

copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

Ordering Clauses

31. Pursuant to sections 1, 2, 4(i), 303(c), 303(f), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303(c), 303(f), 303(g), 303(r), parts 2 and 25 of the Commission's rules *are amended* as specified in rule changes effective September 6, 2002.

List of Subjects in CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules 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 citations for part 25 continue to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies 47 U.S.C. sections 51, 152, 154, 302, 303, and 307, unless otherwise noted.

2. Section 25.136 is amended by revising the section heading, the introductory text, and by adding paragraphs (d) and (e) to read as follows:

§ 25.136 Operating provisions for earth stations for each station network in the 1.6/2.4 GHz and 1.5/1.6 GHz mobile-satellite services.

In addition to the technical requirements specified in § 25.213, earth stations operating in the 1.6/2.4 GHz and 1.5/1.6 GHz Mobile Satellite Services are subject to the following operating conditions:

* * * * *

(d) Any mobile earth station (MES) associated with the Mobile Satellite Service operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands shall have the following minimum set of capabilities to ensure compliance with Footnote S5.353A and the priority and real-time preemption requirements imposed by Footnote US315.

(1) All MES transmissions shall have a priority assigned to them that preserves the priority and preemptive

access given to maritime distress and safety communications sharing the band.

(2) Each MES with a requirement to handle maritime distress and safety data communications shall be capable of either:

(i) Recognizing message and call priority identification when transmitted from its associated Land Earth Station (LES) or

(ii) Accepting message and call priority identification embedded in the message or call when transmitted from its associated LES and passing the identification to shipboard data message processing equipment

(3) Each MES shall be assigned a unique terminal identification number that will be transmitted upon any attempt to gain access to a system.

(4) After an MES has gained access to a system, the mobile terminal shall be under control of a LES and shall obtain all channel assignments from it.

(5) All MESs that do not continuously monitor a separate signalling channel or signalling within the communications channel shall monitor the signalling channel at the end of each transmission.

(6) Each MES shall automatically inhibit its transmissions if it is not correctly receiving separate signalling channel or signalling within the communications channel from its associated LES.

(7) Each MES shall automatically inhibit its transmissions on any or all channels upon receiving a channel-shut-off command on a signalling or communications channel it is receiving from its associated LES.

(8) Each MES with a requirement to handle maritime distress and safety communications shall have the capability within the station to automatically preempt lower precedence traffic.

(e) Any Land Earth Station (LES) associated with the Mobile Satellite Service operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands shall have the following minimum set of capabilities to ensure that the MSS system complies with Footnote S5.353A and the priority and real-time preemption requirements imposed by Footnote US315. It should be noted that the LES operates in the Fixed-Satellite Service ("FSS") as a feeder-link for the MSS (Radio Regulations 71) and that the following capabilities are to facilitate the priority and preemption requirements. The FSS feeder-link stations fulfilling these MSS requirements shall not have any additional priority with respect to FSS stations operating with other FSS systems.

(1) All LES transmissions to mobile earth stations (MESs) shall have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications.

(2) The LES shall recognize the priority of calls to and from MES and make channel assignments taking into account the priority access that is given to maritime distress and safety communications.

(3) The LES shall be capable of receiving the MES identification number when transmitted and verifying that it is an authorized user of the system to prohibit unauthorized access.

(4) The LES shall be capable of transmitting channel assignment commands to the MESs.

(5) The communications channels used between the LES and the MES shall have provision for signalling within the voice/data channel, for an MES, which does not continuously monitor the LES signalling channel during the time of a call.

(6) The LES shall transmit periodic control signalling signals to MES, which do not continuously monitor the LES signalling channel.

(7) The LES shall automatically inhibit all transmissions to MESs to which it is not transmitting a signalling channel or signalling within the communications channel.

(8) The LES shall be capable of transmitting channel-shut-off commands to the MESs on signalling or communications channels.

(9) Each LES shall be capable of interrupting, and if necessary, preempting ongoing routine traffic from an MES in order to complete a maritime distress, urgency or safety call to that particular MES.

