission adopted a “first-come, first-served” procedure for “GSO-like” FSS space station operation in 2003,¹⁵ but specifically did not apply this procedure to applications for DBS service.¹⁶ Under the “first-come, first-served” procedure, applications for new U.S.-licensed space station operation, and requests for new U.S. market access via non-U.S. licensed space station operation, are placed in a single processing “queue” in the order in which they are filed.¹⁷ The Commission then grants the first-in-line application if the operation it proposes is compatible with authorized space station operations and the applicant is otherwise qualified, and the Commission dismisses later-filed space station applications that are incompatible with the newly authorized space station operation.¹⁸

8. Commenters that addressed this issue universally support applying the first-come, first-served process to DBS.¹⁹ And no party objected to our conclusion in the *Second Notice* that the Commission could not assign DBS licenses through the use of competitive bidding procedures.²⁰ We

¹² Comments were filed by following parties: AT&T Services, Inc. (AT&T Comments); EchoStar Satellite Operating Corp and DISH Network L.L.C (EchoStar Comments); MDS Operations, Inc. and RS Access, LLC (MDS Operations Comments); the MVDDS 5G Coalition (MVDDS 5G Comments); and SES Americom, Inc. and Affiliates (SES Comments).

¹³ Reply comments were filed by AT&T (AT&T Reply), Intelsat License LLC (Intelsat Reply), SES (SES Reply), and WorldVu Satellites Ltd. (WorldVu Reply).

¹⁴ *Second Notice*, 33 FCC Rcd at 11306, paras. 9-11.

¹⁵ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760 (2003) (*Space Station Licensing Reform Order*).

¹⁶ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10765, para. 3 n.4 (“In this proceeding, we consider revisions to the procedure for all new satellite license applications except for Direct Broadcast Satellite (DBS) and Digital Audio Radio Satellite (DARS) licenses.”).

¹⁷ *Id.* at 10805, para. 109.

¹⁸ *Id.* at 10805, para. 110; 47 CFR § 25.155(a).

¹⁹ Echostar Comments at 3; SES Comments at 2, Intelsat Reply at 3-4.

²⁰ We based this conclusion in large part on the ruling in *Northpoint Technology, Ltd. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005).

agree that adopting a first-come, first-served licensing process for DBS will further our goal of aligning DBS licensing with the Commission's updated, streamlined licensing process for GSO FSS applications.²¹ As stated previously, there is little difference technically between GSO FSS satellite systems and DBS systems, and we have been presented with no persuasive argument that DBS license applications should not be processed in the same manner. Therefore, we apply the same first-come, first-served process to DBS license applications. We address the applicability of this process to requests for U.S. market access from non-U.S. licensed space stations below in sub-section F.

B. Retention of Existing Technical Information Requirements

9. The *Second Notice* proposed that applications for authority to construct, deploy and operate a space station to provide DBS service, or requests for U.S. market access to provide DBS service to earth stations in the United States using a non-U.S. licensed space station under section 25.137 of the Commission's rules,²² must provide the technical information required by section 25.114 of the Commission's rules.²³ Of particular applicability to DBS service, the following technical information must be provided under section 25.114: (1) whether the space station is to be operated on a broadcast or non-broadcast basis;²⁴ and (2) information and analyses in the event that the technical characteristics of the proposed system differ from those in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations.²⁵

10. The record does not provide any basis to eliminate or change any of the existing technical information currently required to be provided under section 25.114. Echostar was the only commenter to address these filing requirements in detail, agreeing with the Commission's proposal to apply the aforementioned technical information contained in section 25.114.²⁶ Therefore, as proposed, we will continue to apply the existing provisions of section 25.114 to requests to provide DBS service. Because DBS is similar to, but varies in certain aspects from GSO FSS, we will also retain those existing filing requirements that are specific to DBS service.

C. Application of Streamlined Milestone and Bond Requirements to DBS

11. The *Second Notice* proposed to apply sections 25.164 (Milestones) and 25.165 (Surety Bonds) to authorizations and grants of U.S. market access to provide DBS service.²⁷ These provisions currently apply to GSO FSS space station licensees. The Commission's milestone and bond requirements are intended to deter warehousing by satellite operators before a proposed space station has been launched

²¹ *Second Notice*, 33 FCC Rcd at 11309, para. 20.

²² *Second Notice*, 33 FCC Rcd at 11307, para. 13. 47 CFR § 25.137 (Requests for U.S. market access through non-U.S.-licensed space stations).

²³ 47 CFR § 25.114 (Applications for space station authorizations).

²⁴ 47 CFR § 25.114(d)(11).

²⁵ 47 CFR § 25.114(d)(13).

²⁶ Echostar Comments at 5-6.

