

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

<p>In the Matter of</p> <p>Policies and Rules for the Direct Broadcast Satellite Service</p>	<p>IB Docket No. 98-21</p>
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NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioners Furchtgott-Roth and Powell approving in part; dissenting in part and issuing separate statements.

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I. INTRODUCTION

1.1 Consistent with our goals of regulating services subject to our jurisdiction in a pro-competitive, common-sense manner, this rulemaking seeks to streamline and simplify the Commission's rules governing the direct broadcast satellite (DBS)¹ service. We propose to eliminate unnecessary and duplicative regulation of this emerging service and seek comment on a number of issues concerning horizontal concentration within the multi-channel video programming distribution (MVPD) market. Today, DBS and the direct-to-home fixed-satellite service (DTH-FSS) provide service to approximately 8.5 million households, offering an alternative to cable television service, which is the dominant MVPD provider.² DBS and DTH-FSS providers serve more subscribers than any type of MVPD other than cable. It has been reported that the domestic and international demand for DBS and DTH-FSS will grow in the future, demonstrating the potential for increased competition to the cable industry and within the MVPD market generally.³ In addition, we have recently licensed entities to provide services in the high-power Ka-band. This next generation of broadband satellite service offers great promise for new and innovative direct-to-home satellite services.⁴ In light of the growth of DBS and DTH-FSS, the promise of new broadband systems, the continuing rise in cable rates,⁵ as well

¹DBS is the acronym used in the United States to describe the domestic implementation of the broadcast satellite service (BSS), as it is known internationally.

²Reports indicate that as of February 1998 there are approximately 8.5 million households receiving MVPD satellite delivered service. *Sky Report*, February 1998 at <http://www.skyreport.com/dthsubs.htm> (*Sky Report*). According to the Commission's 1997 Cable Competition Report, in June 1997, there were a total of 73.6 million MVPD households of which there were 64.2 million basic cable subscribers; 7.2 million DBS, DTH-FSS, and C-band subscribers; 1.1 million MMDS subscribers; 1.2 million SMATV subscribers; and 3,000 OVS subscribers. *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming* (Fourth Annual Report), CS Dkt. No. 97-141, FCC 97-423 (rel. January 13, 1998)(*1997 Report*) at Appendix E, Table E-1.

³See, e.g., *Satellite News*, February 2, 1998 at 6, *citing* Report by the Consumer Electronics Manufacturing Association (CEMA).

⁴See *Assignment of Orbital Locations to Space Stations in the Ka-band*, DA 97-967 (rel. May 9, 1997)(licensees include Hughes Galaxy Communications Galaxy, Motorola, Loral Space, Ka-Star, PanAmSat, Morning Star, EchoStar, VisionStar, GE American Communications, Lockheed Martin, NetSat 28, Comm, and Orion); see also *Teledesic Corporation, Application for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the Domestic and International Fixed Satellite Service*, 12 FCC Rcd 3154 (1997).

⁵The average monthly cable rate rose by approximately 8.5% between July 1996 and July 1997 for cable systems that do not face "effective competition." *Report on Cable Industry Prices*, MM Dkt. No. 92-266, FCC 97-

as consumer benefits from competition such as more service offerings, better consumer service, and downward pressure on prices, we believe it is particularly important to continue to examine our policies to ensure that they are pro-competitive and deregulatory.

1.2 The Commission has historically regulated DBS, which is transmitted using frequency bands that are internationally allocated to the broadcast satellite service, and DTH-FSS, which is transmitted using fixed-satellite service (FSS) frequency bands, separately. The Commission rules for the DBS service are codified in Part 100,⁶ while FSS rules, including those applicable to DTH satellite service providers, can be found in Part 25.⁷ Since both DBS and DTH-FSS provide video services directly to the home via satellite, we propose to consolidate, where possible, the DBS service rules with the rules for DTH-FSS and other satellite services under Part 25 and to eliminate in its entirety Part 100. We also propose to move certain DBS-specific Part 100 rules into Part 25⁸ and to eliminate several Part 100 rules which we believe are no longer needed. For instance, we propose to eliminate the Part 100 rules (Sections 100.72-.80) which govern DBS auctions and to conduct DBS auctions under the general auction rules contained in Part 1, subpart Q.⁹ We further propose to amend our Part 25 rules, where necessary, in order to render them applicable, where appropriate, to DBS and DTH-FSS, as well as other satellite services.

1.3 In proposing to incorporate certain Part 100 rules into Part 25, we highlight several rules of particular importance. We seek comment on our proposal that we move our existing DBS foreign ownership rules from Part 100 to Part 25, and we ask whether the Commission should modify these rules. We also seek comment on how we can strengthen our rules regarding the provision of DBS service to Alaska and Hawaii and whether we should adopt geographic service rules for Puerto Rico and other U.S. territories and possessions. Because it is our goal to

409, (rel. December 15, 1997) at ¶ 28. In contrast, in the same period the overall consumer price index for all items for all urban consumers rose approximately 2.2%. Bureau of Labor Statistics, *Consumer Price Index-All Urban Consumers* at <http://146.142.4.24/cgi-bin/surveymost> (data extracted on January 20, 1998). Hence cable rates rose nearly four times as fast as the consumer price index.

⁶See *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 FCC2d 676 (1982), *recon. denied*, 53 RR2d 1637 (1983)(DBS Order).

⁷The Commission previously streamlined its Part 25 rules in 1996. See *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures* (Report and Order), 11 FCC Rcd 21581 (1996)(Part 25 Streamlining Order).

⁸Some Part 25 Rules will not apply to DBS.

⁹47 C.F.R. § 1.2101, *et.seq.*

promote competition in the MVPD market generally, we also seek comment as to whether new rules addressing horizontal concentration in the MVPD market, such as limitations on cable/DBS cross-ownership, are necessary in order to prevent anti-competitive conduct in the MVPD market.¹⁰

II. BACKGROUND

1.4 *Initiation of Direct-to-Home Service.* The DTH service has its origins in the large direct-to-home satellite antennas which were first introduced in the 1970's for the reception of video programming transmitted via satellite.¹¹ Because these first-generation direct-to-home satellites operated in the C-band frequencies at low power, direct-to-home satellite antennas, or dishes, as they are also known, generally needed to be seven to ten feet in diameter in order to receive the signals being transmitted.¹² The Commission did not require FSS licensees transmitting the programming to obtain special licenses to provide this direct-to-home service. Instead, licensees were and continue to be subject to the existing FSS rules contained in Part 25, which apply whether the satellite is providing video, voice or data services.¹³ More recently,

¹⁰We note that the Commission has pending before it two applications from Primestar Partners. In one application Primestar seeks to acquire control of Tempo Satellite, Inc., currently a subsidiary of TCI Satellite Entertainment, Inc., which holds an authorization for 11 DBS channels at both 119° W.L. and 166° W.L. *Application of TCI Satellite Entertainment, Inc. and Primestar, Inc., for Transfer of Control of Tempo Satellite, Inc.*, File No. 91-SAT-TC-97, file July 18, 1997. As part of the second application, Primestar proposes to acquire certain assets of the News Corp and MCI Telecommunications, Inc., joint venture which includes a DBS license for 28 channels at 110° W.L. *See Application of MCI Telecommunications Corporation and Primestar LHC, Inc., for Consent to Assignment of Direct Broadcast Satellite Authorizations*, File No. 106-SAT-AL-97, August 15, 1997; *see also MCI Telecommunications Corporation, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 110° W.L.*, DA 96-1793 (1996). Since Primestar is owned by a group of large cable multi-system operators that also have ownership interests in a number of national cable programming services, those applications raise some of the same issues raised in this general notice. Comments in this proceeding therefore may also be considered in the Primestar proceeding and incorporated into the record of that proceeding.

¹¹*See Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*(First Report), CS Dkt. No. 94-48, 9 FCC Rcd 7442 (1994)(1994 Report) at ¶ 71.

¹²C-band refers to frequencies in the 3700-4200 MHz and 5425-6426 MHz frequency bands.

¹³47 U.S.C. § 605(b). In order to receive programming from as many sources as possible, most direct-to-home satellite dishes were designed to track and receive video signals from a number of different satellites. Direct-to-home satellite dish vendors were generally independent distributors who were neither satellite operators nor program producers, and direct-to-home satellite dish users received both unscrambled, free-to-air programming, and scrambled subscription services. Direct-to-home satellite dish use grew rapidly in

FSS licensees have been using the Ku and extended Ku-bands to provide direct-to-home services enabling subscribers to use a receiving dish approximately one meter in diameter.¹⁴ In 1994, a group of several cable companies (including TCI Satellite, Inc., Time Warner/Newhouse, Cox, MediaOne/U.S. West, Comcast, and GE American Communications) formed Primestar Partners, L.P. to provide DTH-FSS in the Ku-band, and Primestar now provides services to 1.9 million subscribers.¹⁵

1.5 *Regulatory Treatment of DBS.* The Commission has historically treated DBS differently from other fixed-satellite services and established a separate Part 100 for DBS service rules. This difference in treatment reflects the Commission's original conception of DBS as a broadcast service as well as the unique treatment of DBS under the International Telecommunication Union's World Radio Conference orbital assignment plan.¹⁶ When the Commission adopted the Part 100 rules in 1982, it originally envisioned that DBS would be a broadcast service but left open the possibility that licensees could provide service on a subscription or common carrier basis.¹⁷ The Commission assigned responsibility for regulating DBS to its Mass Media Bureau, along with other broadcast services, while responsibility for regulating FSS, including DTH-FSS, remained with the Common Carrier Bureau.¹⁸ Since the inception of the DBS service, DBS providers have had the choice of being regulated as broadcast, common carrier, or non-broadcast, non-common carrier (*i.e.*, subscription). To date, all DBS licensees have chosen to be regulated as subscription services, and the Commission's regulatory classification of DBS as a subscription service has been affirmed by the courts.¹⁹

the late 1980's and early 1990's, especially in rural areas that lacked access to cable, and today there are approximately 2 million C-band subscribers. This figure does not include Primestar which is a Ku-band service that provides an entire programming package to subscribers from a single fixed-satellite. *Sky Report* (Feb. 1998).

¹⁴The Ku-band frequencies are 11.7 GHz - 12.2 GHz and 14.0 GHz - 14.5 GHz.

¹⁵*Sky Report* (Feb. 1998). To provide its DTH-FSS service, Primestar leases transponder capacity on an FSS satellite licensed to GE Americom. Primestar is not itself a Commission licensee.

¹⁶The International Telecommunication Union (ITU) is an intergovernmental organization through which countries coordinate the use of radio frequencies.

¹⁷*DBS Order* at ¶ 84.

¹⁸In 1994, when it created the International Bureau, the Commission granted the Bureau authority over all satellite services, including DBS and FSS. 47 C.F.R. § 0.51. *See Amendment of Parts 0, 1, 25, 43, 64 and 73 of the Commission's Rules to Reflect a Reorganization Establishing the International Bureau*, FCC 94-252 (1994).

¹⁹*Subscription Video Services* (Report and Order), 2 FCC2d 1001 (1987)(*Subscription Video*), *aff'd.*, National Assoc. for Better Broadcasting v. FCC, 849 F.2d 665 (D.C. Cir. 1988).

1.6 Under the ITU's rules, spectrum and orbital locations for the DBS service (known internationally as the Broadcast Satellite Service or BSS) are apportioned on a global basis among all nations through ITU agreements reached at ITU World Radio Conferences. By contrast, orbital locations in the fixed-satellite service are generally selected and notified by national administrations and interference issues are resolved through satellite coordinations. In the early 1980's, ITU members reached agreement on assigning BSS orbital locations among the ITU's member countries. According to the BSS and Feeder Link Plans for North and South America (the ITU's Region 2),²⁰ the United States was assigned eight orbital locations for providing DBS service.²¹ Each of these eight orbital locations is capable of providing 32 analog channels, each with a 24 MHz bandwidth.²² In accordance with Appendices S30 and S30A, DBS orbital assignments to the United States are separated by nine degrees, as opposed to two-degree spacing used to accommodate C and Ku-band FSS assignments. Greater orbital spacing in the DBS service enables subscribers to use earth station antennas that are smaller than those generally employed for C and Ku-band services.²³

1.7 In 1982, the Commission established what it described as "interim" DBS service rules in a new Part 100 of its rules and began accepting applications for service.²⁴ In its initial DBS licensing rounds, the Commission did not assign all 32 channels at a particular orbital

²⁰The Regional Administrative Radio Conference in 1983 (RARC-83) developed and adopted the Region 2 BSS and Feeder Link Plans. It was not until 1985, at the World Administrative Radio Conference (WARC Orb-85), that the Region 2 Plans were ratified internationally and became a part of the ITU's Radio Regulations. The Regions 1 (Europe and Africa) and 3 (Asia-Pacific) BSS Plan became a part of the ITU Radio Regulations in 1977 at the World Broadcasting-Satellite Administrative Radio Conference (WARC-77). The Regions 1 and 3 Feeder Link Plan became a part of the ITU Radio Regulations in 1988 at the World Administrative Radio Conference (WARC Orb-88).