(10) Each LES shall be capable of automatically turning off one or more of its associated channels in order to complete a maritime distress, urgency or safety call.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 100

[IB Docket No. 98–21; FCC 02–110]

Policy and Rules for the Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission has adopted a *Report and Order* that modifies direct broadcast satellite (DBS) regulation to more closely reflect the regulation of other satellite services, and moves the rules for DBS, located in part 100, to part 25 (Satellite Communications) and eliminates part 100 of the Commission's rules. The Report and Order streamlines the regulation of this rapidly growing and changing service and helps promote fair and increased competition in the multi-channel video programming distribution ("MVPD") market. These rules also promote efficient and expeditious use of spectrum and orbital resources while preserving maximum flexibility for DBS operators. The current rules in part 100, for the most part, were adopted almost 20 years ago when DBS was envisioned to be essentially a broadcast-type service. Since that time, the service has instead grown into a robust and successful segment of the satellite industry with programming services provided on a subscription basis. The service rules are revised to comport with the way that DBS actually operates.

DATES: Effective September 6, 2002.

FOR FURTHER INFORMATION CONTACT: For more information regarding the *Report and Order*, contact Selina Y. Khan, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418-7282 or via the Internet at skhan@fcc.gov. For additional information concerning the information collections contained in this document, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (R&O), IB Docket 98-21, FCC 02-110, adopted April 8, 2002 and released June 13, 2002. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW, Room CY-B402, Washington, DC 20554, telephone (202)863-2893, facsimile (202)863-2898 or via email qualexint@aol.com. It is also available on the Commission's website at <http://www.fcc.gov>.

Paperwork Reduction Act

1. This *Report and Order* contains new information collections. The Federal Communications Commission, as part of its continuing effort to reduce

paperwork burden, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. This *Report and Order* has been submitted to OMB for review under the emergency clearance provisions of the PRA. Public and agency comments are due September 6, 2002. Emergency clearance is requested no later than September 6, 2002.

2. The Commission, under the normal provisions of the PRA, invites the general public, and other Federal agencies to comment on the information collections contained in this proceeding prior to submitting it to OMB for review. Public and agency comments are due September 6, 2002.

3. Comments should address: (a) Whether the modified 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.

OMB Control Number: 3060-0683.

Title: Direct Broadcast Satellite Service.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time Per Response: 1.5-20 hours.

Frequency of Response: On occasion.

Total Annual Burden: 300 hours.

Total Annual Costs: \$50,000.

Needs and Uses: The information collected will be used by the Federal Communications Commission as part of the application and licensing process for DBS entities. Specifically, applicants for the DBS service will be required to file their applications to conform to the newly-adopted service rules. Without the newly adopted rules, future DBS applicants do not have rules in effect to file under.

Summary of the Report and Order

4. The Federal Communications Commission has adopted a *Report and Order* that revises its rules and policies governing the Direct Broadcast Satellite ("DBS") service. The *Report and Order* modifies DBS regulation to more closely reflect the regulation of other satellite

services, moves the rules for DBS to part 25 and eliminates part 100.

5. The revisions will simplify the procedures applicable to DBS, eliminate unnecessary filing requirements, and harmonize the DBS licensing process with that of other satellite services. For example, the *Report and Order* eliminates the DBS-specific foreign ownership limits of § 100.11 of the Commission's rules and apply the statutory foreign ownership provision of section 310(b) of the Communications Act. The Commission also clarifies our geographic service rules to enhance the delivery of DBS service to the States of Alaska and Hawaii. The *Report and Order* updates and clarifies DBS technical rules, and clarify due diligence rules for DBS providers. In addition, the Commission moves the service-specific DBS auction rules to part 25 and defers to the Commission's general competitive bidding rules. Further, the Commission declines adopting any specific DBS ownership restrictions, but will continue to analyze DBS/DBS ownership issues in the context of assignment and transfer applications on a case-by-case basis.

6. In this *Report and Order* the Commission retains some DBS specific rules that reflect distinctions between DBS and other satellite services. Specifically, the *Report and Order* preserves certain specific part 100 rules (i.e. license terms, due diligence and geographic service requirements, competitive bidding, and technical requirements) in part 25 because DBS is a unique satellite service in some respects.