²⁷ 47 CFR §§ 25.164 and 25.165. *Second Notice*, 33 FCC Rcd at 11307-08, paras. 15-17.

and begun operations.²⁸ Such milestone requirements extend not only to U.S. licensees, but also to operators of non-U.S. licensed space stations that have been granted access to the U.S. market.²⁹

12. In 2015, the Commission substantially streamlined the milestone and bond provisions contained in sections 25.164 and 25.165 of the Commission's rules.³⁰ Specifically, the Commission eliminated all of the space station construction milestones, except the requirements to bring a space station into operation at the assigned location within a specified period of time.³¹ Also, in order to provide better incentives against spectrum warehousing, the Commission modified the space station bond requirement to increase liability over time.³² The *Second Notice* proposed to extend these streamlined milestone and bond provisions to DBS services, and to replace the current analogous, but different, due diligence requirements contained in section 25.148(b) of the Commission's rules with a requirement to comply with the milestone and bond provisions of sections 25.164 and 25.165.³³

13. SES supports the proposals for extending streamlined milestone and bond requirements to DBS licensees.³⁴ EchoStar also supports our proposals, but asserts that we should allow DBS licensees the option of using either our existing escalating bond requirement or a corporate guarantee, under which the licensee's parent corporation would be obligated to pay any amounts owed.³⁵ Intelsat, however, notes that EchoStar's proposal to allow corporate guarantees to stand in lieu of milestone and bond requirements fails to include important details, such as what financial resources would be required to become eligible for a guarantee.³⁶

14. We adopt the proposal to apply to DBS the same streamlined milestone and bond provisions of sections 25.164 and 25.165 that apply to GSO FSS. We also eliminate the due diligence requirements contained in section 25.148(b), as proposed. This action achieves the objective of updating the rules for DBS to reflect the streamlined licensing adopted for GSO FSS, which will improve the speed and efficiency of the licensing procedure, while at the same time maintaining requirements that protect the public interest and guard against mutual interference between satellites. We do not adopt EchoStar's proposals because they reiterate proposals that were considered and rejected when the streamlined milestone and bond requirements were adopted. We concluded that a corporate guarantee would remove the market-based mechanism incorporated in the bond requirement that includes the financial community

²⁸ It has been a longstanding Commission policy to impose milestone schedules for system implementation in satellite licenses. See *Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, Report and Order, 90 FCC 2d 676, 719, para. 114 (1982); *MCI Communications Corporation, Application for Extensions of Time to Construct and Launch Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 2 FCC Rcd 233, 233, para. 5 (Com. Car. Bur. 1987); *Norris Satellite Communications, Inc., Application for Review of Order Denying Extension of Time to Construct and Launch Ka-Band Satellite System*, Memorandum Opinion and Order, 12 FCC Rcd 22299 (1997); *Morning Star Satellite Company, L.L.C., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service at Orbital Locations 62° W.L., 30° E.L., 107.5° E.L., and 147° W.L.*, Memorandum Opinion and Order, 16 FCC Rcd 11550 (2001). In 2003, the Commission codified standard milestone requirements for U.S. space station licensees and for non-U.S. licensed space station operators granted access to the U.S. market. See *Space Station Licensing Reform Order*, 18 FCC Rcd at 10827-38, 10875, paras. 173-208, 310-312.

²⁹ 47 CFR § 25.137(d)(1).

³⁰ *Part 25 2015 Order*, 30 FCC Rcd at 14716, para. 3, 52-83.

³¹ *Id.* at 14738-39, paras. 59-64.

³² *Id.* at 14745-45, paras 72-83.

³³ *Second Notice*, 33 FCC Rcd at 11308, para. 17.

³⁴ SES Comments at 2.

³⁵ EchoStar Comments at 7-8.

³⁶ Intelsat Reply at 2.

in determining whether the licensee is likely to construct and launch its proposed satellite system, and that it might also provide an insufficient assurance of payment in the event of bankruptcy of the company acting as guarantor.³⁷ These same considerations apply to DBS.

D. Extension of License Terms

15. GSO FSS satellites are currently licensed for a period of 15 years, and the *Second Notice* proposed to extend the license term for DBS space stations not licensed as broadcast facilities to 15 years from the current term of 10 years.³⁸ In making that proposal, the Commission observed that currently licenses for DBS space stations that are licensed as broadcast facilities are issued for a period of 8 years, and licenses for DBS space stations that are not licensed as broadcast facilities are issued for 10 years.³⁹ The 8-year term for broadcast stations is established by the Communications Act.⁴⁰ In the *Second Notice*, the Commission also noted that all existing DBS operators are classified as non-broadcast licensees because their services are subscription based, and their license terms are currently 10 years.⁴¹ It also noted that the Commission has authority to establish license terms longer than 10 years for non-broadcast stations.⁴² The term for any future DBS licenses that are classified as broadcast licensees will remain the statutory 8 years.

16. Commenters agree that issuing non-broadcast DBS space station licenses for 15 years would better reflect the useful life of new DBS satellites.⁴³ Commenters note that there are no technical or engineering considerations that render the operating life of a DBS satellite shorter than the operating life of a non-DBS satellite, such as those used to provide GSO FSS, and DBS satellites generally are able to provide service beyond their initial 10-year license terms.⁴⁴ It would also make DBS space station license terms consistent with the terms of most other space stations.⁴⁵ Therefore, consistent with aligning DBS licenses with GSO FSS satellites, we adopt our proposal to use a 15-year framework for licensing non-broadcast DBS operations. As a result, all new licenses for the provision of DBS services on a non-broadcast basis will be issued with a license term of 15 years, following the effective date of these rule changes. Existing DBS licenses may be extended to match a 15-year license term upon application of the licensee to modify the license. We decline to require the International Bureau to extend the license terms of all existing licenses automatically at this time, as suggested by AT&T.⁴⁶ Although the Commission previously extended then existing non-DBS license terms automatically when it adopted a longer license term for non-DBS space stations as part of the *Space Station Reform* proceeding in 2003,⁴⁷ such an action is not needed here. A review of the Commission's licensing database shows that all existing DBS

³⁷ *Part 25 2015 Order*, 30 FCC Rcd at 14745-46, para. 85.

