constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title of 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(263)(i)(A)(2) and (B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(263) * * *

(i) * * *

(A) * * *

(2) Rule 102 adopted on February 4, 1977 and amended on June 12, 1998.

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102 adopted on January 21, 1999.

* * * * *

[FR Doc. 99–26068 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[IB Docket No. 98–192; FCC 99–236]

In the Matter of Direct Access to the INTELSAT System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a policy to permit Level 3 direct access to the International Telecommunications Satellite Organization (''INTELSAT'') satellite system from earth stations within the United States, for the purpose of providing international satellite services. As a result of this decision, U.S. carriers and users of INTELSAT may enter into contractual agreements with INTELSAT for ordering, receiving, and paying for services at the same rates INTELSAT charges its Signatories, *in lieu* of having to go exclusively through Comsat, the U.S. Signatory to INTELSAT. Comsat is permitted, however, to file a tariff with the Commission that requires Level 3 direct access customers to reimburse it for certain costs incurred in its unique role as the U.S. Signatory to INTELSAT. The document denies requests made by telecommunications carriers for ''fresh look'' at their long-term contracts with Comsat and ''portability'' of the INTELSAT space segment capacity they use that is held by Comsat. Finally, the document limits involvement by dominant foreign INTELSAT Signatories under a specific circumstance and requires that INTELSAT waive its immunities under certain limited circumstances. With this decision, the United States joins 94 other INTELSAT signatory countries that already permit direct access to INTELSAT from earth stations within their countries. Implementing direct access from the United States will lower prices, enhance competition, and lead to greater efficiency and flexibility in the use of INTELSAT space segment capacity.

DATES: Effective December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Michael McCoin, International Bureau, Satellite Policy Branch, (202) 418–0774, or email at mmccoin@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 98–192, FCC 99–236, adopted September 15, 1999, and released September 16, 1999. The complete text of this Commission *Report and Order* is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., or may be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857–3800, 2131 M Street, N.W., Washington, D.C. 20036. The complete text is also available under the file name

fcc99236.wp on the Commission's internet site at http://www.fcc.gov/Bureaus/International/Orders/1999.

Summary of the Report and Order

1. This *Report and Order* permits Level 3 direct access to the INTELSAT satellite system from earth stations in the United States for the provision of international satellite services, subject to certain conditions and limitations. The Report and Order affirms the Commission's tentative conclusions in the Notice [1] that the Commission has authority under the Communications Satellite Act of 1962 (''Satellite Act'') to permit Level 3 direct access and that such action would not be a ''taking'' of private property without ''just compensation'' under the Fifth Amendment to the United States Constitution. The document concludes that direct access is in the public interest. Specifically, the Commission finds that direct access will result in (1) cost savings, greater efficiency, flexibility, and control over facility use by U.S. customers; (2) competitive pressure on Comsat rates and the rates of competing satellite operators; and (3) enhance the ability of U.S. carriers to compete globally with foreign counterparts that already may obtain satellite capacity directly from INTELSAT.

2. INTELSAT is a 143 member intergovernmental organization that owns and operates a global system of satellites. It is located in Washington, D.C. and is a key provider of satellite transmission capacity for both U.S. commercial and governmental use. In 1992, INTELSAT developed procedures for non-Signatories to obtain space segment capacity directly from INTELSAT rather than requiring access through the national Signatory. Level 3 direct access requires a customer to enter into a service agreement with INTELSAT that sets forth the general terms and conditions for INTELSAT supply of its space segment capacity. Through the service agreement, a customer is able to access INTELSAT space segment directly at INTELSAT tariff rates, known as INTELSAT Utilization Charges (''IUC''). Level 3 direct access customers have no investment obligations in the INTELSAT system and no governance rights within the organization. A Signatory, such as Comsat, permitting Level 3 direct access would still earn a return on its investment in proportion to space segment capacity used by a Level 3 direct access customer in its country (currently between 14 and 18 percent).[2]

3. The Commission initiated this proceeding as a result of requests in an earlier proceeding by United States carriers and other users of INTELSAT to permit direct access to the INTELSAT system as a condition for granting Comsat non-dominant status in its provision of INTELSAT services.[3] Although the Commission did not require that direct access be permitted as a condition to granting Comsat non-dominant status, it committed to initiating this proceeding ''expeditiously to explore the legal, economic, and policy ramifications of direct access.'' [4] In the *Notice*, the Commission tentatively concluded that the Commission has authority under the Satellite Act and the Communications Act of 1934 (''Communications Act'') to permit United States carriers and other users to obtain Level 3 direct access to the INTELSAT system. The *Notice* requested comment on whether Level 3 direct access would result in benefits to carriers, other users, and end users, and whether it would enhance competition.