7. In this *Report and Order* the Commission eliminated § 100.11 of the Commission's rules. In first proposing rules in 1981, the Commission stated that it was seeking to apply an "open and flexible approach" to DBS to "allow the business judgments of individual applicants to shape the character of the service offered." The Commission stated that it intended to impose on DBS "only those regulatory requirements that [were] expressly mandated by the Communications Act" to afford the DBS service maximum regulatory freedom to develop. In the *Report and Order*, the Commission stated that although § 100.11, by its literal terms, extends to all DBS providers, subscription as well as broadcast and common carrier, there is no indication, that the Commission, in 1982 when it adopted the rule, meant to impose foreign ownership restrictions on DBS providers that are not subject to the foreign ownership restrictions in section 310(b).

8. The Commission declined to impose specific foreign ownership

limitations on DTH-FSS licensees providing subscription service in addition to the statutory limitations in section 310(a) and (b) of the Act. The Commission stated that there are no additional foreign ownership rules for MVPD services provided to subscribers by means of cable or DTH satellite systems, other than those required by statute. The Commission found that adopting foreign ownership rules for DTH-FSS licensees providing subscription services would affect the competitiveness of DBS, DTH and of the MVPD markets, which would be inconsistent with the Commission's efforts to increase competition in the MVPD market. Moreover, the Commission has traditionally taken a deregulatory approach to DTH-FSS and have refrained from imposing unnecessary regulations. In addition, the Commission will apply the requirements set forth in *DISCO II* in deciding questions of access to the U.S. market by non-U.S. DBS providers will remain subject to the relevant statutory requirements of section 310 of the Act." Thus, all DBS providers will be subject to section 310(a) of the Communications Act and to the relevant sections of Section 310(b) of the Act.

9. The Commission recognizes the importance of establishing DBS as a competitor to cable in the multi-channel video programming distribution market in the States of Hawaii and Alaska. In this *Report and Order*, the Commission clarifies its geographic service rules to enhance the delivery of DBS service to the States of Alaska and Hawaii. Under current rules, DBS licensees must serve Alaska and Hawaii if technically feasible. In this *Report and Order*, the Commission recognizes that it is possible to provide service to Hawaii and also to significant portions of Alaska from the 101° W.L. orbit location in addition to the 110° W.L. and 119° W.L. orbit locations. Furthermore, the Commission concludes that it is not technically feasible to serve either Alaska or Hawaii from the 61.5° W.L. orbit location. In this *Report and Order*, the Commission clarifies that DBS operators must offer packages of services in Alaska and Hawaii that are reasonably comparable to what they offer in the contiguous 48 states. In an effort to balance requirements to provide service to all 50 states, and in order to avoid dictating system design or business plans, the Commission declines to specifically define what constitutes full or comparable service although we expect that DBS operators will offer the same level of service to customers throughout all 50 states.

Specifically, the Commission clarifies that it will consider a DBS provider to be in compliance with this requirement, contained in § 100.53 of the Commission's rules, only if it offers packages of services in Alaska and Hawaii that are reasonably comparable to what the provider offers in the contiguous 48 states.

10. The Commission does not adopt any specific DBS/cable cross-ownership restrictions. The Commission also deferred this issue to the *Cable Ownership Further Notice of Proposed Rulemaking* in 66 FR 51905, October 11, 2001. The Commission will analyze DBS/DBS ownership issues in the context of assignment and transfer applications on a case-by-case basis.

11. In December of 2002, the Commission decided to seek further comment on non-conforming uses of DBS spectrum because it appeared that there are a number of orbit locations, particularly those covering only the western part of the U.S., that are not being used to provide DBS service. Under current rules, a DBS licensee, after the first five years, must provide DBS service at least fifty percent of the time. In this *Report and Order* the Commission concludes that it will allow non-conforming use for all orbital locations, including the western orbital locations, for downlink services that meet the technical requirements for interference protection. The *Report and Order* allows DBS licensees are free to provide non-conforming services on as many transponders on any of their satellites for as large a fraction of the time as they wish subject to the Commission's other requirements for DBS.