³⁸ *Second Notice*, 33 FCC Rcd at 11309, para. 18.

³⁹ *Second Notice*, 32 FCC Rcd at 11309, para. 18; 47 CFR § 25.121 (a)(1) and (2).

⁴⁰ See 47 U.S.C. § 307(c)(1)

⁴¹ The Commission has determined that subscriber-based DBS is not "broadcasting" for the purposes of the Communications Act. See *Subscription Video*, GN Docket No. 85-305, Report and Order, 2 FCC Rcd 1001, 1006 at para. 42 (1987) (upheld in *Nat'l Ass'n For Better Broadcasting v. FCC*, 849 F.2d 665, 669 (D.C. Cir. 1988).

⁴² *Second Notice*, 32 FCC Rcd at 11309, para. 18 and n.42.

⁴³ AT&T Comments at 8; EchoStar Comments at 6; SES Comments at 2; AT&T Reply at 2-3.

⁴⁴ AT&T Comments at 8, Reply at 2-3; Echostar Comments at 6.

⁴⁵ 47 CFR § 25.121(a).

⁴⁶ AT&T Comments at 8.

⁴⁷ *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, 18 FCC Rcd 10760, ¶ 266 (2003).

licenses have already been extended beyond their initial ten-year terms, with only a few exceptions.⁴⁸ Because DBS licensees frequently apply for modification of their licenses, and a request to extend a DBS license to 15 years can easily be added to such an application, we find that administrative efficiency is best served by extending those few licenses that have not already been extended only upon request by the licensee.

E. Availability of Optional Two-Step FCC/ITU License Application Process

17. The *Second Notice* summarized the optional two-step application process for GSO FSS applicants adopted by the Commission in 2015.⁴⁹ Under that two-step application process, an applicant for a GSO FSS license using frequencies in “unplanned” bands must submit a draft Coordination Request filing to the Commission using a simplified application form – Form 312 (Main Form) – pay the full license application fee, and post a \$500,000 bond in order to establish and perfect a queue position.⁵⁰ This first-step application submission establishes a place in the space station application processing queue as of the time of filing of the simplified Form 312 with the Commission.⁵¹ As a second step, the prospective licensee must file a complete license application within two years of submission of the Coordination Request materials or forfeit the value of the bond and lose the queue status gained by the prior Coordination Request filing.⁵² This two-step application process is optional, and, as an alternative, applicants may file a full application without first submitting a draft Coordination Request or posting the corresponding \$500,000 bond.⁵³ The Commission adopted a similar two-step application process for GSO FSS operation in “planned” frequency bands subject to Appendix 30B of the ITU Radio Regulations.⁵⁴ In contrast, the Commission stated that it would treat proponents of satellite operations that are subject to Appendices 30 and 30A of the ITU Radio Regulations somewhat differently. For these proponents, which include those proposing operations in the 12.2-12.7 GHz and 17.3-17.8 GHz frequency bands used for DBS service, the Commission would still review and forward their ITU filings in advance of a license application, but such review and forwarding would not afford any licensing status, as applications for DBS systems have not been eligible for first-come, first-served processing.⁵⁵

18. Our decision to adopt first-come, first-served processing procedures for DBS applications changes this situation, and, for this reason the *Second Notice* proposed to extend the two-step process for GSO FSS operations in unplanned bands to DBS operations in planned bands.⁵⁶ Accordingly, we proposed to treat ITU filings to modify an existing frequency assignment in the Region 2 Plan, to include a new frequency assignment in the Region 2 Plan, or to include a new or modified frequency assignment

⁴⁸ DirecTV’s T-16 (Call Sign S3039) replacement satellite has not yet commenced operations at the 100.8° W.L. orbital location, and its 10-year license term will not start until commencement of operations is notified to the Commission. The license term of EchoStar 14 (Call Sign S2790) at 118.9° W.L. ends in May 2020 and has not yet been extended. The license term of EchoStar 18 (Call Sign S2931) at 61.35° W.L. does not expire until September 2026 and has not yet been extended.

⁴⁹ *Second Notice*, 33 FCC Rcd at 11309, para. 20.

⁵⁰ *Part 25 2015 Order*, 30 FCC Rcd at 14717, para. 10.

⁵¹ *Id.*

⁵² *Id.*

⁵³ For a space station license application to be complete and acceptable for filing, it must include submission of information that can be provided only at the point when the design of the satellite network has reached a relatively high level of development and detail. Thus, the two-step alternative option that requires a \$500,000 bond (instead of the one-step, traditional full-application filing process) was introduced to allow an applicant to file sooner and secure an earlier spot in the first-come-first-served queue.

⁵⁴ *Part 25 2015 Order*, 30 FCC Rcd at 14717, 14733, paras. 10, 46-47.

⁵⁵ *Id.* at 14732-33, para. 45.

⁵⁶ *Second Notice*, 33 FCC Rcd at 11310, para 21.

in the List of the Regions 1 and 3 Plan in the same manner as a Coordination Request filing for GSO FSS operation in unplanned bands.