²¹See Appendix S30 (WRC-97) of the ITU's Radio Regulations (Appendix S30) at 57. The eight U.S. orbital positions, proceeding from east to west (all W.L.), are 61.5°, 101°, 110°, 119°, 148°, 157°, 166°, and 175°.

²²Digital compression provides the ability for operators to carry simultaneously at least seven video programming services per analog DBS channel, and anticipated technological advances are expected to permit capacity for up to 20 programs per analog channel by the year 2000. See *Number of Television Programs From One Transponder in the Appendices S30 and S30A Plans*, Document 10-11S/108-E, ITU Radiocommunications Study Group 10/11S (September 12, 1995).

²³Earth station antennas with a diameter of 60 cm (18 inches) are commonly employed in the DBS service, whereas earth station antennas employed in the Ku-band DTH-FSS are generally on the order of 0.84 to 1 meter (36 inches) in diameter.

²⁴*DBS Order* at ¶ 1; *CBS, Inc.*, 92 FCC2d 64 (1982); *Processing Procedures Regarding the Direct Broadcast Satellite Service*, 95 FCC Rcd 250 (1983).

location to a single licensee. Rather, at the request of the applicants, it assigned from three to ten channels at individual orbital locations and assigned separate channels to several different licensees at the same location.²⁵

1.8 In 1995, the Commission issued its *DBS Auction Order*, in which it instituted competitive bidding for available DBS channels.²⁶ In that order the Commission also accelerated the due diligence and system implementation requirements by imposing a four-year satellite construction deadline;²⁷ eliminated the east/west channel pairing method of assignment adopted by the Commission in 1989,²⁸ and created DBS geographic service requirements in order to stimulate service to Alaska and Hawaii.²⁹ The new service rules conditioned all DBS licenses awarded after January 1996 on the provision of service to Alaska and Hawaii, "where such service is technically feasible."³⁰ In January 1996, the Commission conducted its first DBS auction for 28 channels at 110° W.L. and 24 channels at 148° W.L.³¹

²⁵See *CBS, Inc.*, 92 FCC2d 64 (1982).

²⁶*Revision of Rules and Policies for the Direct Broadcast Satellite Service* (Report and Order), 11 FCC 9712 (1995)(*DBS Auction Order*) at ¶ 165.

²⁷Previously there were only deadlines for obtaining a satellite construction contract and for final system implementation. *DBS Auction Order* at ¶ 10.

²⁸The Commission had adopted a rule in 1989 that required channels at the eight orbital locations to be paired, with each licensee being assigned an equivalent number of channels at an eastern orbital location and at a western orbital location. The four eastern positions are: 61.5° W.L., 101° W.L., 110° W.L., and 119° W.L. The four western positions are: 148° W.L., 157° W.L., 166° W.L., and 175° W.L. For example, DBS was assigned 11 channels at each of the 61.5° W.L. and 175° W.L. locations. R/L DBS was assigned 11 channels at each of the 61.5° W.L. and 166° W.L. locations. The *DBS Auction Order* eliminated this policy. *DBS Auction Order* at ¶ 124.

²⁹47 C.F.R. § 100.53.

³⁰47 C.F.R. § 100.53(b).

³¹The channels at the 110° W.L. and 148° W.L. locations became available when the previous assignee, Advanced Communications Corp., failed to meet its due diligence obligations (*i.e.*, failure to initiate construction of satellite within prescribed time periods) for use of its assigned channels at those locations. *Advanced Communications Corp.*, (M,O&O) 10 FCC Rcd. 13337, 13340 (Int'l Bureau 1995), *aff'd* (M,O&O), 11 FCC Rcd 3399 (1995), *aff'd*, *Advanced Communications Corp. v. FCC*, 84 F.3d 1452 (D.C. Cir. 1996), *cert denied*, 117 S.Ct. 718 (1997). MCI Telecommunications, Corp., won the auction for the channels at the 110° W.L. location by bidding \$682.5 million, and EchoStar Satellite Corp., won the auction for the channels at 148° W.L. by bidding \$52.295 million.

1.9 *Growth of DBS.* DBS service has experienced significant growth since it was first introduced and now reaches over four million subscribers.³² Currently, DirecTV and USSB are offering service to the public from the 101°W.L. orbital location, and EchoStar and its affiliate Directsat offer a competing service from the 119°W.L. orbital location. Two licensees, DBSC (also an affiliate of EchoStar) and Tempo Satellite, Inc. (an affiliate of TCI Satellite Entertainment, Inc.), have launched satellites to the 61.5°W.L. and 119°W.L. orbital locations, respectively, but neither has commenced service as of this date.

1.10 A chart of the DBS orbital and channel assignments appears below. In addition to highlighting which channels are currently being used for service, the chart also indicates those channels for which permits have expired and/or pending petitions for extension have been filed. A total of 27 channels at four different locations remain unassigned. The Commission has not yet proposed when it will auction these channels.³³ The area within the darkened box represents the three full-CONUS locations (*i.e.*, 101° W.L., 110° W.L., and 119° W.L.) and the status of their corresponding channels.³⁴

³²*Sky Report* (Feb. 1998). This figure does not include DTH-FSS or C-band subscribers.

³³See *DBS Auction Order* at ¶ 165.

³⁴The term "full-CONUS" refers to orbital locations capable of serving the entire continental U.S. as a result of the ability to transmit a signal covering the continental U.S. from a single orbital location.

DBS Orbital Channels By Orbital Location

Permittees/ Licensees	Total	175°	166°	157°	148°	119°	110°	101°	61.5°
DirecTV	54			27 ^x				27 [‡]	
USSB	16				8 ^x		3 ^x	5 [‡]	
EchoStar	35				24	11 [‡]			
Directsat	22	11 ^x				10 [‡]	1		
DBSC	22	11 ^x							11 [↑]
MCI	28						28		
Tempo	22		11			11 [↑]			
R/L DBS	22		11						11
Dominion	8								8 ^x
Unassigned	27	10	10	5					2

‡ operational

↑ satellite launched but not yet operational

x permits that have expired and/or for which a request for extension is pending

1.11 In addition to strong growth in domestic services, direct-to-home providers (including both DBS and DTH-FSS) are rapidly developing services for international transmission. In its 1996 Report and Order revising the policies governing U.S.-licensed satellites, the Commission stated that DBS licensees could use their satellites to provide both domestic and international service without additional approval from the Commission.³⁵ Further, to facilitate the opening of international DBS markets, the United States has reached agreement with Mexico to permit DBS and DTH-FSS satellites licensed by either country to provide service

³⁵ *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems* (Report and Order), 11 FCC Rcd 2429 (1996)(DISCO I) at ¶ 70 (foreign approval required for international operations, consistent with international treaties). The acronym "DISCO" stands for Domestic International Satellite Consolidation Order.

into each other's territory.³⁶

1.12 The Commission's recent order implementing the U.S. commitments to the World Trade Organization (WTO) for market access for satellites licensed by foreign countries (*DISCO II*) will also promote international service.³⁷ The *DISCO II* Order notes that the United States has undertaken no commitments with regard to DTH-FSS or DBS and has also taken a most-favored-nation exemption for those services in the WTO Basic Agreement on Telecommunications.³⁸ The order stresses, however, that foreign-licensed satellites providing DBS or DTH-FSS may provide service into the United States so long as the foreign country licensing the satellite in question offers effective competitive opportunities to U.S. satellite providers in its territory.³⁹ Currently, Galaxy Latin America, an affiliate of DirecTV, is using a U.S.-licensed satellite to provide DTH-FSS service to over a dozen Latin American countries. Sky Latin America, an affiliate of NewsCorp. Inc., is providing a competing DTH-FSS service to Latin America using a U.S.-licensed satellite.

III. DISCUSSION

A. Incorporation of DBS Service Rules into Part 25

1.13 We propose to eliminate Part 100 of our rules and adopt permanent rules in Part 25 to govern DBS.⁴⁰ Consolidating the regulation of all satellite services in one Part will eliminate

³⁶Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Transmission and Reception from Satellites for the Provision of Satellite Services to Users in the United States of America and the United Mexican States, April 28, 1996; Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services in the United States and the United Mexican States, *Public Notice*, DA 96-1880, Rpt. No. SPB-65 (November 13, 1996).

³⁷*Amendment to the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Services in the United States* (Report and Order), IB Dkt. No. 96-111, CC Dkt. No. 93-23, RM-7931, FCC 97-399 (rel. November 11, 1997)(*DISCO II*). We discuss foreign ownership rules applicable to DBS and DTH-FSS below in Section III.A.

³⁸The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 336 (1997).

³⁹*DISCO II* at ¶ 98.

⁴⁰47 C.F.R. §100.1, *et. seq.* and 47 C.F.R. § 25.101, *et. seq.*, respectively.

inconsistencies in our rules, reduce confusion and uncertainty for users, lessen regulatory burdens for licensees, and simplify the development of advanced services. In this way, DBS applicants, permittees, and licensees can use the same forms and procedures as other satellite applicants, permittees, and licensees.⁴¹ In addition, we are finding that applications are combining DBS-band satellite functions with the functions of satellite services in other bands at the same or adjacent orbital locations (*e.g.*, hybrid DBS, Ku-band FSS, and Ka-band systems).⁴² By incorporating the satellite service rules into one section of the Commission's rules, we hope to encourage innovative services by simplifying and clarifying the process for complex multi-band, multi-service applications.

1.14 In April 1997, the International Bureau's Satellite and Radiocommunication Division held a "DBS Roundtable" to solicit public comment on various questions regarding revision of the Commission's DBS rules.⁴³ The comments received subsequent to this Roundtable will be placed and considered in the docket for this proceeding.

1.15 Our proposal to consolidate the rules for DBS in Part 25 will help us implement Congressional intent more effectively. While the Commission has traditionally regulated DBS and DTH-FSS as separate services, Congress has on several occasions sought to apply statutory provisions to both DBS and DTH-FSS. For instance, in 1992, Congress required satellite service licensees providing video programming in the Ku-band under both Part 100 and Part 25 of the Commission's rules to comply with certain public interest obligations.⁴⁴ And, in 1996, Congress amended the Communications Act of 1934⁴⁵ to grant the Commission exclusive jurisdiction over

⁴¹These changes will permit use of FCC Form 312 for DBS and all other satellite services.

⁴²*See, e.g., Application of Hughes Communications Galaxy, Inc., for Authority to Construct, Launch and Operate Galaxy/Spaceway, a Global System of Geostationary Ka band Fixed and Ku band Broadcast Communications Satellites*, File Nos. 174-SAT-P/LA-95 - 181-SAT-P/LA-95 (filed September 29, 1995).

⁴³*Public Notice*, Rpt. No. IN 97-8, DA 97-616 (rel. Mar. 26, 1997)(the topics identified were procedures, policy matters, and technical matters).

⁴⁴*See Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Service Obligations* (Notice of Proposed Rulemaking), 8 FCC Rcd 1589 (1993). 47 U.S.C. § 335(b)(5) defines "provider of direct broadcast satellite service" as follows:

- (i) a licensee for Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or
- (ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

⁴⁵Communications Act of 1934, as amended, 47 U.S.C. § 151, *et. seq.* (Communications Act).