Final Regulatory Flexibility Analysis

12. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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").

13. As required by the RFA, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* ("NPRM") in IB Docket No. 98-21, 63 FR 11202, March 6, 1998. The Commission sought written public comments on the proposals in the NPRM including comments on the IRFA. There were no comments, which discussed or addressed the IRFA; nor were there comments on the effect of the proposed rules on small businesses. Nonetheless, the Commission considered the potential significant economic impact of the proposed rules on small entities.

14. The *Report and Order* streamlines and harmonizes the Commission's direct broadcast satellite ("DBS") service rules with other regulations governing satellite communications. Our objective is to consolidate, where possible, the DBS services rules with the rules for other satellite services and eliminate separate, DBS-specific rules in part 100 of the Commission's rules. Because DBS provides subscription services, DBS falls within the SBA-recognized definitions of "Cable Networks" and "Cable and Other Program Distribution." These definitions provide that small entities are ones with \$11.0 million or less in annual receipts. Small businesses, *i.e.* ones with less than \$11.0 million in annual receipts, do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Because this is an established service, with limited spectrum and orbital resources for assignment, we estimate that no more than 15 entities will be Commission licensees providing these services. In addition, because of the high implementation costs and the limited spectrum resources we believe that none of the 15 licensees will be small entities. We expect that no small entities will be impacted by this rulemaking. Therefore, we certify that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

15. The Commission will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Ordering Clauses

16. Pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that the *Report and Order* is adopted. Part 25 of the Commission's rules is *amended* as specified in the rule change, effective September 6, 2002.

17. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

List of Subjects in 47 CFR Parts 25 and 100

Satellites.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, under the authority of 47 U.S.C. 154(i) and 303 the Federal Communications Commission amends 47 CFR chapter I 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 25.109 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

3. Section 25.111 is amended by adding paragraph (c) to read as follows:

§ 25.111 Additional information.

* * * * *

(c) In the Direct Broadcast Satellite service, applicants and licensees shall also provide the Commission with all information it requires in order to modify the Appendix 30 Broadcasting-Satellite Service ("BSS") Plans and associated Appendix 30A feeder-link Plans, if the system uses technical characteristics differing from those specified in the Appendix 30 BSS Plans, the Appendix 30A feederlink Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A. 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 frequency assignment becomes a part of the appropriate Region 2 BSS and feeder-link Plans. Authorizations for which coordination is not completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations. Applicants and licensees shall also provide the Commission with the necessary Appendix 4 information required by the ITU Radiocommunication Bureau to advance publish, coordinate and notify the frequencies to be used for tracking, telemetry and control functions of DBS systems.

4. Section 25.114 is amended revising paragraphs (c)(13) and (c)(14), and adding paragraph (c)(22) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(c) * * *

(13) Space station license applicants subject to this section other than Direct Broadcast Satellite applicants shall provide detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications shall provide the financial information required by §§ 25.140 (b) through (e), 25.142(a)(4), or 25.143(b)(3), as appropriate;

(14) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether non-common carrier transactions are proposed. If non-common carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a non-common carrier basis. In addition, satellite applications in the Direct Broadcast Satellite service must provide a clear and detailed statement of whether the space station is to be operated on a broadcast or non-broadcast basis.

* * * * *

(22) For satellite applications in the Direct Broadcast Satellite service, if the proposed system's technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to

Appendix 30A, each applicant shall provide:

(i) The information requested in Appendix 4 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; and

(ii) Analyses of the proposed system with respect to the limits in Annex 1 to Appendices 30 and 30A.

* * * * *

5. Section 25.121 is amended by revising paragraph (a) to read as follows:

§ 25.121 License term and renewals.

(a) *License Term.* Except for licenses for DBS facilities, licenses for facilities governed by this part will be issued for a period of 15 years. Licenses for DBS space stations licensed as broadcast facilities will be issued for a period of 8 years. Licenses for DBS space stations not licensed as broadcast facilities will be issued for a period of 10 years.

* * * * *

6. Add § 25.148 to read as follows:

§ 25.148 Licensing provisions for the Direct Broadcast Satellite Service.

