

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Mary Portanova, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5954, [portanova.mary@epa.gov](mailto:portanova.mary@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 7, 2007.

**Bharat Mathur**,

*Acting Regional Administrator, Region 5.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 25 and 27**

**[WT Docket No. 07-293, IB Docket No. 95-91; FCC 07-215]**

**The Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission (FCC) seeks comment on service rules for the Wireless Communications Service (WCS) and for terrestrial repeaters used in conjunction with the Satellite Digital Audio Radio Service (SDARS). The intended purpose of this proceeding is to determine whether the Commission can develop adequate limits on out-of-band emissions for these two services that would permit them coexist in adjacent frequency bands.

**DATES:** Comments are due on or before February 14, 2008 and reply comments are due on or before March 17, 2008.

**ADDRESSES:** You may submit comment, identified by WT Docket No. 07-293 and IB Docket No. 95-91, by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site*: <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.

- *People with Disabilities*: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail*: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202-418-0530 or TTY: 202-418-0432.

For detail instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Steven Spaeth (202) 418-1539, or Stephen Duall, (202) 418-1103, Satellite Division, International Bureau, Federal

Communications Commission, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 07-293 and Second Further Notice of Proposed Rulemaking in IB Docket No. 95-91, adopted December 17, 2007 and released on December 18, 2007. The full text of the Notice of Proposed Rulemaking is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via *e-mail* [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

The NPRM does not contain any proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the NPRM does not contain any proposed new or modified "information collection burden for small business concerns with fewer than 25 employees" subject to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

**Summary of Notice of Proposed Rulemaking**

SDARS licensees operate in the 2320-2345 MHz band. This band is divided evenly between the two SDARS licensees, Sirius (2320-2332.5 MHz) and XM (2332.5-2345 MHz). The WCS service occupies frequencies on either side of the SDARS allocation and consists of six blocks of five megahertz each in the 2305-2320 MHz and 2345-2360 MHz bands.

The Commission has previously invited comment on service rules for SDARS terrestrial repeaters, used in conjunction with the SDARS operators' satellite systems in urban canyons and other areas where satellite signal reception is difficult. In this proceeding, the Commission seeks to update that record, and to invite comment on WCS service rules, that would allow both services to coexist in adjacent frequency bands.

First, the Commission invites comment on power limits for SDARS terrestrial repeaters and WCS service transmitters, to limit the potential for harmful interference resulting from out-of-band emissions. One proposal is an average "ground-level emission limit" of -44 dBm, which would be applicable

to both SDARS and WCS stations. Another proposal is an EIRP limit of 2 kW, based on peak rather than average power, and a 6 dB peak-to-average ratio. The Commission invites parties to suggest other proposals.

Second, the Commission seeks comment on whether it is necessary to restrict the collocation of SDARS and WCS stations, either with stations within the same service or with stations of the other service.

Third, the Commission invites commenters to recommend coordination and recordkeeping requirements.

Fourth, the NPRM notes that the Commission has authorized several SDARS terrestrial repeaters granted pursuant to Special Temporary Authority (STA). The SDARS licensees support grandfathering those repeaters, so that those existing repeaters will not be required to comply with any rules adopted in this proceeding. The WCS licensees propose requiring existing SDARS terrestrial repeaters to come into compliance with any rules adopted in this proceeding within a year. The Commission asks commenters to discuss whether we should adopt the one-year transition advocated by the WCS Coalition, apply a different transition period, or permit SDARS repeaters to continue existing operations until a request is made by a WCS licensee for the SDARS licensee to come into compliance with final rules.

Fifth, the NPRM seeks comment on several miscellaneous issues. For example, parties are invited to discuss whether SDARS operators should be required to comply with international agreements as a condition on any SDARS terrestrial repeater license. The NPRM also considers whether to adopt revision to the radiation hazard rules for SDARS terrestrial repeaters. The NPRM further considers allowing blanket licensing of SDARS terrestrial repeaters.

Finally, the NPRM solicits comments on a number of possible restrictions on the operation of SDARS terrestrial repeaters. One such possible restriction could be to prohibit operation of SDARS terrestrial repeaters except in conjunction with SDARS satellites, both in the Continental United States, and in Alaska and Hawaii. The NPRM also seeks comment on requiring SDARS terrestrial repeaters to use the same spectrum as their associated satellites. Finally, the NPRM invites comment on prohibiting use of repeaters to retransmit the regional spot beams of SDARS satellites, and on prohibiting use of repeaters to transmit original programming.

*Initial Regulatory Flexibility Analysis:* With respect to WCS licensees subject to

part 27 of the Commission's rules, 47 CFR part 27, as required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

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

The primary objective of this proceeding is to consider changes to the rules governing Wireless Communications Service (WCS) which may be necessary to facilitate the coexistence of those licensees with licensees in the SDARS and satellite digital audio radio service (SDARS). Such rule changes are needed because SDARS terrestrial repeaters and WCS operate in adjacent frequency bands. SDARS licensees rely on terrestrial repeaters to provide a nationwide service. Thus, without appropriate service rules for WCS and SDARS operations, the out-of-band emissions caused by each service could cause harmful interference into the other, which in turn would limit the development of these services and thereby be detrimental to the public interest.

The NPRM is intended to refresh the record on any necessary regulatory requirements that would allow SDARS terrestrial repeaters and WCS operation to coexist in adjacent bands. Specifically, the NPRM specifically invites comments on two options for power and emission limits for WCS operations and SDARS repeaters, including a peak ground-level emission limit of -44 dBm, or an average EIRP limit of two kilowatts (kW) EIRP, with a 6 dB peak-to-average ratio.<sup>4</sup>

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

<sup>2</sup> See 5 U.S.C. 603(a).