4. In adopting this policy, the Commission concludes that Level 3 direct access will benefit U.S. INTELSAT customers in the form of a cost savings of between 10 and 71 percent off Comsat tariff rates. The document notes, however, that because Comsat must continue to incur expenses in its role as the U.S. Signatory to INTELSAT, the Commission will allow it to require that direct access customers pay Comsat a surcharge to recover certain Signatory expenses. The Commission finds that a 5.58 percent surcharge to be reasonable based on the record before us. Comsat will be allowed to file a tariff with the Commission to collect the surcharge.

5. To guard against unfair competitive distortions in the U.S. market, the Commission limits in the United States direct access participation of INTELSAT Signatories or affiliates that control 50 percent or more of all the INTELSAT capacity consumed in that Signatory or affiliate's respective home market. These Signatories, however, will still be allowed Level 3 direct access from the United States to locations other than these markets. The *Report and Order* states that this limitation will remove the incentive for Signatories to support the lowering of INTELSAT tariff rates to uneconomic levels—levels that do not reflect INTELSAT's full costs of providing direct access in the U.S. market.

6. The Commission also states that it would expect INTELSAT to voluntarily waive its immunity from suit and process to cover any direct marketing of services and any negotiation of agreements with U.S. carriers that would lead to the provision of services and rates not included in the INTELSAT IUC or pursuant to service agreements different from what INTELSAT generally offers under Level 3 direct access.

7. The Commission does not grant the requests of carriers seeking fresh look at their long term carrier contracts with Comsat for INTELSAT space segment capacity. The *Report and Order* concludes that the carriers had not met the standard for fresh look and that the circumstances surrounding the consummation of these contracts supports leaving them as is. This Commission also did not act on carriers requests for portability of their INTELSAT capacity, obtained through Comsat, because the current record is insufficient. Specifically, the *Report and Order* noted that there is no evidence that INTELSAT capacity will not be available due to Comsat's control of INTELSAT spectrum capacity from the United States. The Commission, however, said it would consider the issue of portability if direct access customers demonstrate that Comsat's control of space segment capacity prevents realization of direct access benefits, and commercial solutions do not appear available.

Final Regulatory Flexibility Analysis

8. As required by section 603 of the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice* to this *Report and Order*. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). *See In the Matter of Direct Access to the INTELSAT System*, IB Docket No. 98–192, File No. 60 SAT–ISP–97, Notice of Proposed Rulemaking,

[1] *In the Matter of Direct Access to the INTELSAT System*, IB Docket No. 98–192, File No. 60–SAT–ISP–97, Report and Order, 63 FR 58755, (November 5, 1998) (''*Notice*'').

[2] Under the INTELSAT Operating Agreement, the Board of Governors establishes a target rate of compensation (return) for shareholders' (''Signatories'') invested capital. All shareholders are entitled to the target rate of return, which is periodically adjusted by the INTELSAT Board of Governors. *See* INTELSAT Operation Agreement, Article 8.

[3] *Comsat Corporation Petition pursuant to Section 10(c) of the Communications Act of 1939, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, FCC 98–78, 63 FR 25811, (May 11, 1998) (''*Comast Non-Dominant Order*'').

[4] *Comsat Non-Dominant Order*, 63 FR 25811.

13 FCC Rcd 22013, 22052–54 (1998). The Commission then sought written public comment in that proceeding, including comments on the IRFA. No party filed comments in response to the IRFA. This *Report and Order* promulgates no new rules and our action here does not affect the previous analysis in the *Notice*. The Commission certifies that there will be no significant effect on a substantial number of small entities.

A. Need for and Objectives of Rules

9. In this *Report and Order*, the Commission permits direct access to the INTELSAT satellite system, *in lieu* of users having to obtain service through Comsat Corporation. This will result in a variety of benefits to users and ultimately consumers including: cost savings of between 10–71 percent over Comsat rates, greater efficiency, and flexibility and control over facility use. In addition, this action will place competitive pressure on the current rates for satellite capacity and enable U.S. carriers to compete more effectively globally.