(a) *License terms.* License terms for DBS facilities are specified in § 25.121(a).

(b) *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 (b)(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 years 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.

(c) *Geographic service requirements.* Those entities acquiring DBS authorizations after January 19, 1996, or

who after January 19, 1996 modify a previous DBS authorization to launch a replacement satellite, must provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized orbital location. This requirement does not apply to DBS satellites authorized to operate at the 61.5° W.L. orbital location. DBS applicants seeking to operate from locations other than 61.5° W.L. who do not provide service to Alaska and Hawaii, must provide technical analyses to the Commission demonstrating that such service is not feasible as a technical matter, or that while technically feasible such services would require so many compromises in satellite design and operation as to make it economically unreasonable.

(d) *DBS subject to competitive bidding.* Mutually exclusive initial applications to provide DBS are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

(e) *DBS long form application.* Winning bidders are subject to the provisions of § 1.2107 of this chapter except that in lieu of a FCC Form 601 each winning bidder shall submit the long-form satellite service application (FCC Form 312) within thirty (30) days after being notified by Public Notice that it is the winning bidder. Each winning bidder will also be required to submit by the same deadline the information described in § 25.215 (Technical) and § 25.601 (EEO), and in paragraph (f) of this section. Each winner also will be required to file, by the same deadline, a signed statement describing its efforts to date and future plans to come into compliance with any applicable spectrum limitations, if it is not already in compliance. Such information shall be submitted pursuant to the procedures set forth in § 25.114 and any associated Public Notices.

(f) *Technical qualifications.* DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices 30 and 30A of the ITU's Radio Regulations. Operation of systems using differing technical characteristics may be permitted, with adequate technical showing, and if a request has been made to the ITU to modify the appropriate Plans to include the system's technical parameters.

7. Section 25.201 is amended by adding the following definition in alphabetical order to read as follows:

§ 25.201 Definitions.

* * * * *

Direct Broadcast Satellite Service. A radiocommunication service in which signals transmitted or retransmitted by space stations, using frequencies specified in § 25.202(a)(7), are intended for direct reception by the general public. For the purposes of this definition, the term direct reception shall encompass both individual reception and community reception.

* * * * *

8. Section 25.202 is amended by revising footnote 9 in paragraph (a)(1) and by adding paragraph (a)(7) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) * * *

* * * * *

⁹ The use of the band 17.3–17.8 GHz by the Fixed-Satellite Service (Earth-to-space) is limited to feeder links for the Direct Broadcast Satellite Service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

* * * * *

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

12.2–12.7 GHz: Space-to-Earth.

* * * * *

9. Add § 25.215 to read as follows:

§ 25.215 Technical requirements for space stations in the Direct Broadcast Satellite Service.

In addition to § 25.148(f), space station antennas operating in the Direct Broadcast Satellite Service must be designed to provide a cross-polarization isolation such that the ratio of the on-axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 30 dB within its primary coverage area.

10. Section 25.601 is revised 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 video programming directly to the public on a subscription basis 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 operating as a broadcaster must comply with the equal

employment opportunity requirements set forth in part 73.

10a. Add subpart J to part 25 to read as follows:

Subpart J—Public Interest Obligations

§ 25.701 Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b) and (c) of this section. For purposes of this rule, DBS providers are any of the following:

(1) Entities licensed to operate satellites in the 12.2–12.7 GHz DBS frequency bands; or

(2) Entities licensed to operate satellites in the Ku-band fixed satellite service and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set-aside of at least one channel of non-commercial programming pursuant to paragraph (c) of this section, or

(3) Non-U.S. licensed satellite operators in the Ku-band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set-aside of one channel of non-commercial programming pursuant to paragraph (c) of this section,

(b) *Political broadcasting requirements*—(1) *Reasonable access.* DBS providers must comply with Section 312(a)(7) of the Communications Act of 1934, as amended, by allowing reasonable access to, or permitting purchase of reasonable amounts of time for, the use of their facilities by a legally qualified candidate for federal elective office on behalf of his or her candidacy.