"direct-to-home satellite services" without making any distinction between DBS and DTH-FSS.⁴⁶ Consolidating the rules for DBS in Part 25 will therefore reflect Congressional intent that DBS and DTH-FSS satellite services be governed in certain aspects by a uniform regulatory scheme and enable us to implement more effectively legislation that applies to both DBS and DTH-FSS.

1.16 Although we propose to regulate DBS under the same Part 25 rules that apply to other satellite services, we recognize that some characteristics of the DBS service distinguish it from other satellite services.⁴⁷ There are, therefore, certain individual Part 100 rules which we propose to preserve and move to Part 25 but apply uniquely to DBS. These are the DBS definition (Section 100.3), the eligibility and foreign ownership rules (Section 100.11), the license term (Section 100.17), the due diligence requirements (Section 100.19), the technical requirements (Section 100.21), the geographic service requirements (Section 100.53), and the competitive bidding mechanism for mutually exclusive applications (Section 100.71). We propose to add these provisions, except the definition of DBS and the technical requirements, to Part 25 by adding a new Section 25.146 titled, "Licensing Provisions for the Direct Broadcast Satellite Service." By adding Section 25.146 to the subpart that contains the licensing provisions for other satellite services governed by Part 25, we seek to harmonize the regulation of satellite services while maintaining relevant distinctions among those services. We propose to add the definition of DBS and the technical requirements to other sections of Part 25, as explained below.

1.17 We identify and explain below each of the changes that we propose and the potential effects of those changes on the DBS service. The following chart identifies each Part 100 DBS rule and the action we propose to take.

⁴⁶47 U.S.C. § 303(v).

⁴⁷For example, the orbital positions used for the DBS service are based on ITU orbital and frequency assignment Plans, rather than assignment by national administrations that are coordinated through the ITU process, as with certain FSS bands. In addition, since use of the DBS band is governed by these ITU orbital and frequency assignment Plans and specific technical regulations for BSS, licensees may not be able to enjoy as much spectrum flexibility as might exist in other satellite services.

Incorporating DBS Service Rules into Part 25

Part 100 Section	Proposed Action	Part 25 Section
100.1 (Basis and purpose)	eliminate	Part 25 Authority
100.3 (Definitions)	amend and move	new 25.201
100.11 (Eligibility and Foreign Ownership)	move	new 25.146(a)
100.13 (Application)	eliminate	covered by Part 25, subpart B
100.15 (Licensing)	eliminate	covered by Part 25, subpart B
100.17 (License term)	amend and move	amend 25.146(b)
100.19 (Due diligence)	move	new 25.146(c)
100.21 (Technical)	amend and move	new 25.146(f)
100.51 (EEO)	move	amend 25.601
100.53 (Geographic service)	amend and move	new 25.146(d)
100.71 (Competitive Bids)	amend and move	new 25.146(e)
100.72-.79 (Competitive Bidding System Design)	eliminate	covered by auction rules in 1.2101, <i>et. seq.</i>
100.80 (Transfers)	eliminate	covered by 1.1211 and 25.119
Part 25 Cross-reference to Part 100 for DBS	eliminate	eliminate 25.109(b)(DBS cross-reference)

1.18 *Basis and purpose § 100.1.* We propose to eliminate Section 100.1, which recites the Commission's statutory authority to regulate radio transmissions and issue radio licenses for the "interim" DBS service.⁴⁸ We propose to eliminate Section 100.1 because Section 303(v) of the Communications Act makes clear that the Commission has exclusive jurisdiction over the

⁴⁸47 U.S.C. § 100.1.

regulation of direct-to-home satellite services, including DBS.⁴⁹ We also propose removing Section 25.109(b) which cross-references Part 25 readers to Part 100 for the DBS service rules.⁵⁰ We believe these changes will eliminate outmoded references to interim DBS rules and systems and duplication of descriptions in the Commission's regulatory authority.⁵¹ We seek comment on these proposals.

1.19 *Definitions § 100.3.* We propose to move the definition of DBS service from Section 100.3 to a new paragraph in Section 25.201. The definition of DBS in Section 100.3 is identical to that which appears in the ITU Radio Regulations.⁵² We propose amending the definition of DBS to include a reference to the frequencies used by the DBS service in order to distinguish application of the DBS rules from the rules for other satellite services in Part 25, including DTH-FSS. We believe that DBS should continue to be defined as a specific service, just as other satellite services are defined separately in Part 25, such as the service rules for the non-voice, non-geostationary mobile-satellite service (Little LEOs) and the fixed-satellite service in the 20/30 GHz bands (Ka-band).⁵³ We seek comment on our proposal to move and amend the current definition of DBS.

1.20 *Eligibility and Foreign Ownership § 100.11.* Section 100.11 of the Commission's rules addresses foreign ownership limitations relating to DBS and tracks the text of Sections 310(a) and (b) of the Communications Act, which contain limitations on foreign ownership of U.S. radio licenses. Specifically, Section 310(a) prohibits any foreign government from owning any U.S. radio license, and Section 310(b) places specific foreign ownership restrictions on broadcast and common carrier licenses.⁵⁴ Section 100.11(b) incorporates the language from Sections 310(a) and (b) of the Communications Act.⁵⁵ We propose to move the existing Section

⁴⁹Telecommunications Act of 1996 (P.L. 104-104, Feb. 8, 1996, 110 Stat. 56) § 205(b). *See also* Part 25 Authority.

⁵⁰47 C.F.R. § 25.109(b).

⁵¹47 C.F.R. § 100.1(b).

⁵²ITU Radio Regulations, Pt. A, Ch. 1, Article 1, Sec. II (3.18). The ITU Radio Regulations, however, refer to DBS as the Broadcast Satellite Service.

⁵³47 C.F.R. §§ 25.142 and 25.145, respectively.

⁵⁴47 U.S.C. § 310. The foreign ownership limitations in Section 310(b) also apply to aeronautical en route and aeronautical fixed radio station licenses. 47 U.S.C. § 310(b).

⁵⁵Section 100.11 provides:

An authorization for operation of a station in the Direct Broadcast Satellite Service shall not be granted to or held

100.11, verbatim, into a new Section 25.146(a), which will apply only to DBS licensees. Our proposal to move Section 100.11 into Part 25 would neither change the foreign ownership rules currently applicable to the DBS service nor create new rules for DTH-FSS. Unlike Part 100, Part 25 does not currently have specific rules limiting foreign ownership. Part 25 licensees, including DTH-FSS licensees, nevertheless remain subject to the statutory limits established in Sections 310(a) and (b). Because the foreign investment limits in Section 310(b) apply to broadcast and common carrier licensees, Part 25 licensees that do not operate as broadcasters or common carriers, as is generally the case, are not subject to the foreign ownership restrictions contained in Section 310(b).

1.21 The applicability of Section 100.11 to subscription DBS was addressed in 1996 by the International Bureau in its decision relating to the grant of a DBS license to MCI Telecommunications Corporation.⁵⁶ In granting MCI the right to construct, launch and operate a DBS system using 28 channels at 110°W.L., the Bureau held that, because MCI's DBS authority was for subscription (*i.e.*, non-broadcast) video satellite service, Section 310(b) of the Communications Act did not apply.⁵⁷ The Bureau noted that the Commission's intent in adopting Section 100.11 was simply to codify the restrictions of Section 310 of the Communications Act rather than to establish foreign ownership restrictions independent of those

by:

- (a) Any alien or the representative of any alien;
- (b) Any foreign government or the representative thereof;
- (c) Any corporation organized under the laws of any foreign government;
- (d) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
- (e) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

⁵⁶*MCI Telecommunications Corporation, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 110°W.L.* (Order), DA 96-1793 (1996) (*MCI Order*). An Application for Review of the Bureau's *MCI Order*, filed by the National Association for Better Broadcasting, is pending before the Commission.

⁵⁷*MCI Order* at ¶ 27.

contained in Section 310.⁵⁸ The Bureau therefore held that Section 100.11 does not apply to subscription DBS. In the event that the Commission affirms the Bureau's decision in the *MCI Order*, we seek comment on whether the Commission should modify its DBS eligibility rules such that the foreign ownership limitations currently located in Section 100.11 would apply to subscription DBS providers. In addition, we seek comment on whether foreign ownership limitations similar to those in Section 100.11 should apply to DTH-FSS provided on a subscription basis. We note that the Executive Branch has asked the Commission to conduct a rulemaking on whether and how foreign ownership restrictions should be applied to subscription services offered from U.S.-licensed satellites.⁵⁹

1.22 *Application requirements § 100.13*. We propose to eliminate the DBS-specific application requirements of Section 100.13. Instead, we propose to adopt the application, processing, and licensing requirements of Part 25 for DBS services, including new FCC Form 312, where applicable.⁶⁰ We also propose not to apply the financial requirements of Section 25.140, that now apply to FSS and other Part 25 satellite services, to DBS applications. The competitive bidding process we use to resolve mutually exclusive DBS applications achieves the same goal as the financial qualifications requirements of Section 25.140, namely, assigning spectrum to those most likely to make efficient use of it.

1.23 We propose to standardize the DBS application process by eliminating the "narrative" format prescribed in Section 100.13. Instead, we intend to apply the same application procedures to the DBS service that we apply to other satellite services under Part 25, subpart B. Specifically, DBS applicants will be required to provide all relevant information requested by Form 312 for space and earth stations. We also seek comment on whether DBS applicants should supply any additional technical information that is not required by Section 25.114. The Commission must notify the International Telecommunication Union and provide certain information regarding each DBS system prior to implementation at an assigned orbital location.⁶¹ We discuss these information requirements below in Section III.B.

1.24 *Licensing procedures § 100.15*. The existing Part 100 licensing procedures for DBS systems involve multiple steps, including the 45-day public notice and competing

⁵⁸*Id.* at ¶ 23.

⁵⁹See Letter to Hon. Reed E. Hundt, from Amb. Vonya McCann (Dept. of State), Hon. Larry Irving (Dept. of Commerce), and Amb. Jeffrey Lang (USTR), dated May 5, 1997.

⁶⁰See *Part 25 Streamlining Order* (modifying Part 25 of the Commission's rules and regulations regarding satellite earth and space station licensing and adopting a new application form, FCC Form 312).

⁶¹See ITU Radio Regulations, Appendix S30, art. 5.

application cut-off periods in Section 100.15. These procedures can delay the DBS licensing process and are unduly burdensome. They are also inconsistent with the Commission's licensing practices for fixed and mobile satellite systems. We therefore propose to eliminate the separate DBS licensing procedures in Section 100.15 and apply existing Part 25 licensing provisions to DBS space and earth station applications.⁶² In addition, we propose to streamline the DBS licensing phase by adopting a one-step licensing process that consolidates the grant of construction permit, authorization of launch, and licensing of space station facilities into a single procedure. We propose that once an authorization is granted we should license the authorized entity through system operation, establishing construction, launch, and system operation deadlines in accordance with our due diligence rules. Based on our experience regulating the DBS service, we believe this will eliminate uncertainty and streamline the DBS application and licensing processes by reducing the number of separate authorizations required from three to one. We also believe eliminating separate authorizations will permit licensees to develop business plans with greater certainty because they will not have to submit applications and seek Commission approval for intermediate implementation milestones. We seek comment on these proposals and whether they permit adequate opportunities for the public to comment on DBS authorizations.

1.25 *License term § 100.17.* The current license terms for DBS licensees, established under the 1995 *DBS Auction Order*, is ten years for non-broadcast licenses and five years for broadcast.⁶³ Since the issuance of the *DBS Auction Order*, Congress has changed the maximum term for broadcast licenses from five to eight years.⁶⁴ Therefore, to conform our rules to the license terms contained in the Communications Act, we propose to adopt an eight year license for DBS broadcast licensees, although we note that to date no DBS licensee has chosen to be licensed as a broadcaster. We propose to add Section 25.146(b) to include ten-year license terms for non-broadcast DBS and eight-year license terms for broadcast DBS licensees. We seek comment on this proposal.

1.26 *Due diligence § 100.19.* We propose to move the DBS due diligence rules from Section 100.19 to a new Section 25.146(c). We intend to continue to apply the existing due diligence rules to DBS permittees and licensees. Thus, DBS licensees will continue to submit annual progress reports on system implementation pursuant to existing Section 25.210(l). We request commenters' views on what, if any, further actions we should take to monitor system

⁶²See Part 25, Subpart B.