B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis

10. No comments were submitted in direct response to the RFA.

C. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

11. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business'', ''small organization'', and ''small governmental jurisdiction''. See 5 U.S.C. 601(6). The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). See 5 U.S.C. 601 *et seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

12. The Commission has not developed a definition of small entities specifically applicable to this situation. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, ''Not Elsewhere Classified.'' This definition provides that a small entity is one with no more than $11 million annual receipts. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899. According to the Census Bureau data, there were a total of 848 communications services in operation in 1992 that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $9.999 million or less and qualify as small entities. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). The census report does not provide more precise data. Comsat Corporation and Lockheed Martin would be the only business affected by the policy enacted in this *Report and Order*. Each of their annual receipts are in excess of $11.0 million and, therefore, cannot be classified as a ''small business.'' Accordingly, the number of small businesses impacted by the policy change here is zero.

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

13. The procedures for implementing Level 3 direct access to the INTELSAT system from the United States, including the surcharge element, will consist of several elements. Subsequent to release and publication in the **Federal Register**, the International Bureau shall issue a Public Notice establishing a 21-day period (from the date of the public notice) for eligible carriers and users to notify the Commission in writing that they want Level 3 direct access to INTELSAT. The public notice also will specify the name and address for filing any such notification. The International Bureau will forward the names of all the eligible U.S. carriers and users to Comsat. Comsat shall be required to inform INTELSAT within ten days of receiving these eligible names that they are authorized to obtain Level 3 direct access from INTELSAT without further approval of the U.S. Signatory—Comsat—consistent with the procedures established by INTELSAT that permits ''blanket authorizations'' for Level 3 direct access. Any eligible carriers and users, not part of the initial ''blanket authorization'' request sent to INTELSAT, may request that Comsat add them to the list of carriers and users eligible for Level 3 direct access ''blanket authorizations.'' Comsat will be required to inform INTELSAT within ten days of receiving each such subsequent request. Within 60 days after publication in the **Federal Register** of this Report and Order, Comsat may file, on one day's notice, a tariff of the terms and conditions of surcharges applicable to U.S. Level 3 direct access customers, consistent with the findings in this Report and Order. The carriers and users obtaining Level 3 direct access from INTELSAT shall pay Comsat the surcharge specified in Comsat's effective tariff that is applicable to the services obtained from INTELSAT. Finally, Comsat may establish reporting mechanisms with INTELSAT for the limited purpose of assuring that Comsat can identify the appropriate surcharge that U.S. direct access customers must pay Comsat upon receipt of service from INTELSAT under Level 3 direct access. Comsat may take appropriate steps through INTELSAT to terminate a customer's Level 3 direct access status for failure to pay the appropriate surcharge.

E. Steps Taken To Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

14. This *Report and Order* promulgates no new rules or policies that would effect small business concerns. The policies it does advance, however, should positively impact competition in the satellite services market.

Report to Congress

15. The Commission shall send a copy of this *Report and Order*, including the status of the FRFA in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). Since this *Report and Order* promulgates no new rules and does not affect the IRFA in the *Notice*, it is not necessary to publish an FRFA in the **Federal Register**.

Ordering Clauses

16. Accordingly, *it is ordered*, that, pursuant to Sections 102 and 201(c)(2), (7) and (11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701 and 721(c)(2), (7) and (11),

and 1, 2, 4(c), 201, 202, 214, 301, 303, 307, 308 and 309, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(c), 201, 202, 214, 301, 303, 307, 308 and 309 that on December 6, 1999 Level 3 direct access to INTELSAT shall be available to carriers and users authorized to obtain INTELSAT space segment capacity for the provision of telecommunications services to and from the United States in accordance with the terms and conditions of this Report and Order and those established by INTELSAT to implement Level 3 direct access.

17. *It is further ordered,* that, following publication in the **Federal Register** of this Report and Order, the International Bureau shall release a Public Notice requesting authorized carriers and users desiring to obtain Level 3 direct access to INTELSAT to so inform the Commission within 21 days of the release of the Public Notice.

18. *It is further ordered,* that, in its capacity as the U.S. Signatory to INTELSAT, and in accordance with procedures established by INTELSAT permitting ''blanket authorizations'' for Level 3 direct access, Comsat shall inform INTELSAT in writing within ten calendar days of receiving the information from the International Bureau that the identified authorized carriers and users responding to the Public Notice may obtain Level 3 direct access from INTELSAT on the effective date of this Report and Order, as provided in paragraphs 206 and 216, without further approval of the U.S. Signatory.