19. Unlike Coordination Requests in unplanned bands, however, the *Second Notice* proposed to review a proposed filing under Appendices 30 and 30A prior to forwarding the filing to the ITU to ensure that it is compatible with other U.S. filings.⁵⁷ This review is necessary to protect the rights of existing U.S. filings from being unduly eroded by another U.S. filing under the relevant ITU protection criteria. Accordingly, the party requesting a planned-band filing would be required to either submit the results of an analysis demonstrating that the proposed operation would not “affect” any other U.S. filing under the relevant ITU criteria or, if another filing would be deemed affected, submit a letter signed by the affected operator (which may be the same as the operator requesting the new filing) that it consents to the new filing.⁵⁸ The *Second Notice* likewise proposed to require applicants for DBS licenses using the two-step procedure to submit the application filing fee and a bond of \$500,000 with their applications and ITU filings.⁵⁹ As noted above, in the FSS licensing framework, a license application submitted to the Commission under the first step of the optional two-step procedure must be accompanied by the application fee and a \$500,000 bond.

20. EchoStar, the only commenter to address this proposal, supports applying the two-step application process to DBS applicants, stating that it would enable applicants to begin the process of ITU filing before they file complete applications with the Commission, which would increase the certainty of priority for applicants.⁶⁰ We agree and further note that adopting our proposal will further align DBS licensing procedures with our updated GSO FSS procedures. We will therefore adopt our proposals as stated above.

F. Application of Rules to Non-U.S. Licensed DBS Systems and ITU Filing Compatibility

21. We adopt our proposal that procedures and requirements for DBS service license applications also apply to requests to access the United States market by non-U.S. licensed space stations, with the exception of the two-step processing procedure discussed above.⁶¹ There was general support in the record for adopting the proposed DBS framework for non-U.S. licensed DBS space stations.⁶² Accordingly, operators of non-U.S. licensed DBS space stations seeking U.S. market access⁶³ and entities filing earth station applications to access non-U.S. licensed DBS space stations must file the same information required under section 25.114 of the Commission’s rules.⁶⁴ In addition, because the United States took an exemption from the World Trade Organization’s Basic Telecommunication Agreement for

⁵⁷ *Id.* at 11310, para 22.

⁵⁸ *Second Notice*, 33 FCC Rcd at 11310, para. 22.

⁵⁹ *Id.* at 11310, para 22.

⁶⁰ EchoStar Comments at 8.

⁶¹ *Second Notice*, 33 FCC Rcd at 11310, para 23. The optional two-step application process is limited to situations where the United States submits filings with the ITU and is not available in situations where a non-U.S. licensed space station seeks access to the U.S. market using ITU filings made by other administrations. Parties have sought reconsideration of this limitation and have asked for a parallel process for non-U.S. licensed space stations. *See* Petition for Reconsideration of the *Part 25 2015 Order* of SES Americom and New Skies Satellite B.V., IB Docket No. 12-267 (filed Sep. 19, 2016).

⁶² EchoStar Comments at 9-10.

⁶³ Foreign satellite operators file requests for U.S. market access in the form of a Petition for Declaratory Ruling by the space station operator or through an earth station application to communicate with a specific non-U.S.-licensed space station. 47 CFR § 25.137 (Requests for U.S. market access through non-U.S.-licensed space stations.).

⁶⁴ 47 CFR § 25.137(b).

“one-way satellite transmission of DTH and DBS television services and digital audio services,”⁶⁵ foreign-licensed DBS systems must also be found acceptable under the Effective Competitive Opportunities analysis the Commission adopted in our *DISCO II* proceeding in 1997 (ECO-Sat).⁶⁶

22. While EchoStar, supports applying the first-come, first-served licensing processing framework to non-U.S. licensed DBS systems, it urges us to revise our practice of deferring processing of a request for U.S. market access from a non-U.S. licensed DBS system that we deem mutually exclusive with a prior filing from a U.S. applicant.⁶⁷ EchoStar claims that this practice hinders international coordination and is therefore not in the public interest.⁶⁸ Intelsat and AT&T argue that we should reject EchoStar’s request. Intelsat and AT&T note that the Commission has already addressed this issue in the *Part 25 2015 Order*.⁶⁹ Intelsat further asserts that the Commission has stated that the ITU process is separate and independent from the U.S. licensing process.⁷⁰

23. We agree with Intelsat and AT&T that this issue has been addressed by the Commission in the *Part 25 2015 Order*, and further observe that the *Second Notice* made no proposal beyond considering market access requests from foreign DBS systems under our first-come, first-served processing framework. For these reasons, we will continue to dismiss requests from foreign-licensed DBS systems for U.S. market access when those requests are mutually exclusive with either a U.S. filing under Appendices 30 and 30A, a prior-filed U.S. DBS license application, or a request for U.S. market access by a different entity. The only exceptions would be if the applicant submits an analysis demonstrating that the proposed operation will not “affect” any other U.S. filing under the relevant ITU criteria or, if another U.S. filing would be deemed affected, the applicant submits a letter signed by the affected operator that it consents to the new filing.

G. Use of ITU Criteria for Requests for Reduced Spacing of DBS Space Stations

24. The *Second Notice* tentatively concluded that the public interest would be served by granting requests for new DBS service via space stations at orbital locations less than nine degrees apart, but that the public interest would not be served by adopting specific rules, different from those contained in Appendices 30 and 30A of the ITU Radio Regulations, for accommodating requests for new DBS systems at reduced-spacing orbital locations. It also tentatively concluded that such requests can be processed using the “first-come, first-served” procedures for DBS service discussed above.⁷¹

⁶⁵ World Trade Organization, *Highlights of the basic telecommunication commitments and exemptions*, found at https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_highlights_commit_exempt_e.htm#exemptions. See General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 284 (1999), 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994).