⁶³The Commission extended DBS license terms in the 1995 *DBS Auction Order* in recognition of the fact that today's satellites enjoy longer in-orbit lifespans than their predecessors. *DBS Auction Order* at ¶ 130.

⁶⁴47 U.S.C. § 307(c)(1).

implementation, including, for example, requiring interim implementation certifications or whether we should eliminate or modify any of the existing due diligence rules. We do not propose applying the DBS due diligence rules to other satellite service licensees. We note that in the past we have not ordinarily adopted general rules regarding satellite construction milestones for other fixed-satellite services in light of the differences in system implementation plans among the many services covered by Part 25. The Commission has, however, used its general licensing authority to condition Part 25 licenses on a service-by-service basis.⁶⁵

1.27 *Technical requirements § 100.21.* In incorporating the DBS rules into Part 25, we propose to apply many of the general technical requirements for satellite services to DBS service.⁶⁶ We address specific questions related to the technical rules applicable to the DBS service below in Section III.B.⁶⁷

1.28 *Equal employment opportunities § 100.51.* The Commission first established equal employment opportunity (EEO) rules for the DBS service in 1982 and codified these rules in Section 100.51(a)-(d).⁶⁸ In 1987, the Commission held that the DBS EEO rules "apply only to those DBS entities which would operate as broadcasters."⁶⁹ The effect of this holding was to limit the applicability of the Part 100 EEO rules to DBS operators licensed as broadcasters and render them inapplicable to subscription DBS services. As discussed *supra* in Section II, no DBS operator to date has chosen to be licensed as a broadcaster; all have chosen to be licensed as providers of subscription services.

1.29 In 1992, Congress instructed the Commission to revise its EEO rules for MVPD providers by enacting Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).⁷⁰ The Commission fulfilled its mandate by amending Parts 25 and 100, among others, to render multi-channel DTH-FSS and DBS licensees subject to the

⁶⁵More recently, we have adopted specific satellite construction milestone requirements for the satellite digital audio radio service (SDARS) and the fixed-satellite service in the 20/30 GHz Bands (Ka-band). *See* 47 C.F.R. §§ 25.144(b), 25.145(f), respectively.

⁶⁶*See* Part 25, Subparts B, C, and D (Applications and Licenses, Technical Requirements, and Technical Operations).

⁶⁷*See infra* Section III.B.

⁶⁸*DBS Order* at ¶ 102.

⁶⁹*Subscription Video*. This decision was affirmed in National Assoc. for Better Broadcasting v. FCC, 849 F.2d 665 (D.C. Cir. 1988).

⁷⁰Pub. L. No. 102-385, 106 Stat. 1460 (1992). 47 U.S.C. § 554.

revised EEO requirements of Part 76.⁷¹ The two sections added -- Sections 25.601 and 100.51(e) -- contain identical language.⁷² In addition, the Commission specifically included DBS operators within the scope of Part 76's EEO requirements.⁷³ The effect of these provisions is to make both subscription DBS and DTH-FSS providers subject to the Part 76 EEO requirements.

1.30 DBS broadcasters, on the other hand, continue to be subject to the pre-existing requirements in Section 100.51(a)-(d), which are based on the EEO rules that were applicable to terrestrial broadcasters at the time the section was drafted in 1982.⁷⁴ Since 1982, the Commission has amended the Part 73 EEO requirements applicable to radio and television broadcasters, but it did not amend the DBS EEO provisions of Section 100.51(a)-(d).⁷⁵ In order to apply the same requirements to DBS broadcasters (should a DBS operator choose to be so licensed in the future) as other broadcasters, we propose applying the revised Part 73 EEO Rule to DBS licensees who operate as broadcasters.

1.31 We therefore propose to eliminate subsections (a)-(d) of Section 100.51 and amend Section 25.601 to require DBS licensees operating as broadcasters to be subject to the broadcast EEO provisions of Part 73. We also propose to eliminate Section 100.53(e) and to amend Section 25.601 to add nonbroadcast DBS to the existing language covering DTH-FSS. We seek comment on this proposal.

1.32 *Geographic service requirements § 100.53.* In its *DBS Auction Order*, the Commission created geographic service obligations for Alaska and Hawaii. In that order, the Commission adopted DBS service rules requiring DBS licensees granted authorizations after January 19, 1996 to provide service to Alaska and Hawaii upon commencement of operations, where technically feasible.⁷⁶ The Commission also adopted a rule in the *DBS Auction Order* that

⁷¹*Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992: Equal Employment Opportunities* (Report and Order), 8 FCC Rcd 5389 (1993).

⁷²Section 25.601 states that "an entity that uses an owned or leased fixed satellite service facility (operating under this part) to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subchapter E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes." Section 100.51(e) replaces the words "fixed satellite service" with the word "DBS".

⁷³47 C.F.R. § 76.71.

⁷⁴*DBS Order* at ¶ 102.

⁷⁵52 FR 26682, July 16, 1987, as amended at 58 FR 42249, Aug. 9, 1993.

⁷⁶47 C.F.R. § 100.53(b).

requires DBS licensees who were granted their authorizations prior to January 19, 1996, to relinquish their DBS channel assignments at the 175°W.L., 166°W.L., 157°W.L., and 148°W.L. orbital locations (the "western channels") if they do not serve Alaska and Hawaii before the expiration of their current authorizations.⁷⁷ Since January 1996, the Commission has granted authorizations for three DBS service providers -- MCI, EchoStar, and Tempo -- to operate at orbital locations that can serve Alaska and Hawaii and conditioned those licenses on the requirement that the licensees provide service to those states.⁷⁸ All three licensees have made clear to the Commission that they will comply with this condition and provide service to Alaska and Hawaii.

1.33 We propose to move the DBS geographic service requirements from section 100.53 to a new section 25.146(d). We believe that the provision of service to Alaska and Hawaii will provide important MVPD competition in these markets. Hence, we propose to continue to apply the rule in Section 100.53(b) that all DBS licensees granted authorizations after January 19, 1996 must provide service to Alaska and Hawaii where technically feasible. In addition, we seek to clarify that this rule will apply to licensees who were granted their authorizations prior to January 19, 1996 and who request extensions of time or renewal of their licenses. In the *DBS Auction Order*, we noted that service to Alaska and Hawaii is technically feasible from the 110° W.L. and 119° W.L. orbital locations, as well as the four western orbital locations.⁷⁹ We have not had an occasion yet to rule whether service to Alaska and Hawaii from the 101° W.L. or 61.5° W.L. orbital locations is technically feasible.

1.34 We note that Section 100.53(b) applies only to Alaska and Hawaii. We seek comment on whether we should adopt similar measures to promote the provision of service to Puerto Rico and other U.S. territories and possessions. Further, the State of Hawaii has asked that we consider adopting an "off-shore states" policy when awarding DBS channels in the eastern orbital positions.⁸⁰ This policy would require licensees of DBS channels at eastern orbital positions to demonstrate that they have provided service to the states of Alaska and Hawaii before they would be eligible to provide service from any eastern DBS channel assignments beyond their existing assignments. We seek comment on this proposal and ask if there are other steps the Commission should take to ensure delivery of service to Alaska, Hawaii, and Puerto Rico, as well as other U.S. territories and possessions.

⁷⁷47 C.F.R. § 100.53(a).

⁷⁸See *MCI Communications*, DA 96-2165 (1996) at ¶ 6, *EchoStar*, DA 96-2164 (1996) at ¶ 5, *Tempo Satellite*, DA 97-355 (1997) at ¶¶ 5, 35.

⁷⁹*DBS Auction Order* at ¶ 128.

⁸⁰Letter to Chris Murphy, Attorney-Advisor, Satellite Policy Branch, from David Nall, Squire, Sanders & Dempsey, counsel for the State of Hawaii, dated April 23, 1997.

1.35 While we propose to move Section 100.53(b) to new Section 25.146(d), we propose to delete Section 100.53(a). Section 100.53(a) is unclear and potentially runs counter to the Commission's purposes. We are concerned that Section 100.53(a), which requires licensees to relinquish their western channels if they do not provide service to Alaska or Hawaii before the end of their current authorizations, could be misinterpreted as permitting DBS licensees with eastern orbital locations to maintain their authorizations at western orbital locations, even if they do not provide service from such western channels. The intent of Section 100.53 was to ensure that DBS licensees provide service to Alaska and Hawaii, where it is technically feasible for them to do so. We believe that Section 100.53(b) accomplishes this goal.

1.36 By contrast, Section 100.53(a) could be interpreted to permit warehousing of western channels by a licensee that is operating from an eastern orbital location. The warehousing of western channels would frustrate the Commission's goals of ensuring efficient use of spectrum resources and promoting service to Alaska and Hawaii. Under one interpretation of Section 100.53(a), an entity holding authorizations for both eastern and western channels might argue that its western channel authorization would remain valid during its ten-year license term for its eastern channels even if it were not using its western channels. Its argument might be that, pursuant to Section 100.53(a), it would not need to relinquish its western channels unless and until its ten-year license expired and it had not provided service to Alaska and Hawaii. If a licensee originally received authorization for eastern and western channels at the same time, such a licensee could, under this interpretation of Section 100.53(a), argue that it could maintain its authorization for its western channels for up to 16 years (6 years to launch and operate its satellite at its eastern channels plus the ten-year operating license term) even if during such time it never used its western channels. This clearly was not the purpose of the original rule. The western channels provide valuable capacity for service to Alaska and Hawaii, and our policies should encourage use of these channels. Even if a licensee does provide service to Alaska or Hawaii from its eastern channels, it serves no purpose to allow such a licensee to warehouse its channels at its western orbital location(s) simply because its eastern channels are serving Alaska and Hawaii. If a licensee fails to put its western channels into service by the expiration of its authorization for these channels, we will reclaim those channels and auction them to an entity that is prepared to put them into use.

1.37 *Auction rules § 100.71-100.80.* The Commission's authority to select DBS licensees through competitive bidding is derived from §309(j) of the Communications Act.⁸¹ In its *DBS Auction Order*, consistent with the Communications Act, the Commission determined that mutually exclusive applications to provide DBS service would be subject to competitive

⁸¹47 U.S.C. §309(j).

bidding.⁸² In December 1997, the Commission revised Part 1 of its rules and established general auction rules (General Auction Rules) that are applicable to all auctionable services, unless the Commission determines otherwise.⁸³ Previously, each service subject to competitive bidding (such as paging, cellular, and DBS) had service-specific auction rules. In establishing the General Auction Rules, the Commission did not amend Part 100. We now propose to eliminate the DBS-specific auction rules in Part 100 and rely on the General Auction Rules in Part 1. We believe that the General Auction Rules provide enough flexibility to allow the Wireless Telecommunications Bureau to design future auctions for the DBS service according to the needs of the service, and we seek comment on whether DBS has service-specific issues that warrant the establishment of rules different from the General Auction Rules.

1.38 We propose to move Section 100.71, which establishes the auction authority for DBS, to Part 25 and create a new Section 25.146(e). We propose to eliminate all other Part 100 auction rules. In so doing, we propose to amend Section 100.71 as follows:

§ 25.146(e) DBS Subject to Competitive Bidding. Mutually exclusive initial applications to provide DBS service are subject to competitive bidding procedures. The general competitive bidding procedures found in part 1, subpart Q of this chapter, will apply unless otherwise provided in this part. Once a winning bidder has made its down payment, the Commission will use the long-form satellite service application (*i.e.*, FCC Form 312) pursuant to the application, processing, and licensing provisions of part 25, subpart B, where applicable. When there is no mutual exclusivity for DBS channels offered for assignment, the Commission will process applications pursuant to the application, processing, and licensing provisions of part 25, subpart B, where applicable.

At the same time, we propose to eliminate the Part 100 auction rules (§§100.72 - .80) because we believe they are no longer necessary in light of the Part 1 General Auction Rules and the proposed Section 25.146(e) above. As we stated in the recently released *General Auction Rules Order*, "[o]ur Part 1 rules will apply to all auctionable services, unless we determine that with

⁸²47 C.F.R. § 100.71. The Commission based its decision in the *DBS Auction Order* principally on the unique characteristics of the DBS service, and in particular, the fact that DBS orbital locations are assigned to the United States by the ITU's international BSS plan. *DBS Auction Order* at ¶165. The Commission's authority to auction the DBS channels was upheld in *DirecTV, Inc. v. F.C.C.* in 1997. *DBS Auction Order, aff'd, DirecTV, Inc. v. F.C.C.*, 110 F.3d 816 (D.C.Cir. 1997).