<sup>3</sup> See 5 U.S.C. 603(a).

<sup>4</sup> These proposals are discussed in more detail in Section III.A. of the NPRM.

In the NPRM, the Commission discusses recordkeeping and coordination proposals to ensure towers are deployed in a fashion to avoid interference. In particular, the Commission is considering whether to adopt a proposal to require licensees to provide notice to all licensed radio stations potentially affected by SDARS repeater and WCS station deployments.

#### *B. Legal Basis for Proposed Rules*

The proposed action is authorized under sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

#### *C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> 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).<sup>7</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>8</sup> Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes explored in the NPRM.

*WCS Licensees.* Wireless Communication Services have flexible rules that allow licensees to either operate commercial fixed or mobile radio services or use the spectrum for private use. The SBA rules establish a size standard for "Wireless Telecommunications Carriers," which encompasses business entities engaged

<sup>5</sup> See 5 U.S.C. 601(6).

<sup>6</sup> 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 which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

<sup>7</sup> See Small Business Act, 5 U.S.C. 632 (1996).

<sup>8</sup> See 5 U.S.C. 601(4).

in radiotelephone communications employing no more than 1,500 persons.<sup>9</sup> There are currently 158 active WCS licenses held by 13 licensees. Of these, 6 licensees qualify as small entities and hold a total of 32 licenses.

**RF Equipment Manufacturers.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."<sup>10</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>11</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>12</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>13</sup> Thus, under this size standard, the majority of firms can be considered small.

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

There are no specific reporting or recordkeeping requirements proposed in the NPRM, other than the recordkeeping and coordination requirements discussed in Section A, *supra*.

<sup>9</sup> See 13 CFR 121.201, NAICS code 517110.

<sup>10</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>11</sup> See 13 CFR 121.201, NAICS code 334220.

<sup>12</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>13</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>14</sup>

As stated in Section A, *supra*, the NPRM specifically invites comments on two options for power and emission limits for WCS operations and SDARS repeaters, including a peak ground-level emission limit of -44 dBm, or an average EIRP limit of two kilowatts (kW) EIRP, with a 6 dB peak-to-average ratio. The NPRM also invites interested parties to suggest alternative proposals.

At this time, the Commission has not excluded any alternative proposal concerning ground-level emission limits and average EIRP limits from its consideration, but it would do so in this proceeding if the record indicates that a particular proposal would have a significant and unjustifiable adverse economic impact on small entities.

However, the Commission has also invited interested parties to propose any other alternative form of coordination if it would be more efficient or effective. However, the Commission will not consider any alternative proposal that would have a significant and unjustifiable adverse economic impact on small entities.

In the NPRM, the Commission discusses recordkeeping and coordination proposals to ensure towers are deployed in a fashion to avoid interference. In particular, the Commission is considering a proposal to require licensees to provide notice to all licensed radio stations potentially affected by SDARS repeater and WCS station deployments. However, as noted *supra* in Section A, the Commission has also invited interested parties to propose any other alternative form of coordination if it would be more efficient or effective. However, the Commission will not consider any alternative that would have a significant

<sup>14</sup> See 5 U.S.C. 603(c).

and unjustifiable adverse economic impact on small entities.

In the NPRM, the Commission seeks comment on grandfathering and transition proposals for existing SDARS repeaters. One proposal is to grandfather all existing SDARS terrestrial repeaters, thereby exempting those repeaters from any out-of-band power limits adopted in this rulemaking proceeding. Another is to require the operators of those repeaters to come into compliance with any such limits within a year from the adoption of such rules. The Commission invites comments on both of these grandfathering-related and transition-related proposals, and invites commenters to recommend other transition periods. The Commission solicits any alternative proposals that would not incur significant and unjustifiable adverse impact on small entities.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

**Initial Regulatory Flexibility Certification:** With respect to SDARS licensees subject to part 25 of the Commission's rules, 47 CFR part 25, the Regulatory Flexibility Act (RFA)<sup>15</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>16</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>17</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>18</sup> 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

<sup>15</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

<sup>16</sup> See 5 U.S.C. 605(b).

<sup>17</sup> 5 U.S.C. 601(6).

<sup>18</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), 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."

additional criteria established by the Small Business Administration (SBA).<sup>19</sup>

With respect to the DARS licensees, only two operators hold licenses to provide SDARS service, XM and Sirius. Both of these licensees are dominant in their field and neither qualify as small entities. SDARS provides nationally distributed subscription radio service, which requires a great investment of capital for operation. Because SDARS service requires significant capital, we believe it is unlikely that a small entity as defined by the Small Business Administration would have the financial wherewithal to become an SDARS licensee.<sup>20</sup>

The Commission therefore certifies, pursuant to the RFA, that the proposals in the *Second Further Notice* in IB Docket No. 95–91, if adopted, will not

<sup>19</sup> 15 U.S.C. 632.

<sup>20</sup> The small business size standard for the census category, "Radio Networks," which includes radio satellite broadcasting is \$6.5 million or less in receipts, per year. See 13 CFR 121.201, NAICS code 515111.

have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the NPRM require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the NPRM, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the NPRM and this initial certification will be published in the **Federal Register**.<sup>21</sup>

#### Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, the *Second Further Notice*

<sup>21</sup> See 5 U.S.C. 605(b).

of Proposed Rulemaking in IB Docket No. 95–91 and Notice of Proposed Rulemaking in WT Docket No. 07–293 *is adopted*.

*It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of the *Second Further Notice of Proposed Rulemaking* in IB Docket No. 95–91 and Notice of Proposed Rulemaking in WT Docket No. 07–293, including the Initial Regulatory Flexibility Certification and 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.

**Marlene H. Dortch,**

*Secretary.*

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