⁶⁶ 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, 12 FCC Rcd 24094 (1997) (*DISCO II Order*). Under the ECO-Sat analysis, entities seeking access to the U.S. market bear the burden of demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in the country in which the non-U.S. licensed space station is licensed and in all countries in which communications with the U.S. earth station will originate or terminate. 47 CFR § 25.137(a).

⁶⁷ EchoStar Comments at 9.

⁶⁸ *Id.* at 10.

⁶⁹ Intelsat Reply at 3-4 (citing Petition for Reconsideration of SES Americom, Inc. and New Skies Satellites B.V., IB Docket No. 12-267 (filed Sep. 19, 2016) (which Echostar supports. This petition is pending.); AT&T Reply at 4-6.

⁷⁰ Intelsat Reply at 3-4.

⁷¹ *Second Notice*, 33 FCC Rcd at 11312, para. 25.

25. The Commission's rules already permit consideration of requests for new DBS service at reduced orbital spacings if entities making such a request can coordinate their proposed operations with other U.S. DBS operators and secure agreements with other operators already having assignments in the ITU Region 2 Plans (or with prior requests for Plan modifications).⁷² The *Second Notice* proposed to address such requests under the existing rules rather than adopt new rules.⁷³

26. This approach protects current DBS consumers from interference and degradation of their video reception, while at the same time allowing potential new DBS operators to demonstrate – through careful system design, advancing technology, and coordination with existing DBS systems – that new DBS systems can operate at orbital spacings of less than nine degrees without causing harmful interference to existing systems and their customers. It will also ensure that operations at reduced orbital separations will lead to the same levels of interference observed between two DBS systems operating nine degrees apart, with co-frequency, co-coverage operation, and nominal Appendix 30 power density levels. We recognized that this proposal would require mitigation measures by future operators at reduced orbital spacings, such as reduced power density levels or non-fully overlapping coverages.⁷⁴ The *Second Notice* tentatively concluded that such measures are more easily and appropriately implemented by future entrants than retroactively imposed on existing DBS operators and their subscribers.⁷⁵

27. At the same time, ITU Appendices 30 and 30A do not govern the relationship between two DBS systems operating under U.S. ITU filings.⁷⁶ But the *Second Notice* proposed that the same ITU criteria be used to determine compatibility between a new DBS application with respect to a DBS system already in the processing queue or previously authorized, even when both systems are or will be operating under U.S. ITU filings.⁷⁷ If any of the frequency assignments of the system already in the queue or previously authorized is affected, according to the ITU criteria, the new DBS application can still be considered compatible with this system by submission of a letter signed by the affected operator indicating that it consents to the new application.

28. Several commenters addressed the relationship between DBS licensees at the standard, nine-degree spaced locations and potential DBS licensees between those locations. EchoStar agrees that ITU criteria should be used to determine compatibility between two U.S. DBS filings/licenses, stating that the use of ITU standards will help to create certainty for both DBS incumbents and new operators at less than nine-degree spacings.⁷⁸ AT&T notes that the nine-degree spacing system allows DBS to offer smaller, less expensive “dish” antennas to consumers.⁷⁹ AT&T asserts that the ITU criteria, by which we

⁷² *2006 Notice*, 21 FCC Rcd at 9458, para. 29 (stating that “current Commission rules can accommodate the filing of DBS applications that specify operations at locations other than the eight orbital slots assigned to the United States in the ITU Region 2 Plan (as specified in Appendices 30 and 30A of the ITU Radio Regulations.”). *See also* 47 CFR §§ 25.114(d)(13) (specifying the information an applicant for a DBS license must provide “if the proposed system's technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations.”) and 25.148(f) (stating that “DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices 30 and 30A of the ITU's Radio Regulations. Operation of systems using differing technical characteristics may be permitted, with adequate technical showing, and if a request has been made to the ITU to modify the appropriate Plans to include the system's technical parameters.”).

⁷³ *Second Notice*, 33 FCC Rcd at 11313, para. 29.

⁷⁴ *Id.* at 11313-14, para. 30.

⁷⁵ *Id.* at 11313-14, para. 30.

⁷⁶ *Id.* at 11313, para. 31.

⁷⁷ We note in this respect that this is the approach taken in a similar situation when operations are being conducted in the ITU Appendix 30B frequencies. *See* 47 CFR §§ 25.110(b)(3)(ii) and 25.140(a)(3)(v).

⁷⁸ EchoStar Comments at 12.

⁷⁹ AT&T Comments at 5.

propose to evaluate interference potential from DBS licensees at less than nine-degree spacings, are based on legacy values and assumptions established in 1983, that have largely been invalidated by technological advances in the intervening 36 years.⁸⁰ In order to prevent harmful interference to DBS licensees at standard nine-degree spacings, AT&T advocates that we condition any licenses for new DBS systems at less than nine-degree spacings to coordinate with all licensees within six degrees in orbital spacing.⁸¹

29. We will adopt our proposal to use ITU criteria to determine compatibility between a new DBS application and a DBS system already in the processing queue or previously authorized. While we agree with AT&T that the ITU standards have been in place for 36 years, we have been presented with no evidence that they have not served to prevent harmful interference between DBS systems. Further, as EchoStar observes, adhering to ITU standards in the absence of compelling evidence that they are insufficient to our requirements provides greater certainty to satellite licensees and applicants and strengthens international cooperation in satellite services.