⁸³The Commission recently modified the General Auction Rules. *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures* (Report and Order), WT Dkt. No. 97-82, ET Dkt. No. 94-32, FCC 97-413 (rel. december 31, 1997)(*General Auction Rules Order*).

regard to particular matters the adoption of service-specific rules is warranted."⁸⁴

1.39 In the *General Auction Rules Order*, the Commission determined that it would evaluate each auctionable service to determine if service-specific rules are required, including whether designated entity provisions are appropriate for particular services.⁸⁵ The Commission has previously explained that the determination of whether a particular service ought to employ designated entity provisions, and if so what type of provisions, would "rest in whole or in part on [its] assessment of the available opportunities in, and characteristics of, a specific spectrum-based service."⁸⁶ We seek comment on whether we should establish designated entity provisions for future DBS auctions and, if so, what designated entity provisions would be appropriate.

1.40 We note that in the 1995 *DBS Auction Order*, the Commission declined to adopt provisions for designated entities for the auction of the channels at the 110° W.L. and 148° W.L. orbital locations.⁸⁷ The Commission stated, however, that having "designated entity provisions for future DBS auctions may be appropriate, particularly if we auction spectrum in small blocks."⁸⁸ Commenters who favor the adoption of designated entity provisions for DBS should discuss whether we should establish generic designated entity provisions applicable to all future DBS auctions or whether we should adopt designated entity provisions on a case-by-case basis, depending on the number of channels available at a given auction.

⁸⁴*General Auction Rules Order* at ¶ 5. We also stated that we would "adopt service-specific auction procedures where we find that our general competitive bidding procedures are inappropriate" in response to concerns raised in the proceeding by Hughes Electronic Corporation. *Id.* at ¶ 12.

⁸⁵*Id.* at ¶ 5.

⁸⁶See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding* (Report and Order), 9 FCC Rcd 2348, 2391 (1994).

⁸⁷*DBS Auction Order* at ¶ 217.

⁸⁸*Id.*

1.41 The following chart provides a general comparison, for reference only, of the Part 100 auction rules with the relevant General Auction Rules in Part 1.

Auction Rules Comparison Chart

	Part 1	Part 100
Auction Design	§ 1.2103	§ 100.72
Acct. Mechanism	§ 1.2104	§ 100.73
Bidder Eligibility	§ 1.2105	§ 100.75
Upfront Payments	§ 1.2106	§ 100.76
Winner Licensing	§ 1.2107, 8, & 9	§ 100.78
Anti-Collusion	§ 1.2105(c)	§ 100.79
Default	§ 1.2109	§ 100.74, 78
Assign or Transfer	§ 1.2111	§ 100.80

1.42 We seek comment on the few differences between the auction rules contained in Parts 1 and 100 and whether these differences should be maintained. For example, the transfer disclosure requirements for Section 100.80 have a six-year disclosure period while the General Auction Rules have a three-year disclosure period in Section 1.2111. We seek comment more generally on whether DBS has service-specific issues that warrant the establishment of rules different from the General Auction Rules.

B. Technical Matters

1.43 In this section, we seek comment on revisions to our current technical rules for DBS in order to ensure that the rules reflect today's technology and to promote maximum technical flexibility for licensees. Our current technical requirements were adopted in 1982 and were intended only to be interim.⁸⁹ Certain aspects of these interim rules are no longer valid today. For example, Section 100.21 requires DBS systems to operate in accordance with the spectrum sharing criteria and technical characteristics adopted in the Final Acts of the World

⁸⁹DBS Order at ¶ 1.

Administrative Radio Conference in 1977 (WARC-77).⁹⁰ The ITU Radio Regulations, which the Final Acts of WARC-77 modified, have been amended by subsequent World Radio Conferences, and Section 100.21 therefore no longer reflects the present ITU Radio Regulations. In addition, Section 100.21 was adopted prior to the ITU's adoption of the BSS and Feeder Link Plans applicable to Region 2, which includes North and South America. We propose to create a new Section 25.146(f) that will require DBS licensees to operate in accordance with ITU Radio Regulations, which are codified in Appendices S30 and S30A of the ITU Radio Regulations. We seek comment on this proposal.

1.44 Appendices S30 and S30A contain the BSS and Feeder Link Plans, as well as provisions for implementing BSS systems. These Appendices also provide a mechanism for implementing systems whose technical parameters differ from the planned assignments. The United States must initiate a modification to the ITU's BSS and Feeder Link Plans if a US-licensed DBS system that uses parameters different than those specified in the BSS and Feeder Link Plans wishes to receive protection from interference internationally or if it proposes to use an orbital location not assigned to the United States in the ITU Plans.⁹¹ If a licensee successfully completes a Plan modification, the actual parameters of the licensee's system will be included in the Plans, and it will be protected both from subsequent modifications to the Plans and from other services sharing the bands. Until a system is included in the Plans, it must not cause harmful interference to, and will not receive protection from, other services or from other assignments that conform with the Plans.

1.45 Under the ITU Radio Regulations, an administration whose proposed DBS system exceeds the technical limits in Annex 1⁹² to Appendices S30 and S30A, for instance by altering the satellite beam coverage area, must seek the agreement of the administrations whose Plan assignments or other networks are affected by the proposed modification.⁹³ The Commission

⁹⁰At WARC-77, the BSS Plan for Regions 1 and 3 was created and adopted. The Final Acts of WARC-77 set out the orbital slots and channel assignments for each country in Regions 1 and 3 and discuss the technical parameters used in establishing the BSS Plan (see Annex 8 of the Final Acts). In addition, the Final Acts contain provisions for "modifying" the BSS Plan, *i.e.*, implementing systems using technical parameters that differ from those specified in Annex 8 to the Final Acts. The Final Acts also include interim procedures for implementing BSS space stations in Region 2, prior to the planning of BSS for that Region. Subsequently at WARCOrb-85, updated when the Region 2 Plans were adopted. These updated procedures were not included in our rules.

⁹¹See ITU Radio Regulations, Appendix S30 and S30A, Article 4.1.

⁹²Annex 1 to Appendices S30 and S30A contains coordination thresholds that must be met by proposed systems or such systems must coordinate with affected systems.

⁹³See ITU Radio Regulations, Appendix S30 and S30A, Annex 1.

has received at least one application for a DBS system that does not meet the limits specified in Annex 1.⁹⁴ In other satellite services, the United States regularly coordinates satellite systems, and we believe that coordination is also appropriate for the DBS service. We believe it will be possible to obtain approval from affected administration(s) for DBS systems proposed by our licensees that exceed the technical limits contained in Annex 1. Accordingly, we propose to delete the current provisions in Section 100.21 which prohibit applicants from exceeding the technical limits in Annex 1 and to consider systems that exceed such limits, if there are reasonable assurances that the agreement of the affected administration(s) can be obtained.⁹⁵ We seek comment on this proposal.

1.46 We also propose to adopt a new Section 25.111(c) that would explicitly state the information that licensees will need to provide if they seek a modification of the current ITU Plans. To initiate a modification of the Plans, the United States must submit to the ITU Radiocommunication Bureau the information requested in Annex 2 to Appendices S30 and S30A of the ITU Radio Regulations.⁹⁶ The submission of the transmit and receive, co-polarized and cross-polarized, satellite antenna gain contours should be made electronically, according to the format specified by ITU Circular.⁹⁷ To allow the Commission to determine the impact of the proposed system on existing Plan assignments and other services and to fulfill ITU requirements, applicants will have to submit an analysis demonstrating whether they exceed the limits specified in Annex 1 to Appendices S30 and S30A.⁹⁸ For tracking, telemetry and control operations for DBS systems, the United States must submit Appendix 4 and Appendix S4 information to advance publish and notify the ITU Radiocommunication Bureau of the frequencies that will be used by the DBS system. The ITU Radiocommunication Bureau requests the electronic submission of Appendix S4 information.⁹⁹ We propose to require that DBS applicants submit all the necessary ITU information outlined above and submit the Appendix S4 information in electronic form, and we seek comment on this proposal.

⁹⁴See e.g., *Application of Hughes Communications Galaxy, Inc., for Authority to Construct, Launch and Operate Galaxy/Spaceway, a Global System of Geostationary Ka band Fixed and Ku band Broadcast Communications Satellites*, File Nos. 174-SAT-P/LA-95 - 181-SAT-P/LA-95 (filed September 29, 1995).

⁹⁵E.g., if it is shown in an FCC application that the effect on the foreign system(s) is negligible.

⁹⁶See ITU Radio Regulations, Appendices S30 and S30A, Annex 2 (lists the basic characteristics to be furnished in notices relating to space stations in the broadcasting-satellite service).

⁹⁷ See ITU's Circular Letter C/58, dated October 21, 1996 (*Circular Letter C/58*).

⁹⁸When attempting to modify the Plans, an Administration must submit to the ITU the names of administrations who are affected by the proposed modification, or state that the limits in Annex 1 are not exceeded. See Section 4.3.5.1 of Appendix S30 and Section 4.2.6.1 of Appendix S30A.

⁹⁹ See *Circular Letter C/58*.

1.47 We also seek comment on whether we need to develop regulations to supplement those specified in Appendices S30 and S30A of the ITU Radio Regulations. For example, the DBS systems that operate in the United States use technical parameters that differ from the parameters on which the Region 2 Plans were developed.¹⁰⁰ United States DBS systems use digital modulation techniques instead of analog, have lower downlink effective isotropically radiated power (EIRP), and have extended the original intended service area delineated by the radio frequency beams of the Plans. In addition, the operational DBS systems typically use larger feeder link transmit earth station antennas than described in the Plans and have implemented receive earth station antennas with smaller diameters than assumed during the creation of the Plans.¹⁰¹ In light of these differing system parameters, which may not have been foreseen during the development of the international Radio Regulations, we seek comment on whether referencing Appendices S30 and S30A in the Commission's rules adequately specifies the technical requirements for DBS systems.

1.48 *Coordination among licensees at the same orbital location.* The Commission has assigned different DBS channels at the same orbital position to different entities. The close proximity of satellites located at the same orbital location can lead to uplink interference between adjacent channels, especially if the earth station transmit EIRPs are not similar. Appendix S30A states that a space station may be located anywhere within 0.2 degrees of the assigned orbital location,¹⁰² as long as the agreement of other administrations with channel assignments at the same orbital location is obtained. Such provisions do not address the domestic issue of different channels at the same location assigned to different licensees. We often need to coordinate among licensees, and we intend to apply our policy of requiring licensees at the same orbital location to coordinate among themselves to arrive at a mutually acceptable solution to any potential or existing interference between their operations. We seek comment on this issue. In addition, we propose extending to DBS licensees the requirement in Section 25.272(a) that satellite licensees establish a network control center to monitor and coordinate space station activities.¹⁰³ We seek comment on this proposal.

1.49 *Interference protection.* We seek comment on whether the implementation of DBS

¹⁰⁰ITU Radio Regulations, Appendices S30 and S30A contain provisions for "modifying" the Plans in order to include systems in the Plan that use different technical parameters.

¹⁰¹The Commission has submitted these technical modifications of the Plans to the ITU Radiocommunication Bureau in accordance with Article 4 of Appendices S30 and S30A.

¹⁰²*E.g.*, for the orbital position of 110° W.L., any location between 109.8° W.L. and 110.2° W.L.