19. *It is further ordered,* that, authorized carriers and users, not identified as part of the initial ''blanket authorization'' sent to INTELSAT by Comsat, may request Comsat to request adding them to the list of named carriers and users eligible for Level 3 direct access and Comsat shall so inform INTELSAT within ten days of receiving each such subsequent request.

20. *It is further ordered,* that, within 60 days of publication in the **Federal Register** of this Report and Order, Comsat may file, on one day's notice, a tariff of the terms and conditions of the surcharge applicable to U.S. Level 3 direct access customers which shall be consistent with findings in the Report and Order.

21. *It is further ordered,* that, authorized carriers and users obtaining Level 3 direct access from INTELSAT shall pay Comsat the surcharge specified in Comsat's effective tariff that is applicable to the services obtained from INTELSAT.

22. *It is further ordered,* that, in its role as the U.S. Signatory, Comsat may establish reporting mechanisms with INTELSAT for the limited purpose of assuring that Comsat can identify the appropriate surcharge that U.S. direct access customers must pay Comsat upon receipt of service from INTELSAT under Level 3 direct access.

23. *It is further ordered,* that, Comsat's tariff may provide that failure to pay the appropriate surcharge will result in loss of a customer's Level 3 direct access privileges.

24. *It is further ordered,* that the Comsat Corporation MOTION TO STRIKE the *ex parte* filing submitted by counsel for the Satellite Users Coalition, IS DENIED.[5]

25. *It is further ordered,* that, the Commission's Office of Managing Director shall send a copy of this Report and Order, including Final Regulatory, Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

26. *It is further ordered,* that policies and requirements established in this Report and Order shall take effect December 6, 1999, or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507, whichever occurs later.

List of Subjects in 47 CFR Chapter 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–26148 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

[5] Comsat moves to strike the filing on September 9, 1999 by the Satellite Users Coalition giving notice of an *ex parte* presentation it made to Commission staff the previous day, prior to release of the Sunshine Notice. *See* Letter from Comsat Corporation to the Secretary, Federal Communications Commission, dated September 9, 1999. *See also* Opposition to Motion to Strike by Satellite Users Coalition, IB Docket No. 98–192, File No. 60–SAT–ISP–97 (Sept. 13, 1999). *See also* Comsat Reply to Opposition to Motion to Strike, IB Docket No. 98–192, File No. 60–SAT–ISP–97 (Sept. 14, 1999). Comsat contends that receipt of this required filing the following day, by staff not present at the September 8, 1999 meeting, constituted a violation of our *ex parte* rules which prohibits presentations to decision-makers on matters listed on the Commission's Agenda. *See* 47 CFR 1.1203(a). However, the oral and other information provided by the Satellite Users Coalition on September 8, 1999, was constructively available to all Commission decision-makers on that date. In addition, the Satellite Users Coalition was required to file this information for the public record by the end of the next day in accordance with Section 1.1206(b) of our rules. 47 CFR 1.1206(b). As a result, service on decision-makers not present at the September 8 meeting did not constitute a violation of Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252; FCC 99–244]

1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's re-assessment of the 45 MHz Commercial Mobile Radio Service (CMRS) spectrum cap and cellular cross-interest rules initiated as part of our 1998 biennial review of the Commission's regulations pursuant to section 11 of the Communications Act. After careful analysis and extensive review of the rules and the record in this proceeding, the Commission concludes that at this time the spectrum cap and cellular cross-interest rules continue to be necessary to promote and protect competition in CMRS markets. However, the Commission finds that it is appropriate to modify both rules to allow some greater cross-ownership at this time. The Commission adopts a modest increase in the spectrum cap's current aggregation limit in rural areas to reflect the differing costs and benefits of limits on spectrum aggregation in rural areas, and a separate attribution benchmark of 40 percent for passive institutional investors. The Commission amends the cellular cross interest rule by increasing the attribution benchmarks used in the rule. Finally, as part of this proceeding, the Commission denied a petition to forbear from enforcement of the CMRS spectrum cap filed by the Cellular Telecommunications Industry Association (CTIA).

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: David Krech or Pieter van Leeuwen, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order* in WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252, adopted September 15, 1999, and released September 22, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service,