H. Lifting of DBS Licensing “Freeze”

30. The *Second Notice* observed that the Commission imposed a “freeze” on requests for new DBS systems in 2005, and stated that the proposals made in the *Second Notice* would resolve the issues that caused the Commission to impose that freeze.⁸² SES supports lifting the freeze.⁸³ AT&T notes that if the Commission moves forward with lifting the freeze, we should make sure that current DBS operators are adequately protected from any new systems proposing to operate at reduced orbital spacing.⁸⁴ We find that the decisions we have made here resolve the issues involved in the licensing freeze, as well as AT&T’s concern, and therefore we lift the freeze and will begin accepting new applications for DBS licenses. We will accept new applications or requests for U.S. market access upon a date that the International Bureau will announce in a public notice.

I. Resolution of Other Matters

31. In the *2006 Notice*, the Commission also sought comment on other issues related to the regulation of DBS service. These other issues relate to protection requirements among terrestrial Multichannel Video Distribution and Data Service (MVDDS) licensees and DBS operations at reduced spacings,⁸⁵ protection of DBS operations at reduced spacings from interference from NGSO FSS operations,⁸⁶ protection of mobile DBS receivers smaller than 45 centimeters in diameter,⁸⁷ and whether to establish a spectrum cap on existing DBS licensees.⁸⁸ The *Second Notice* sought additional comment on these issues in light of developments since the *2006 Notice* and the tentative conclusions and proposals in the *Second Notice*.⁸⁹

32. EchoStar suggests that the Commission adopt an aggregate interference limit in the DBS bands in order to protect incumbent services, including DBS and MVDDS.⁹⁰ SES disagrees, stating that

⁸⁰ *Id.* at 6.

⁸¹ AT&T Comments at 7, AT&T Reply at 3-4.

⁸² *Second Notice*, 33 FCC Rcd at 11314, para. 33.

⁸³ SES Comments at 2.

⁸⁴ AT&T Comments at 5-8; AT&T Reply at 1-2.

⁸⁵ *2006 Notice*, 21 FCC Rcd at 9465, paras. 53-54.

⁸⁶ *Id.* at 9465-66, paras. 55-58.

⁸⁷ *Id.* at 9467-68, paras. 59-61.

⁸⁸ *Id.* at 9568-69, paras. 62-63.

⁸⁹ *Second Notice*, 33 FCC Rcd at 11314, para. 34.

⁹⁰ EchoStar Comments at 5.

the *Second Notice* did not address this issue and that the Commission should leave this issue to a future proceeding in which commenters could provide technical arguments and analyses.⁹¹ We agree with SES that this issue is best addressed in a separate proceeding where a more concrete technical record can be built.⁹²

33. MDS Operations states that MVDDS licensees in the 12.2-12.7 GHz band are subject to “complicated and onerous” rules that have choked investment and hindered development and deployment of terrestrial services.⁹³ MDS Operations asserts that more intensive DBS deployment is unlikely to occur and that the Commission should loosen restrictions on MVDDS in the band.⁹⁴ MVDDS 5G agrees, and specifically states that the Commission should “release” an additional 500 megahertz of spectrum in the 12 GHz band for 5G.⁹⁵ AT&T disagrees and states that this proceeding is an inappropriate venue for considering other uses of the 12.2-12.7 GHz band.⁹⁶ WorldVu states that MVDDS operators have failed to utilize the 12 GHz band⁹⁷ and asserts that this proceeding is not the appropriate forum for addressing changing the uses of the 12.2-12.7 GHz band.⁹⁸ The intent and scope of this current proceeding is to update and streamline the rules for DBS and not to address the balance of uses in the 12.2-12.7 GHz band. Moreover, this matter is being addressed in a Petition for Rulemaking that is currently pending at the Commission.⁹⁹ For these reasons, we decline to take further action, or make further proposals on this issue, in this proceeding.

34. SES encourages the Commission to explore options for increasing the use of DBS spectrum by compatible satellite operations.¹⁰⁰ SES observes that an international footnote to the Table of Frequency Allocations and certain Commission actions have authorized broadcasting-satellite service and FSS use of the DBS bands of 12.2-12.7 and 17.3-17.7 GHz.¹⁰¹ SES encourages the Commission to grant FSS downlinks equal status with DBS in the 12.2-12.7 GHz band.¹⁰² AT&T, however, states that attempts to use this proceeding to argue for expansion of other services should be rejected.¹⁰³ We agree that the benefits and drawbacks of changing the services currently in the DBS bands have not been sufficiently aired in the few comments addressing them in this proceeding. We will therefore take no action on these issues here.¹⁰⁴

⁹¹ SES Reply at 6.

⁹² The International Bureau’s Public Notice announcing the lifting of the “freeze” on applications for new DBS licenses will note that any future applications or requests for market access will be subject to any such future proceeding.

⁹³ MDS Operations Comments at 3.

⁹⁴ *Id.* at 6-7.

⁹⁵ MVDDS 5G Comments at 5; *see also* Letter from MVDDS 5G Coalition to Marlene H. Dortch, Secretary, FCC (filed May 28, 2019).

⁹⁶ AT&T Reply at 7-9.

⁹⁷ WorldVu Reply at 1.

⁹⁸ *Id.* at 6.

⁹⁹ *See* Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (filed Apr. 26, 2016) (“5GPetition”).

