

and at its own risk engage in pre-operational build-out and, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, ATC operation requirements, the rules and regulations in this Part and the applicable engineering standards. Prior to engaging in such pre-operational build-out and testing, an MSS licensee must notify the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket. Such letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. MSS licensees engaging in pre-operational build-out and testing must also comply with §§ 5.83, 5.85(c), 5.111, and 5.117 of this chapter relating to experimental operations. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority.

(h) *Aircraft.* All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5–1660.5 MHz and 1525–1559 MHz bands shall bear the following statement in a conspicuous location on the device: “This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft.”

[65 FR 59142, Oct. 4, 2000, as amended at 67 FR 46604, July 16, 2002; 67 FR 51110, Aug. 7, 2002; 68 FR 43645, July 24, 2003; 68 FR 47858, Aug. 12, 2003; 69 FR 5710, Feb. 6, 2004]

**§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.**

(a) Earth station applicants or entities filing a “letter of intent” or “Petition for Declaratory Ruling” requesting authority to operate with a non-U.S. licensed space station to serve the United States must attach an exhibit with their FCC Form 312 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

(1) The country in which the non-U.S. licensed space station is licensed; and

(2) All countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no practical or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest. This paragraph shall not apply with respect to requests for authority to operate using a non-U.S. licensed satellite that is licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement.

(b) Earth station applicants, or entities filing a “letter of intent,” or “Petition for Declaratory Ruling,” requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal and technical information for the non-U.S. licensed space station in accordance with part 25. Applications addressed in this paragraph must be filed electronically through the International Bureau Filing System (IBFS).

(c) A non-U.S. licensed NGSO-like satellite system seeking to serve the United States can be considered contemporaneously with other U.S. NGSO-like satellite system pursuant to § 25.157 and considered before later-filed applications of other U.S. satellite system operators, and a non-U.S.-licensed GSO-like satellite system seeking to

serve the United States can have its request placed in a queue pursuant to § 25.158 and considered before later-filed applications of other U.S. satellite system operators, if the non-U.S. licensed satellite system is:

- (1) In orbit and operating;
- (2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union.

(d) Earth station applicants requesting authority to operate with a non-U.S.-licensed space station and non-U.S.-licensed satellite operators filing letters of intent or petitions for declaratory ruling to access the U.S. market must demonstrate that the non-U.S.-licensed space station has complied with all applicable Commission requirements for non-U.S. licensed systems to operate in the United States, including but not limited to the following:

- (1) Milestones;
- (2) Reporting requirements;
- (3) Any other applicable service rules;
- (4) For non-U.S.-licensed satellites that are not in orbit and operating, a bond must be posted. This bond must be in the amount of \$5 million for NGSO satellite systems, or \$3 million for GSO satellites, denominated in U.S. dollars, and compliant with the terms of § 25.165 of this chapter. The party posting the bond will be permitted to reduce the amount of the bond upon a showing that a milestone has been met, in accordance with the terms of § 25.165(d) of this chapter.

(5) Non-U.S. licensed GSO-like space station operators with a total of five requests for access to the U.S. market in a particular frequency band, or a total of five previously granted requests for access to the U.S. market with unbuilt GSO-like space stations in a particular frequency band, or a combination of pending GSO-like requests and granted requests for unbuilt GSO-like space stations in a particular frequency band that equals five, will not be permitted to request access to the U.S. market with another GSO-like space station license in that frequency band. In addition, non-U.S.-licensed NGSO-like satellite system operators with one request on file with the Commission in a particular frequency band,

or one granted request for an unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to request access to the U.S. market with another NGSO-like satellite system in that frequency band.

(e) A non-U.S.-licensed satellite operator that is seeking to serve the United States pursuant to a Letter of Intent may amend its request by submitting an additional Letter of Intent. Such additional Letters of Intent will be treated as amendments filed by U.S. space station applicants for purposes of determining the order in which the Letters of Intent will be considered relative to other pending applications.

(f) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Letter of Intent or Petition for Declaratory Ruling, may modify its U.S. operations under the procedures set forth in § 25.117(d). In addition, a non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Petition for Declaratory Ruling, may modify its U.S. operations under the procedures set forth in § 25.118(e).

(g) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Petition for Declaratory Ruling must notify the Commission if it plans to transfer control or assign its license to another party, so that the Commission can afford interested parties an opportunity to comment on whether the proposed transaction affects any of the considerations we made when we allowed the satellite operator to enter the U.S. market. If the transferee or assignee is not licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement, the non-U.S.-licensed satellite operator will be required to make the showing described in paragraph (a) of this section.

[62 FR 64172, Dec. 4, 1997, as amended at 64 FR 61792, Nov. 15, 1999; 65 FR 16327, Mar. 28, 2000; 65 FR 59143, Oct. 4, 2000; 68 FR 51503, Aug. 27, 2003; 68 FR 62249, Nov. 3, 2003; 69 FR 51587, Aug. 20, 2004]