

Radiocommunication Conference ("WRC-95"). The NPRM proposed allocation of the 455-456 MHz and 459-460 MHz bands on a co-primary basis to non-voice, non-geostationary MSS Earth-to-space operations (also referred to as Little LEO services), consistent with the Region 2 MSS allocation. Under the proposal, Little LEO mobile earth station ("MES") terminals would be able to use the spectrum for Earth-to-space ("uplink") transmissions, including service and feeder links. The Commission proposed that Little LEO operations in these bands protect incumbent stations in the fixed and mobile services that already occupy the spectrum. This proposed allocation would supplement the 4.05 megahertz of spectrum previously allocated for Little LEO services.

2. We find that with the passage of time, the NPRM and record in this proceeding has become outdated. In particular, we find that the proposals and comments therein do not adequately reflect recent developments that may have altered the needs and plans of the Little LEO community and the current views and needs of incumbents in the bands.

3. Specifically, in the recent government transfer band spectrum reallocation proceeding, we allocated the 1390-1392 MHz band to the fixed-satellite service for Little LEO feeder uplinks and the 1430-1432 MHz band for Little LEO feeder downlinks on a co-primary basis. The allocation is contingent on completion of ongoing studies and adoption of an international allocation for this spectrum. Without this allocation, feeder links would continue to have to share the same bands as service links. The new feeder link spectrum would allow Little LEO operators to more efficiently use existing service link spectrum to provide service to customers. The upcoming WRC-2003 is expected to consider whether additional service and feeder link spectrum should be allocated for the Little LEO service. The United States, in its preliminary view, supports such an allocation.

4. Any consideration at this time of the spectrum needs of Little LEOs must take into account the WRC-2003 preparations, any changes in the Little LEO industry, and current industry needs in light of our decision in the government transfer band spectrum reallocation proceeding. The record in this docket does not encompass these factors. Accordingly, we conclude that it would be premature for us to take any action with respect to Little LEO allocations in advance of WRC-2003. After WRC-03, we will evaluate any

new allocations for this service that may arise. Considering Little LEO service and feeder link spectrum requirements at that time would allow us to make spectrum management decisions in a manner that best accommodates Little LEO spectrum needs, as well as the needs of incumbent operations.

5. We note that in previous cases where the record has been overtaken by events, the Commission has concluded that the public interest is best served by the termination of the proceeding. The present circumstances of this proceeding are of the same character, and we terminate it without prejudice to the substantive merits. We note that in other circumstances, the Commission has sometimes sought to refresh a stale record. We decline to do so here because we believe that any Little LEO allocation issues that remain after the *Government Transfer Bands*, R&O, 67 FR 6172, February 11, 2002, should be addressed in this proceeding would not accomplish this objective. We make no decision with respect to the underlying allocation proposals contained in the *NPRM*. To the extent that these issues are still relevant notwithstanding the passage of time, nothing precludes us from independently evaluating them in the context of a separate proceeding. Petitioners are free to file an updated petition for rulemaking if they consider the relief the requested to remain relevant to their needs. See, e.g., *Petition to Authorize Co-Primary Sharing of the 450 MHz Air-to-Ground Radiotelephone Service with BETRS*, MO&O at paragraph 4, DA 00-72, *Memorandum Opinion and Order*, 15 FCC Rcd 1859 (2000).

6. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C 154(i) and (j), and § 1.425 of the Commission's rules, 47 CFR 1.425, the proceeding in ET Docket No. 97-214 is *terminated*.

Federal Communications Commission .

Marlene H. Dortch,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket 92-297; FCC 01-172]

Rules To Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC) has adopted an order disposing of petitions for clarification or reconsideration of rules for the licensing and operation of communication satellite systems using the Ka Band for transmission between space stations and earth stations. We tentatively agree, however, that greater specificity in the service-coverage rule for Ka-Band systems may be desirable, and we intend to review this subject in the forthcoming rulemaking concerning the second-round Ka-Band applications.

DATES: Effective June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in CC Docket No. 92-297; FCC 00-172, adopted May 22, 2001 and released on May 24, 2001. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Room, CY-A257, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554, telephone (202) 863-2893m facsimile (202) 863-2893 or via email qualexint@aol.com. It is also available on the Commission's website at <http://www.fcc.gov>.

Summary of Memorandum Opinion and Order

Coverage Requirements

The FCC established service rules for Fixed Satellite Service ("FSS") systems transmitting in the Ka-Band in the *Third Report and Order* in Docket No. 92-297, 62 FR 61448, November 18, 1997. Motorola Global Communications, Inc. filed a petition asking the FCC to revise

a rule adopted in the *Third Report and Order* that prescribes coverage requirements for non-geostationary-orbit (“NGSO”) systems. The rule provision in question, 47 CFR 25.145(c), states that an applicant for an NGSO FSS Ka-Band authorization must demonstrate that the proposed system could provide continuous service throughout the United States, Puerto Rico, and the U.S. Virgin Islands and must also show that the system could provide service for at least 18 hours in any 24-hour period anywhere outside the United States between 70 degrees North latitude and 55 degrees South latitude. Motorola asked the FCC to insert provisions defining required service coverage in terms of a five-degree minimum above-horizon elevation angle for the earth-station-to-satellite sight-line. Motorola contended that by establishing a measurable performance threshold the proposed amendment would make it possible for the coverage requirement to be consistently applied. The FCC pointed out, however, that propagation in the Ka Band is highly susceptible to rain attenuation and that the duration and intensity of rain fade affecting a satellite link are inverse functions of the time-averaged elevation angle formed by the sight-line from the earth station to the satellite; the lower the angle, the greater the rain-fade effect. The FCC said that defining “service” in terms of a five-degree minimum elevation angle would have a bearing on quality of service everywhere within the defined coverage area, including locations where rainfall is generally plentiful. As there was no evidence of record that broadband NGSO FSS Ka-Band service could be reliably provided at elevation angles as low as five degrees in areas where rainfall is plentiful, the FCC declined to adopt the proposed rule amendment.