¹⁰⁰ SES Comments at 2-3.

¹⁰¹ *Id.* at 4.

¹⁰² SES Comments at 5-6, Reply at 2-3.

¹⁰³ AT&T Reply at 7.

¹⁰⁴ SES has filed a Petition for Rulemaking requesting that the Commission open a rulemaking proceeding addressing these issues in the 17.3-17.7 GHz band. SES Americom, Inc., Petition for Rulemaking, RM-11839 (filed

IV. PROCEDURAL MATTERS

35. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act (RFA)¹⁰⁵ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”¹⁰⁶ Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix B.

36. *Paperwork Reduction Act.* The requirements in revised sections 25.114(a)(3) and 25.140(a)(1)(vi) constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis in Appendix B.

37. In this present document, we have assessed the effects of our filing requirements on satellite providers and find that these requirements will not impose undue burdens on businesses with fewer than 25 employees. The filing requirements we are imposing are necessary to ensure that the proposed operations will comply with the technical rules we have established and not unduly preclude possible future terrestrial operation in the band.

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

V. ORDERING CLAUSES

39. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), this *Report and Order* IS ADOPTED, and part 25 IS AMENDED as set forth in Appendix A.

40. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective 30 days after publication in the Federal Register, except that those amendments which contain new or modified information collection requirements that require review and approval by the Office of Management and Budget under the Paperwork Reduction Act: the revision to section 25.114(a)(3) and the addition of section 25.140(a)(1)(vi) WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

41. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the

Mar. 5, 2019); see also Public Notice, *Consumer & Governmental Affairs Bureau Reference Information Center Petitions for Rulemaking Filed*, Report No. 3126, released May 1, 2019.

¹⁰⁵ See 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁰⁶ 5 U.S.C. § 605(b).

Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

42. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

The Federal Communications Commission amends 47 CFR part 25, as follows:

PART 25 – SATELLITE COMMUNICATIONS

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

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

2. Amend §25.110 by revising paragraph (b)(3) introductory text and by revising paragraphs (b)(3)(iii) and (b)(3)(iv) to read as follows:

§25.110 Filing of applications, fees, and number of copies.

* * * * *

(b) (3) A license application for 17/24 GHz BSS space station operation, for GSO FSS space station operation, or for GSO space station operation subject to the provisions in Appendices 30 and 30A of the ITU Radio Regulations (incorporated by reference, *see* §25.108) may be submitted in two steps, as follows:

* * * * *

(iii) An application for GSO space station operation subject to the provisions in Appendices 30 and 30A of the ITU Radio Regulations (incorporated by reference, *see* §25.108) may be initiated by submitting to the Commission, in accordance with the applicable provisions of part 1, subpart Y of this chapter, a draft ITU filing to: modify an existing frequency assignment in the Region 2 Plan; to include a new frequency assignment in the Region 2 Plan; or to include a new or modified frequency assignment in the List of the Regions 1 and 3 Plan, accompanied by a simplified Form 312 and a declaration of acceptance of ITU cost-recovery responsibility in accordance with § 25.111(d). The simplified Form 312, Main Form submission must include the information required by items 1-17, 43, 45, and 46. In addition, the applicant must submit the results of an analysis demonstrating that no U.S. filing under Appendices 30 and 30A would be deemed affected by the proposed operation under the relevant ITU criteria or, for any affected filings, a letter signed by the affected operator that it consents to the new filing.

(iv) An application initiated pursuant to paragraphs (b)(3)(i), (b)(3)(ii) or (b)(3)(iii) of this section will be considered completed by the filing of an FCC Form 312 and the remaining information required in a complete license application, including the information required by § 25.114, within two years of the date of submission of the initial application materials.

* * * * *

3. Amend § 25.114 by revising paragraph (a)(3) to read as follows:

* * * * *

(a)(3) For an application filed pursuant to the two-step procedure in § 25.110(b)(3), the filing pursuant to § 25.110(b)(3)(iv) must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits as required by paragraph (d) of this section and must constitute a comprehensive proposal.

* * * * *

4. Amend § 25.121 by revising paragraph (a)(1) to read as follows:

(a) *License Term.* (1) Except for licenses for SDARS space stations and terrestrial repeaters and DBS and 17/24 GHz BSS space stations licensed as broadcast facilities, licenses for facilities governed by this part will be issued for a period of 15 years.

* * * * *

5. Amend § 25.140 by revising title to read as follows:

§25.140 Further requirements for license applications for GSO space station operation in the FSS, in the frequencies of the ITU Appendices 30 and 30A, and in the 17/24 GHz BSS.

* * * * *

6. Amend § 25.140 by adding new paragraph (b)(6) to read as follows:

(b)(6) In addition to the information required by § 25.114, an applicant for a GSO space station operating in the frequencies of the ITU Appendices 30 and 30A (incorporated by reference, see § 25.108) must provide a statement that the proposed operation will take into account the applicable requirements of these Appendices of the ITU Radio Regulations and a demonstration that it is compatible with other U.S. ITU filings under Appendices 30 and 30A or, for any affected filings, a letter signed by the affected operator indicating that it consents to the new application.

* * * * *

7. Amend § 25.148 by removing and reserving paragraphs (b), (d) and (e).

8. Amend § 25.164 by revising paragraph (a) to read as follows:

(a) The recipient of an initial license for a GSO space station, other than a SDARS space station, granted on or after August 27, 2003, must launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization no later than five years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or the Commission.