¹⁰³*See* proposed modified rule § 25.272. This rule establishes general inter-system coordination procedures.

systems with technical parameters substantially different than those anticipated in the BSS Plans could result in harmful interference to other systems. For example, the Region 2 BSS Plan was created assuming receive earth stations with parabolic reflector antennas with diameters of 1 meter with a corresponding half-power beamwidth of 1.7° and the antenna reference pattern specified in Appendix S30 of the ITU Radio Regulations.¹⁰⁴ In the United States, receive earth stations with offset feed antennas as small as 45 centimeters in diameter have been widely implemented. Such receive earth station antennas have a half-power beamwidth of approximately 3.7° . In addition, the ratio between maximum gain and side-lobe discrimination decreases as the antenna dimensions decrease, thus decreasing the overall carrier-to-interference ratio. We are concerned that U.S.-licensed DBS systems receive sufficient interference protection and seek to ensure that subscribers' receive antennas will work effectively in today's and the future's potential radio frequency interference environment. At the 1997 World Radiocommunication Conference (WRC-97),¹⁰⁵ certain administrations supported proposals to protect DBS systems only to the technical parameters on which the Plans were based, including a receive earth station antenna of one meter in diameter, regardless of the parameters actually implemented. These proposals were not adopted by WRC-97, but the same issues may arise again in the future.

1.50 The Commission is committed to allowing systems to maximize their technical flexibility and service quality and recognizes that earth station receive antenna size is a very important factor to potential consumers of DBS service. We are aware that our technical rules need to take into account the fact that non-U.S. satellite systems using their Plan assignments to serve the U.S. could result in smaller satellite spacing than the current nine degree spacing between U.S. DBS orbital slots. In addition, WRC-97 adopted an allocation for non-geostationary (NGSO)-FSS in the BSS bands at 12 GHz, thereby raising the prospect of sharing between DBS and NGSO-FSS systems.¹⁰⁶ The Commission has received applications for NGSO-FSS satellite systems to operate in these bands.¹⁰⁷ Use of DBS frequencies by NGSO-

¹⁰⁴The reference pattern used is given in Figure 8 of Annex 5 to Appendix S30.

¹⁰⁵ WRC-97 began October 27, 1997 and ended November 21, 1997.

¹⁰⁶This includes the 12.2 - 12.7 GHz band in Region 2, 11.7 - 12.5 GHz in Region 1 and 11.7 - 12.2 GHz in Region 3. See Final Acts of WRC-97, Geneva, 1997, Footnote S5.487A. Resolution 532 (WRC-97) established provisional power flux density limits to protect GSO BSS systems from NGSO-FSS systems. See Final Acts of WRC-97, Geneva, 1997. In addition, the ITU set up a joint task group between several of its study groups (JTG 4-9-11) to review these provisional limits, as well as others to protect the FSS and terrestrial services from NGSO-FSS, in the next two years. The U.S. has established a domestic group (U.S. JTG 4-9-11) to prepare for the international meetings of the JTG 4-9-11. See *Public Notice*, Department of State, issued by Warren Richards (rel. December 15, 1997).

¹⁰⁷See *Application of SkyBridge L.L.C. for Authority to Launch and Operate The SkyBridge System* (File Nos.

FSS systems should not have a significant impact on the regulation of DBS and is, therefore, not the focus of this rulemaking. Such issues will be fully considered in future rulemakings. However, commenters and DBS service providers should be aware of and take into consideration the potential for such use in the future.

1.51 We request comment on whether the Commission should afford interference protection to DBS systems only to the extent that they meet certain receive antenna performance standards. Specifically, we request comment on what type of regulation would be appropriate, such as adopting side-lobe suppression or minimum gain requirements or perhaps requiring the system to have a minimum overall carrier-to-interference ratio. We note that, in implementing its two degree spacing policy with respect to the FSS, the Commission has adopted certain uplink and downlink power density requirements and earth station antenna performance requirements.¹⁰⁸

1.52 *Tracking, Telemetry and Control.* The ITU's Radio Regulations do not specifically address tracking, telemetry and control (TT&C) frequencies for DBS systems.¹⁰⁹ A number of applications have requested to use C or Ku-band FSS frequencies for on-station TT&C functions.¹¹⁰ More recently, applicants have requested to use C or Ku-band frequencies only for emergency or transfer orbit TT&C functions.¹¹¹ They have indicated that more world-wide facilities are available for transfer orbit operations in the various FSS bands than the DBS band. Use of FSS frequencies (*e.g.*, C and Ku-band) functions for DBS systems is generally not consistent with the international Table of Frequency Allocations, nor with the Commission's general requirements for performing TT&C functions in the same band as the service band.¹¹² Further, the use of C and Ku-band FSS allocations for TT&C functions at certain orbital locations is not in conformance with the C and Ku-band tri-lateral agreement between the United

48-SAT-P/LA-97 and 89-SAT-AMEND-97); SkyBridge's *Petition for Rulemaking* (RM No. 9147); *Application of Denali Telecom, LLC for Authority to Launch and Operate the Pentriad Highly Elliptical Orbit Satellite System* (File No. 160-SAT-P/LA-97).

¹⁰⁸See 47 C.F.R. §§ 25.134 and 25.209.

¹⁰⁹See § 25.201 (individual definitions for space telecommand, space telemetering, and space tracking).

¹¹⁰C-band refers to frequencies in the range 3700 MHz - 4200 MHz and 5925 MHz - 6425 MHz. Ku-band refers to frequencies in the range 11.7 GHz - 12.2 GHz and 14.0 GHz - 14.5 GHz. These frequencies are the primary bands used for FSS services.

¹¹¹See *MCI Order; Application of EchoStar DBS Corporation for Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 148°W.L.*, DA 96-2164 (1996) at ¶ 4.

¹¹²See 47 C.F.R. § 25.202(g).

States, Canada and Mexico, and could cause harmful interference to U.S. licensees in other services in these FSS bands.¹¹³ We propose requiring that licensees perform TT&C functions in-band in the DBS service band, such as within available guardbands. Applying Section 25.202(g) of the Commission's rules to DBS systems would accomplish this goal. We seek comment on this proposal.

1.53 *Feeder Link Earth Station Coordination with Terrestrial Services in the U.S.* A portion of the feeder link spectrum in the United States is also shared with terrestrial services, specifically, 17.7 - 17.8 GHz. Currently, there are no FCC rules that explicitly address sharing between these services.¹¹⁴ In practice, the Commission's policy has been to require that applicants follow the general earth station coordination requirements contained in Part 25.¹¹⁵ Sharing between terrestrial services and DBS feeder link earth stations has not been a problem in the past, and the limited number of feeder link earth stations facilitates sharing. For coordination between feeder link earth stations and terrestrial stations, we propose to continue to apply the coordination requirements currently in Part 25. These earth station coordination requirements, however, generally apply to commercial operations. U.S. Government coordination may also be required, and this will continue to be conducted through the normal inter-agency process.

¹¹³See "Trilateral Agreement Regarding Use of The Geostationary Orbit Reached by Canada, Mexico and The United States," *Public Notice*, dated September 2, 1988.

¹¹⁴We note that there is an ongoing rulemaking regarding satellite and terrestrial use of these bands throughout the 17.7-20.2 GHz band. See *Routine Licensing of Large Numbers of Small Antenna Earth Stations Operating in the Ka Band* (Petition for Rulemaking), RM No. 9005, filed Dec. 23, 1996.

¹¹⁵Feeder links to BSS are in an FSS allocation. It is consistent to regulate BSS feeder link earth stations in the same manner as other FSS earth stations.

C. DBS Ownership

1.54 *Introduction.* DBS and DTH-FSS combined account for the second largest number of subscribers within the MVPD market, accounting for 9.8%¹¹⁶ of the market as compared to cable's 87%.¹¹⁷ Unlike other video service providers such as broadcast television and cable, however, DBS satellite operators and providers have never been subject to national limits on audience or subscriber reach, or cross-ownership restrictions with other MVPDs such as cable systems.¹¹⁸

1.55 When DBS service was first authorized in 1984, the Commission did not impose ownership restrictions on DBS systems.¹¹⁹ Congress, however, did consider whether to impose a cable/DBS cross-ownership restriction as part of the 1992 Cable Act. Legislation introduced in the Senate included a cable DBS cross-ownership limitation.¹²⁰ The House and Senate

¹¹⁶This figure includes 7.2 million subscribers to DBS, DTH-FSS, and C-band reported as of June 1997 data. *1997 Report* at Appendix E, Table E-1.

¹¹⁷*Id.*

¹¹⁸In contrast, to encourage competition and a diversity of voices, market structure rules have been adopted for many services that distribute video programming to consumers. For example, current rules prohibit the owner of a group of TV stations from serving more than 35 percent of nationwide TV households, 47 C.F.R. § 73.3555; restrict the ownership of more than one TV station in a local area, 47 C.F.R. § 73.3555 ; prohibit the ownership of a TV station whose signal overlaps with a local cable system, 47 C.F.R. § 76.501; prohibit the ownership of a TV station and a local daily newspaper in the same community, 47 C.F.R. § 73.3555; and prohibit the ownership of MMDS (or wireless cable systems) by cable systems in their franchise area, 47 C.F.R. § 21.912. A currently stayed rule prohibits any person from reaching, through owned or attributed cable systems, more than 30% of all homes passed nationwide by cable. 47 C.F.R. § 76.503.

We note, however, that pursuant to the Telecommunications Act of 1996, we recently repealed all national ownership limits on radio broadcast stations and relaxed local radio broadcast station ownership limits. *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)*(Order), FCC 96-90 (1996). There are also pending rulemaking dockets in which questions have been raised concerning whether the local TV ownership rules should be relaxed. Congress repealed the statutory ban on cable/TV station cross-ownership in 1996. There are no restrictions on DBS/television station cross-ownership.

¹¹⁹*DBS Order* at 711-713.

¹²⁰The specific language stated that:

If ten percent of the households in the United States with television sets subscribe to any one service provided by multichannel video programming distributors directly via

Conference decided, however, that, because "there [were] no DBS systems operating in the United States at [the] time, it would [have been] premature to require the adoption of limitations" at that time.¹²¹ The conferees stated that they expected "the Commission to exercise its existing authority to adopt such limitations should it be determined that such limitations would serve the public interest."¹²²

1.56 The sole ownership limitation the Commission has applied to date has been with respect to the auction of the 110° W.L. and the 148° W.L. DBS orbital positions. In the *DBS Auction Order*, the Commission adopted a "one-time" restriction concerning DBS ownership.¹²³ The rule required divestiture within one year by a successful bidder for the 110° W.L. orbital position of any attributable interest in any channels at either of the other two orbital positions capable of serving the entire continental U.S., the two "full-CONUS" locations (119° W.L. or 101° W.L. orbital locations).¹²⁴ The rule was meant to prevent any one entity from having attributable interests in more than one of the three DBS full-CONUS locations.¹²⁵ The Commission did not adopt a general cable/DBS cross ownership limitation, but observed in the *DBS Auction Order* that its authority to approve transfers of control of licenses would enable it to address any competitive concerns raised by subsequent proposals by cable affiliated entities to acquire DBS spectrum.¹²⁶

1.57 The *1997 Competition Report* found that incumbent franchised cable systems continue to be the dominant distributors of multichannel video programming.¹²⁷ Although the

satellite to home satellite antennae, the Commission shall promulgate appropriate regulations (A) limiting ownership of any such distributor by cable operators and (B) requiring access to such satellite service by unaffiliated video programmers.

H.R. Conf. Rep. No. 102-862, 102d Cong., 2d Sess. (1992).

¹²¹*Id.*

¹²²*Id.*

¹²³*DBS Auction Order* at ¶ 28.

¹²⁴*Id.* at ¶ 85-97.

¹²⁵We found that a one-time auction rule would "encourage entry of another full-CONUS DBS service and will essentially ensure that each of the three full-CONUS orbital locations will initially be controlled by entities that do not share interests with DBS operators at the other two locations." *Id.* at ¶ 54.

¹²⁶*Id.* at ¶ 76.

¹²⁷*1997 Report* at ¶ 11.

share of non-cable MVPD subscribers, especially DBS, continues to rise, cable subscribers still account for 87% of all MVPD subscribers nationally, while DBS, the second-largest MVPD, accounts for only 9.8% of national MVPD customers.¹²⁸ Moreover, local markets for the delivery of multichannel video programming remain highly concentrated. Vertical integration of national programming services by cable operators has declined slightly, with approximately 40% of national programming services remaining vertically integrated with cable systems.¹²⁹ The December 1997 *Report on Cable Industry Prices* found that cable systems that do not face "effective competition" charged higher prices than cable systems that do face effective competition.¹³⁰ It found that the average monthly charge for cable system programming services and equipment rose 8.5% between July 1996 and July 1997.¹³¹ Thus, an important issue is whether DBS can act as a sufficient competitive alternative to cable systems to have a restraining effect on cable rates.