Construction Milestones

A number of the license applicants involved in the first Ka-Band FSS processing round, including Hughes Communications Galaxy, Inc., proposed to use inter-satellite links (“ISLs”) to interconnect the satellites in their networks. Because of unresolved interference and allocation issues, the FCC’s International Bureau withheld authority for ISLs when it granted initial system authorizations to those applicants, and the Commission said in the *Third Report and Order* that it would refrain from imposing construction-progress “milestone” deadlines for those licensees until the issues concerning ISL authorization were resolved. Hughes pointed out that the milestone rule did not fully reflect

that policy determination, as it said that GSO FSS licensees would be required to commence construction within one year of receiving a license and launch at least one satellite within five years of that date. The FCC agreed with Hughes and accordingly revised the text of the milestone rule to conform more clearly to the intent expressed in the *Third Report and Order* in this regard.

Additional Spectrum Assignments for Links With Earth Stations Outside the United States

In addition to requesting authority for Ka-Band satellite links with earth stations within the United States, Hughes requested authority to operate in wider frequency bands to link with earth stations in foreign countries. The Bureau did not assign spectrum to Hughes specifically for links with foreign-based earth stations but indicated in the initial license order that the Commission would undertake coordination on Hughes’ behalf with respect to such non-domestic operation in consultation with foreign administrations and noted that the Commission intended to address issues concerning international coordination of Ka-Band FSS systems in a future rulemaking order. In its petition for reconsideration, Hughes pointed out that although the *Third Report and Order* established policies for coordinating international operation of FCC-licensed Ka-Band satellite systems, the Commission had yet to grant explicit authority for Hughes to use spectrum for service links with earth stations in foreign countries. Hughes asked for issuance of a clarifying statement that it could use the frequency bands 17.7–18.8 GHz, 19.7–20.2 GHz, 27.5–28.6 GHz, and 29.25–30.0 GHz for that purpose. In supporting comments, GE American Communications, Inc. agreed that the Commission should clarify the rights of GSO FSS licensees to operate internationally. The FCC accordingly directed its International Bureau to issue an order modifying Hughes’ space-station license to add authority for such operation, subject to appropriate conditions. The FCC said, however, that before undertaking international coordination of proposed use of the 17.7–18.3 GHz band for FSS downlink transmission to earth stations in foreign countries it would require any licensee requesting such coordination to show that it has coordinated such proposed operation with other FCC licensees with authority for global operation in that frequency band.

Deviations From Band Plan Necessitated by Prior Coordination Agreements

Hughes also requested clarification of the FCC’s policy regarding international coordination of FCC-licensed Ka-Band satellite systems. The FCC said in the *Third Report and Order* that it would adhere to its domestic allocation plan when coordinating international operations of FCC-licensed Ka-Band FSS systems, except insofar as the plan was incompatible with coordination agreements that had been negotiated with other administrations before the plan was adopted. Hughes maintained that it could not “finalize” its system design and proceed with satellite construction without knowing how, and to what extent, such prior international agreements necessitate departure from the domestic allocation plan. As the *Third Report and Order* did not disclose such information, Hughes asked the FCC to “specify in detail the extent to which GSO [Ka-Band] licensees will have to modify their international operations * * * to comply with deviations from the * * * [domestic] band plan [due to] preexisting * * * coordination agreements.” In response to this request, the FCC pointed out that the information Hughes sought was already a matter of public record.

Anti-trafficking Rule

On its own motion, the FCC amended the anti-trafficking rule for Ka-Band satellite systems, 47 CFR 25.145(d), to correct a cross-reference that appeared to limit the applicability of the rule to licenses for NGSO systems, contrary to the Commission’s plainly-stated intention in the *Third Report and Order* to prohibit “any Ka-band licensee from selling a bare license for a profit.”

Ordering Clauses

It Is Further Ordered that § 25.145 of the Commission’s rules is amended as specified in the rule changes, effective June 7, 2002. This action is taken pursuant to 47 U.S.C. 154(i) and 303(r).

It is further Ordered that the “Petition for Clarification and/or Reconsideration” filed on December 18, 1997 by Teledesic Corporation shall be temporarily held in abeyance, as provided herein.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

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

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

2. Section 25.145 is amended by revising paragraphs (d)(1), (d)(2) and (f) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30GHz Bands.

* * * * *

(d) * * *

(1) “Trafficking” in bare licenses is prohibited, except with respect to licenses obtained through a competitive bidding procedure.

(2) The Commission will review a proposed transaction to determine if the circumstances indicate trafficking in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities licensed for the Fixed-Satellite Service in the 20/30 GHz bands.

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(f) *Implementation milestone schedule.* Unless otherwise specified in the license, each GSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first satellite within one year of grant of all space station frequency assignments, to begin

construction of the remainder within two years of such authorization, to launch at least one satellite into each of its assigned orbit locations within five years of such authorization, and to launch the remainder of its satellites by the date required by the International Telecommunication Union to assure international recognition and protection of those satellites. Unless otherwise specified in the license, each NGSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first two satellites within one year of the grant of all space station frequency assignments and complete construction of those first two satellites within four years of such authorization.

Construction of the remaining authorized operating satellites in the constellation must begin within three years of such authorization, and the entire authorized system must be operational within six years.

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