* * * * *

9. Amend § 25.165 by revising paragraph (a) to read as follows:

(a) For all space station licenses issued after September 20, 2004, other than licenses for SDARS space stations and replacement space stations as defined in paragraph (e) of this section, the licensee must post a bond within 30 days of the grant of its license. Failure to post a bond will render the license null and void automatically.

* * * * *

APPENDIX B**Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Notice of Proposed Rulemaking (Second Notice)* released in November 2018 in this proceeding.² The Commission sought written public comment on the proposals in the *Second Notice*, including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

The Report and Order modifies the Commission's rules and policies for licensing space stations in the Digital Broadcasting Satellite (DBS) Service. These changes, among other things, provide a licensing system under which new licenses for DBS satellites in reduced spacing orbital slots would be processed according to the Commission's rules for geostationary orbit space stations in the Fixed-Satellite Service.

B. Legal Basis

The action is authorized under sections 4(i), 303, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 309.

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 adoption of proposed rules.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ 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).⁷ Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the proposed rules.

Satellite Telecommunications and All Other Telecommunications

The rules adopted in this Report and Order affect some providers of satellite telecommunications services. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms:

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, FCC 18-73 (rel. June 8, 2018).

³ See 5 U.S.C. § 604.

⁴ 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 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 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).

⁷ Small Business Act, 15 U.S.C. § 632 (1996).

“Satellite Telecommunications” and “Other Telecommunications.” Under both categories, a business is considered small if it had \$32.5 million or less in annual receipts.⁸

The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁹ For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under \$25 million.

The second category of Other Telecommunications is comprised of entities “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”¹⁰ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.¹¹ Of this total, 2,346 firms had annual receipts of under \$25 million.¹² We anticipate that some of these “Other Telecommunications firms,” which are small entities, are earth station applicants/licensees that might be affected if our proposed rule changes are adopted.

We anticipate that our rule changes may have an impact on earth station and space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch, and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our proposed actions.

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

The Report and Order makes several rule changes that would affect compliance requirements for earth station and space station operators. Most proposed changes, however, are directed at space station applicants and licensees. As noted above, these parties rarely qualify as small entities.

For example, we allow additional use of certain frequencies within the 17.2-17.7 GHz band, subject to compliance with technical limits designed to protect other users of the bands.

We adopt modified rules for satellite system implementation to provide additional flexibility to operators. In total, the rules adopted in the Report and Order are designed to achieve the Commission’s mandate to regulate in the public interest while imposing the lowest necessary burden on all affected parties, including small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four

⁸ See 13 CFR § 121.201, NAICS codes 517410, 517919.

⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications.”

¹⁰ U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications.”

¹¹ See 13 CFR § 121.201, NAICS code 517919.

¹² U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹³

The NPRM proposing the rules adopted in the Report and Order sought comment from all interested parties. Specifically, small entities were encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM. No commenter addressed the impact of the rules proposed in the NPRM and adopted in the Report and Order.

In this NPRM, the Commission sought comment on means to minimize negative economic impacts on applicants and licensees, including small entities, by permitting DBS space stations in orbital locations between the currently authorized orbital locations. No commenter addressed means to minimize negative impacts on applicants and licensees, including small entities.

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

None.

¹³ 5 U.S.C. § 603(c)(1)-(4).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, IB Docket No. 06-160, Report and Order

Under my leadership, the FCC has made significant strides toward streamlining the licensing process for the satellite services that it regulates. Just last month, for example, the Commission streamlined its processing rules for small satellites—making compliance easier and cheaper to encourage innovation in the small satellite sector.

But the procedures for direct broadcast satellite (DBS) service satellites, those most commonly used by DIRECTV and DISH to deliver satellite TV, have not been updated for a decade. Today's decision largely aligns the processing procedures for DBS with recently-streamlined processing procedures for other fixed-satellite service satellites so that DBS, too, can benefit from the streamlining of our rules for launching satellite services. Taking this step will facilitate increased use of spectrum and orbital resources while protecting existing consumers of satellite television from harmful interference to their services.

My thanks to the many Commission staffers working to reform the rules governing DBS service. I'd like to thank Jose Albuquerque, Stephen Duall, Sean O'More, Jennifer Gilson, Tom Sullivan, and Troy Tanner from the International Bureau; and David Horowitz and Doug Klein from the Office of the General Counsel.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, IB Docket No. 06-160, Report and Order

Today's Report and Order updates Federal Communications Commission rules that govern direct broadcast service satellites. It lifts a fourteen-year freeze on requests to provide new DBS service and allows for reduced orbital spacing in the process. It has my support.

But when it comes to this agency's satellite priorities, I am mystified that we are spending time on streamlining DBS rules when there is no demonstrated interest from a new entrant. When it comes to satellite updates, our focus should be on modernizing orbital debris policies in services where there is growing demand.

Over the past year, the FCC has approved more than 13,000 satellites for launch. Not one of them involved DBS. But when you consider the size of the new constellations we have just approved and the extraordinary number of objects headed to space, you realize we need to address junking up our skies—and we need to do it sooner rather than later. That's why more than a year ago I called for a comprehensive review of orbital debris policies to mitigate collision risks and ensure the sustainability of space. What are we waiting for? We can't keep kicking this can down the road or insisting orbital debris is the province of others that lack authority over commercial systems. We need to make this our satellite policy priority. We need to do so now.