1.58 Given the status of competition in the MVPD market, we seek comment on whether it is preferable to continue to address specific competition and public interest concerns related to DBS ownership on a case-by-case basis, or whether it may now be appropriate to consider adopting rules governing DBS ownership and cross-ownership with other entities.¹³² On the one hand, a continued case-by-case approach would maintain our longstanding commitment to a flexible regulatory structure for DBS service, and would not prejudice our ability to address specific cases based on the facts in existence at any particular time. It would also take into account any changes in the structure of the MVPD market. On the other hand, a formal rule may provide greater predictability and consistency and avoid the need to address specific ownership questions on an individual basis in licensing proceedings, with attendant costs to both the applicant and the Commission. We seek comment on these general considerations, and any specific attributes of DBS which suggest that one approach may be preferable to the other.

¹²⁸*Id.*

¹²⁹*Id.*

¹³⁰*Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992* (Report on Cable Industry Prices), MM Dkt. No. 92-266, FCC 97-409 (rel. December 15, 1997) at ¶ 4-5.

¹³¹*Id.* at ¶ 28. This percentage represents the increase in the average monthly rate for the noncompetitive group of cable systems.

¹³²We note that the Commission has before it two applications from Primestar Partners, a group of large cable MSOs that also have ownership interests in a number of national cable programming services. As part of one application, Primestar seeks to acquire control of Tempo, currently a subsidiary of TCI Satellite Entertainment, Inc., which holds an authorization for 11 DBS channels at both 119° W.L. and 166° W.L. As part of the second application, Primestar proposes to acquire certain assets from MCI which includes a DBS license for 28 channels at 110° W.L.

1.59 In order to consider whether it may be desirable for the Commission to adopt any new rules concerning DBS horizontal ownership or cross-ownership, we seek comment on the product and geographic markets in which DBS systems compete. Information on the structure of horizontal ownership can suggest the extent to which there is competition in the provision of program distribution.

1.60 *Product Market.* We seek comment on the relevant product market¹³³ in which DBS systems compete for customers, and specifically whether they should be considered to compete in a DBS market, a satellite DTH market, or a more broadly defined MVPD market.¹³⁴ We note that we concluded in the *1995 DBS Auction Order* that the relevant product market for DBS systems is the MVPD market.¹³⁵ Moreover, the *1997 Competition Report* states that it is appropriate to use an MVPD market definition and the report analyzes an MVPD market in which, among other program distribution providers, cable and DBS compete.¹³⁶

1.61 Assuming that DBS competes in an MVPD market, what, if any, kinds of DBS ownership patterns raise competitive concerns? Are there any non-ownership relationships, such as leasing arrangements, that ought to raise competitive concerns? Since cable systems currently have the largest share of MVPD viewers,¹³⁷ should we be primarily concerned about ownership by cable companies of other MVPD providers such as DBS, and therefore should we adopt specific restrictions on DBS/cable cross-ownership?¹³⁸ If so, what kinds of restrictions

¹³³The concept of the relevant market is an antitrust concept and "is an important first step in assessing whether a firm has market power, *i.e.*, 'the power to control market prices and exclude competition.'" Economic theory and antitrust case law "define the relevant product market by analyzing the degree to which products or services are 'reasonably interchangeable by consumers for the same purposes.'" *1994 Report* at ¶¶ 38-40.

¹³⁴In this notice we use the term "DBS" to refer to high power direct to home satellite systems currently regulated under Part 100 of our rules. We note, however, that the *1997 Competition Report* includes medium power fixed satellite service direct-to-home satellite within its definition of DBS. *1997 Report* at ¶ 54.

¹³⁵*DBS Auction Order* at ¶ 36.

¹³⁶*1997 Report* at ¶ 123.

¹³⁷*Id.* at ¶ 4.

¹³⁸It should be noted that the term "cross-ownership" is usually used to describe ownership of firms providing two different but related services or products, *e.g.*, "TV/newspaper cross-ownership." In this Notice we discuss DBS/cable cross-ownership even while noting that DBS and cable both compete in the provision of video distribution services in a broad MVPD market.

would be appropriate? For example, should there be a flat ban on cross-ownership of a DBS system by any cable system? If not, should we impose a rule that limits cross-ownership for cable operators with large market shares? Should such a limit be based on potential subscribers or actual penetration of the commonly owned services?¹³⁹

1.62 If DBS is considered part of a broader MVPD market, and particularly if the Commission were to adopt a DBS/cable cross-ownership rule, is there a reason to be additionally concerned if any one DBS system controls more than a certain aggregate number of channels or more than a single DBS orbital position, especially a full-CONUS orbital position? For example, is it important that MVPD viewers have the option of choosing among several competing DBS systems?

1.63 Is it possible, for example, that the operation of several independently owned DBS systems could lead to a decline in the prices charged for DBS installation and service, and thus allow DBS to become a more significant competitor to cable systems? If so, does this suggest that there should be a ban on ownership of more than one DBS full-CONUS orbital position, regardless of whether a DBS operator has any cable or other MVPD interests? Should the three full-CONUS DBS positions allocated to the United States be analyzed differently from DTH-FSS positions that might be capable of reaching the entire continental U.S.? In considering rules regarding the control of DBS full-CONUS positions, how, if at all, should we take account of foreign-licensed satellites that are authorized to provide DBS service into the U.S.?¹⁴⁰

1.64 *Geographic Market.* The scope of the geographic market for a service "is defined by the geographic area to which buyers can reasonably turn or from which competing suppliers are likely to sell."¹⁴¹ The geographic scope of the market for DBS, at least, appears to be national, if not international, because the signals received from an individual DBS system cover all of the continental U.S., in the case of the 3 full-CONUS positions, and most of the U.S. in the case of other U.S. assigned orbital locations. As we concluded, however, in our 1995

¹³⁹In connection with its reconsideration of *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992* (Second Report and Order) in MM Docket No. 92-264, 8 FCC Rcd 8565 (1993), the Commission will consider whether any limitation on the number of national subscribers any cable system can reach should take into account ownership of other MVPD systems.

¹⁴⁰As noted above, the United States has reached an agreement with Mexico to allow DBS and DTH-FSS satellites licensed by either country to provide service into each other's territory. Also, as stated in the Commission's *DISCO II* order, foreign-licensed satellites will be able to provide DBS and DTH-FSS in the U.S. if the country licensing the satellite in question offers effective competitive opportunities to U.S.-licensed satellites in its home market. *DISCO II* at ¶ 98.

¹⁴¹1994 Report at ¶ 40.

Competition Report and reiterated in our 1996 and 1997 *Competition Reports*, the relevant geographic scope of the MVPD market for the provision of service to consumers is more appropriately a local market defined by the overlap of the "footprints" of the various service providers.¹⁴² A consumer views video programs at only one location at any given time (whether at home, an office, a hotel or some other public place). From the point of view of consumers, therefore, video programs available in another city have no direct relevance to their viewing choices. To a consumer located in Washington, D.C., the number of competitive services available to that consumer is unaffected by the number of choices available in New York City, New York, or in Des Moines, Iowa. We request comment on this analysis and what effect the limitations imposed by the Satellite Home Viewing Act¹⁴³ on DBS providers' marketing efforts have on defining the local geographic market.

1.65 In summary, we request comment on the appropriate product and geographic markets in which DBS systems compete and whether it would be desirable, as a means of promoting competition in the MVPD market generally, and the DBS market specifically, to adopt explicit DBS ownership restrictions.

IV. CONCLUSION

1.66 It is our goal to promote competition in the MVPD market generally, and we therefore seek to make DBS and DTH-FSS more competitive services by streamlining and clarifying the rules for all types of direct-to-home system operators. We also seek to implement a common sense regulatory approach by eliminating unnecessary rules and streamlining Commission regulation of the direct-to-home satellite market. At the same time, we seek to promote efficient and expeditious use of spectrum and orbital resources and to create a competitive MVPD marketplace for the benefit of the subscribing community on a national and international basis. It is with these fundamental objectives in mind that we propose the above-stated amendments. We request comment on these issues and proposals, and encourage all interested parties to participate in the resolution of this matter.

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

1.67 This is a non-restricted (*i.e.*, permit-but-disclose) notice-and-comment rulemaking

¹⁴²1997 Report at ¶ 124.

¹⁴³Satellite Home Viewing Act, 17 U.S.C. § 119.

proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Analysis

1.68 Pursuant to the Regulatory Flexibility Act of 1990, 5 U.S.C. §§ 601–612, (RFA) as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, the Commission's Initial Regulatory Flexibility Analysis with respect to this Notice of Proposed Rulemaking is as follows:

1. Reason for Action: This Notice of Proposed Rulemaking (NPRM) proposes to streamline and harmonize the Commission's direct broadcast satellite (DBS) service rules. We propose to incorporate the DBS rules into Part 25, the satellite communications part of the Commission's rules. We do not envision that the relocation of the DBS service rules will substantially alter the licensing provisions for the DBS service rules under current Part 100. The DBS service was initially developed in 1982 with the promulgation of "interim" rules. *DBS Order*, 90 FCC2d 676 (1982). Since 1994, DBS licensees have begun to provide service into the United States. We believe that the "interim" rules are outmoded with respect to the application and licensing procedures and the technical parameters for existing systems. Consistent with our goals of regulating services subject to our jurisdiction in a common-sense manner and promoting competition, this rulemaking seeks to streamline and simplify the Commission's rules governing the DBS service by applying a unified Form 312 for DBS space and earth stations. For instance, we propose to eliminate the Part 100 rules (Sections 100.72-.80) which govern DBS auctions and to regulate DBS auctions under the General Auction Rules contained in Part 1, subpart Q. In proposing to incorporate certain Part 100 rules into Part 25, we highlight two rules of particular importance. We seek comment on our proposal that we move our existing DBS foreign ownership rules from Part 100 to Part 25 and whether we should modify those rules in the event the Commission affirms the International Bureau's decision in the *MCI Order* and whether similar restrictions should apply to DTH-FSS. We also seek comment on how we can strengthen our rules regarding the provision of DBS service to Alaska and Hawaii. Because it is our goal to promote competition in the MVPD market generally, we also seek comment as to whether new rules addressing horizontal concentration in the MVPD market, such as limitations on cable/DBS cross-ownership, are necessary in order to prevent anti-competitive conduct in the DBS or MVPD markets.

2. Objectives: The objective of this proceeding is to streamline the DBS service rules and harmonize the regulation of the DBS service with other satellite services, where appropriate. While incorporating the DBS rules into Part 25, the location of the other satellite communications service rules, we seek comment on relocation of the foreign ownership rules of

Section 100.11; further measures we could take to promote service to Alaska and Hawaii; comments on proposals to update the DBS technical rules; and comment on whether to adopt rules to address issues related to concentration in the multi-channel video programming distribution market. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to existing permittees and licensees, result in the continued development of DBS and other satellite services to the public.

3. Legal Basis: This Notice of Proposed Rulemaking is adopted pursuant to Sections 1, 4(i), 303(r), 303(v), 307, 309(a), 309(j), 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 303(v), 307, 309(a), 309(j), 310, and 5 U.S.C. Section 553 of the Administrative Procedures Act.

4. Description and Estimate of Small Entities Subject to the Rules: The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or direct broadcast satellite service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with \$11.0 million or less in annual receipts.¹⁴⁴ According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the DBS category. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities.¹⁴⁵ The rules proposed in this Notice apply only to entities providing DBS service. Small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Since this is an established service, however, with limited spectrum and orbital resources for assignment, we estimate that no more than 15 entities will be Commission licensees providing these services. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by this rulemaking.

5. Reporting, Recordkeeping, and Other Compliance Requirements: The proposed action in this Notice would affect those entities applying for DBS construction permits and licenses and those applying to participate in auctions of DBS spectrum in the future. In the case where there is not any mutual exclusivity, applicants will be required to follow the recently streamlined application procedures of Part 25 for space and earth station licenses by submitting

¹⁴⁴13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4899.