(2) *Use of facilities.* DBS providers must comply with Section 315 of the Communications Act of 1934, as amended, by providing equal opportunities to legally qualified candidates.

(c) *Carriage obligation for noncommercial programming*—(1) *Reservation requirement.* DBS providers shall reserve four percent of their channel capacity exclusively for use by qualified programmers for noncommercial programming of an educational or informational nature. Channel capacity shall be determined annually by calculating, based on measurements taken on a quarterly basis, the average number of channels

available for video programming on all satellites licensed to the provider during the previous year. DBS providers may use this reserved capacity for any purpose until such time as it is used for noncommercial educational or informational programming.

(2) *Qualified programmer.* For purposes of these rules, a qualified programmer is:

(i) A noncommercial educational broadcast station as defined in section 397(6) of the Communications Act of 1934, as amended,

(ii) A public telecommunications entity as defined in section 397(12) of the Communications Act of 1934, as amended,

(iii) An accredited nonprofit educational institution or a governmental organization engaged in the formal education of enrolled students (A publicly supported educational institution must be accredited by the appropriate state department of education; a privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations), or

(iv) A nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

(v) Other noncommercial entities with an educational mission.

(3) *Editorial control.* (i) A DBS operator will be required to make capacity available only to qualified programmers and may select among such programmers when demand exceeds the capacity of their reserved channels.

(ii) A DBS operator may not require the programmers it selects to include particular programming on its channels.

(iii) A DBS operator may not alter or censor the content of the programming provided by the qualified programmer using the channels reserved pursuant to this section.

(4) *Non-commercial channel limitation.* A DBS operator cannot initially select a qualified programmer to fill more than one of its reserved channels except that, after all qualified entities that have sought access have been offered access on at least one channel, a provider may allocate additional channels to qualified programmers without having to make additional efforts to secure other qualified programmers.

(5) *Rates, terms and conditions.* (i) In making the required reserved capacity available, DBS providers cannot charge

rates that exceed costs that are directly related to making the capacity available to qualified programmers. Direct costs include only the cost of transmitting the signal to the uplink facility and uplinking the signal to the satellite.

(ii) Rates for capacity reserved under paragraph (a) of this section shall not exceed 50 percent of the direct costs as defined in this section.

(iii) Nothing in this section shall be construed to prohibit DBS providers from negotiating rates with qualified programmers that are less than 50 percent of direct costs or from paying qualified programmers for the use of their programming.

(iv) DBS providers shall reserve discrete channels and offer these to qualifying programmers at consistent times to fulfill the reservation requirement described in these rules.

(6) *Public file.* (i) Each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition; and

(D) A record of all requests for political advertising time and the disposition of those requests.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

(7) *Effective date.* DBS providers are required to make channel capacity available pursuant to this section upon the effective date. Programming provided pursuant to this rule must be available to the public no later than six months after the effective date.

PART 100—[REMOVED]

11. Remove part 100.

[FR Doc. 02-19888 Filed 8-6-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket 01-276; FCC 02-209]

Table of Allotments To Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition filed by WQED Pittsburgh ("QED"), licensee of noncommercial educational television stations WQED(TV), Channel *13 and WQEX(TV), Channel *16 in Pittsburgh, wherein it requests that the Commission dereserve Channel *16 and permit QED to sell the station to ShootingStar, a commercial entity. The Commission grants QED's request and permits QED to sell WQEX(TV) and use the proceeds to improve its financial condition, construct DTV facilities for its remaining station, and fund a permanent programming endowment.

DATES: Effective September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein (202) 418-1600, Video Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania* ("Report and Order"), MM Docket, 01-276, FCC 02-209, adopted July 11, 2002 and released July 18, 2002. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY-A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Vistrionix, Inc.

Synopsis of Report and Order

The *Report and Order* finds that QED remains in financial distress, that it has taken dramatic steps to improve its financial condition, including reducing its workforce by half and selling available assets, and that QED and its auditors both conclude that the sale of WQEX(TV) as a commercial station is crucial to QED's financial recovery. The *Report and Order* also concludes that the Pittsburgh area can no longer support both WQED(TV) and WQEX(TV), given its population decline, and the downward trend in