¹⁴⁵U.S. Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

the information required by Form 312, where applicable. In the case where there is mutual exclusivity between applicants for DBS authorizations, the competitive bidding rules of Part 1 will be used to determine the licensee. Applicants will have to comply with the requirement to file a short-form (FCC Form 175). Completion of short-form FCC Form 175 to participate in an auction is not estimated to be a significant economic burden for these entities. The action proposed will also affect auction winners in that it will require them to submit a long Form 312 application for authorization. This process will be required by all DBS applicants whether selected through the competitive bidding process or not.

6. Federal Rules that Overlap, Duplicate or Conflict with These Proposed

Requirements: None. One of the main objectives of the Notice is to eliminate any existing overlap or duplication of rules between the DBS and other satellite services.

7. Any Significant alternatives minimizing impact on small entities and consistent with stated objectives: In developing the proposals contained in this Notice, we have attempted to minimize the burdens on all entities in order to allow maximum participation in the DBS market while achieving our other objectives. We seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize the impact of our rules on small entities. In particular, we seek comment on alternatives to the reporting, recordkeeping, and other compliance requirements discussed above.

8. Comments are solicited: Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

C. Initial Paperwork Reduction Act of 1995 Analysis

1.69 This Notice of Proposed Rulemaking contains either a proposed or a modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due April 6, 1998. 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.

D. Comment Filing Procedures

1.70 Comments and reply comments should be captioned using the docket number in this proceeding only. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before April 6, 1998 and reply comments on or before April 21, 1998. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. Please note, however, that comments and reply comments may be filed electronically, as described below. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Christopher J. Murphy of the International Bureau, 2000 M Street, N.W., Suite 500, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in WordPerfect 5.1 format.

1.71 Written comments by the public on the proposed and/or modified information collections are due on or before April 6, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

1.72 For purposes of this proceeding, we hereby waive those provisions of our rules that require formal comments to be filed on paper, and encourage parties to file comments electronically. Electronically filed comments that conform to the guidelines of this section will be considered part of the record in this proceeding and accorded the same treatment as comments filed on paper pursuant to our rules. To file electronic comments in this proceeding, you must use the electronic filing interface available on the FCC's World Wide Web site at <<http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts>>. Further information on the process of submitting comments electronically is available at that location and at <<http://www.fcc.gov/e-file/>>.

E. Ordering Clauses

1.73 Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 303(r), 303(v), 307, 309(a), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 303(v), 307, 309(a), 310, this NOTICE IS HEREBY GIVEN of our intent to adopt the policies set forth in this Notice and that COMMENT IS SOUGHT on all proposals in this Notice.

1.74 IT IS ORDERED that the Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et. seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A**Proposed Commission Rule Amendments**

Proposed Amendments to 47 CFR Part 25 and removal of Part 100 of the Commission's Rules:

1. Remove § 25.109(b).
2. Amend § 25.111 to add paragraph (c) to read as follows:

§ 25.111 Additional information.

* * * * *

(c) In the Direct Broadcast Satellite service, applicants, permittees and licensees shall also provide the Commission with all information it requires in order to modify the Appendix S30 Broadcasting-Satellite Service (BSS) Plans and associated Appendix S30A feeder link Plans, if the system uses technical characteristics differing from those specified in the Appendix S30 BSS Plans, the Appendix S30A feeder link Plans, Annex 5 to Appendix S30 or Annex 3 to Appendix S30A. For such systems, no protection from interference caused by radio stations authorized by other Administrations is guaranteed until the agreement of all affected Administrations is obtained and the modified frequency assignment becomes a part of the Plans. Authorizations for which coordination is not completed and/or for which the necessary agreements under Appendices S30 and S30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations.

3. Amend § 25.114 to add paragraph (c)(22) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(22) If the proposed DBS system's technical characteristics differ from those specified in the Appendix S30 BSS Plans, the Appendix S30A feeder link Plans, Annex 5 to Appendix S30 or Annex 3 to Appendix S30A, each applicant shall provide:

(i) the information requested in Annex 2 to Appendices S30 and S30A of the ITU's Radio Regulations. Further, applicants shall provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented.

(ii) analyses of the proposed system with respect to the limits in Annex 1 to Appendices S30 and S30A.

* * * * *

4. Add § 25.146 to subpart B to read as follows:

§ 25.146 Licensing Provisions for the Direct Broadcast Satellite Service.

(a) DBS eligibility and foreign ownership. An authorization for operation of a station in the Direct Broadcast Satellite Service shall not be granted to or held by:

- (1) Any alien or the representative of any alien;
- (2) Any foreign government or the representative thereof;
- (3) Any corporation organized under the laws of any foreign government;
- (4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
- (5) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(b) License terms. Licenses for non-broadcast DBS facilities will be issued for a period of ten (10) years. Licenses for broadcast DBS facilities will be issued for a period of eight (8) years.

(c) Due diligence. (1) All persons granted DBS authorizations shall proceed with due diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the authorization. The satellite stations shall also be required to be in operation within six years of the authorization grant.

(2) In addition to the requirements stated in paragraph (1) of this section, all persons who receive new or additional DBS authorizations after January 19, 1996 shall complete construction of the first satellite in their respective DBS systems within four year of grant of the authorization. All satellite stations in such a DBS system shall be in operation within six years of the grant of the authorization.

(3) DBS licensees shall be required to proceed consistent with all applicable due diligence obligations, unless otherwise determined by the Commission upon proper showing in any

particular case. Transfer of control of the authorization shall not be considered to justify extension of these deadlines.

(d) Geographic service requirements. Those entities acquiring, extending, or renewing DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized orbital location.

(e) DBS subject to competitive bidding. Mutually exclusive initial applications to provide DBS service are subject to competitive bidding procedures. The general competitive bidding procedures found in part 1, subpart Q of this chapter, will apply unless otherwise provided in this part. Once a winning bidder has made its down payment, the Commission will use the long-form satellite service application (*i.e.*, FCC Form 312) pursuant to the application, processing, and licensing provisions of part 25, subpart B, where applicable. When there is no mutual exclusivity for DBS channels offered for assignment, the Commission will process applications pursuant to the application, processing, and licensing provisions of part 25, subpart B, where applicable.

(f) Technical qualifications. DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices S30 and S30A of the ITU's Radio Regulations. Operation of systems using differing technical characteristics may be permitted, with adequate technical showing, if a request has been made to the ITU to modify the appropriate Plans to include the system's technical parameters. Until the system completes the Appendices S30 and S30A, Article 4, modification procedures and becomes a part of the Plans, the operation cannot cause harmful interference to assignments that conform to the Plans or other services sharing the same frequency bands, nor can it receive protection from assignments that conform with the Plans or other services sharing the same frequency bands.

5. Amend § 25.201 by adding the definition "Direct broadcast satellite service" to read as follows:

§25.201 Definitions.

* * * * *

Direct broadcast satellite service. A radio communication service in which signals transmitted or retransmitted by space stations, using frequencies specified in section 25.202(a)(7), are intended for direct reception by the general public. In the Direct Broadcast Satellite Service the term direct reception shall encompass both individual reception and community reception.

* * * * *

6. Amend § 25.202 to revise the table in paragraph (a)(1) and add paragraph (a)(7) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

Space-to-Earth	Earth-to-Space
3700-4200 MHz ¹	5925-6425 MHz ¹
10.95-11.2 GHz ¹	13.75-14.0 GHz ⁴
11.45-11.7 GHz ²	14.0-14.2 GHz ⁵
11.7-12.2 GHz ³	14.2-14.5 GHz
17.7-19.7 GHz ¹	17.3-17.8 GHz ⁶
19.7-20.0 GHz	27.5-29.5 GHz ¹
	29.5-30.0 GHz

* * * * *

⁶Use of this band is limited to feeder links for the Direct Broadcast Satellite service.

* * * * *

(a)(7) The following frequencies are available for use by the Direct Broadcast Satellite service:

12.2 - 12.7 GHz: space-to-Earth.

7. Revise § 25.272 to read as follows:

§ 25.272 General inter-system coordination procedures.

(a) Each space station licensee in the Fixed-Satellite Service or Direct Broadcast Satellite Service shall establish a satellite network control center which will have the responsibility to monitor space-to-Earth transmissions in its system and to coordinate transmissions in its satellite system with those of other systems to prevent harmful interference incidents or, in the event of a

harmful interference incident, to identify the source of the interference and correct the problem promptly.

* * * * *

8. Revise § 25.601 to read as follows:

§ 25.601 Equal employment opportunity requirement.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased fixed-satellite service or direct broadcast satellite service facility (operating under this part) to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E, of this chapter, if such entity exercises control (as defined in part 76, subpart E, of this chapter) over the video programming it distributes. Notwithstanding other EEO provisions within these rules, a licensee or permittee of a direct broadcast satellite station licensed as a broadcaster must comply with the equal employment opportunity requirements set forth in part 73.

9. Remove Part 100.

SEPARATE STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH
DISSENTING IN PART

Re: Policies and Rules for the Direct Broadcast Service -- Notice of Proposed Rulemaking

The rule making proceeding we initiate today has a laudable goal: "to streamline and simplify the Commission's rules governing the direct broadcast satellite service." Despite its deregulatory tone, however, the Commission herein considers adopting new cross-ownership regulations that would be unnecessary and likely would prove burdensome to consumers and industry. Accordingly, I dissent in part.

There is no need for a general rule that has such extremely limited and distant applicability. We will not be presented DBS cross-ownership issues thousands, hundreds, or even tens of times. By virtue of the limited number of DBS orbital slots, such rules could be applied only a handful of times. Adopting a general rule would require us to predict the future and make hypothetical policy judgments; yet a thorough analysis of specific situations as they arise would take little, if any, additional time. To the extent we consider DBS cross-ownership issues, we should do so only on a case-by-case basis.

In addition, we simply should not consider adopting rules that easily could impose significant burdens on consumers and industry in the context of a rulemaking proceeding that "seeks to streamline and simplify the Commission's rules."

* * * * *

**STATEMENT OF
COMMISSIONER MICHAEL K. POWELL
APPROVING IN PART, DISSENTING IN PART**

Re: Policies and Rules for the Direct Broadcast Satellite Service, IB Docket No. 98-21

I fully support the decision to streamline and simplify the Commission's rules governing the direct broadcast satellite (DBS) service. I believe it should be the constant task of this agency to examine our rules so that we can eliminate those that are not necessary. Because I believe such consolidation will improve our regulation, I am voting to approve that portion of the Notice.

Having said this, there is one disturbing island in this sea of words about deregulation and efficiency. The item invites us to consider imposing more regulation in the form of a DBS/cable cross-ownership rule. On what basis? The answer we are given is a hypothetical string of assumptions that suggest the need for further regulatory action: cable rates are high, DBS is the best potential competitor to cable, cable ownership of DBS systems might substantially reduce competition, so maybe we need a blanket rule banning such combinations. Why so? We are not without authority to examine such horizontal combinations when they are proposed. We can conduct classic antitrust analysis to consider possible anticompetitive effects and we have the public interest standard which we can apply on a case-by-case basis. Additionally, we are not the only agency with power and expertise to act in this area. The Department of Justice has adequate authority and an admirable record in evaluating and blocking anticompetitive combinations.

There might be cause for considering a rule if we were seeing numerous cable/DBS combinations, and if we were seeing anticompetitive effects, and if we saw that our existing powers were insufficient to address these problems. But that is not the case. Moreover, we will have the chance to evaluate competitive issues in the context of the Primestar merger, where we will have the benefit of real facts and a real record on which to think through these issues and to test the adequacy of our existing authority. Although the series of questions proposed in the item appear to be balanced, they have the air of a solution in search of a problem.

It may prove true that horizontal combinations among DBS and cable providers limit competition in the MVPD market. So may many other things such as program access restrictions. Indeed, the issue of MVPD competition presents broader questions that should be evaluated comprehensively and not in tiny pieces scattered here and there among orders that have very little to do with the subject. Rather, that inquiry should be posed in the context of a comprehensive inquiry into ways in which the Commission can promote more competition in that market.

In other circumstances, I might agree with my colleagues that it would be best to initiate a rulemaking proceeding where we can solicit broader input. It is my view, however, because we have a case before us that will provide better information to inform our judgment, that this is not a propitious time to begin this inquiry. I respectfully dissent from this portion of the item.