

that it has no potential effects on federally recognized Indian Tribes. This rule only addresses public conduct at Hoover Dam.

#### 9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

#### 10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

#### 11. Data Quality Act

In developing this rule we did not conduct or use a study experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

#### 12. Effects on the Energy Supply (E. O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of energy effects is not required.

#### 13. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences;
- Use lists and tables wherever possible.

If you feel we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the specific sections that are unclearly written, which sections or sentences are too long, the sections where you feel lists or table would be useful, etc.

#### 14. Public Comments

If you wish to comment on this proposed rule, you may submit your comments by any of the methods listed in the **ADDRESSES** section. Our practice is to make comments, including names and addresses of respondents, available for public review during business hours.

In some circumstances we may withhold from the rulemaking record a respondent's identity or home address, as allowable by law. If you wish us to withhold your name and/or address, you must indicate your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### List of Subjects

##### 43 CFR Part 421

Law enforcement, Public conduct, Reclamation lands, Reclamation projects, Dams, Security measures.

##### 43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, Reclamation projects, Dams, Security measures.

Dated: September 8, 2006.

Mark Limbaugh,

Assistant Secretary—Water and Science.

For the reasons set forth in the preamble, the Bureau of Reclamation proposes to amend 43 CFR Chapter 1 as follows:

#### **PART 421—RULES OF CONDUCT AT HOOVER DAM**

1. Part 421 is removed.

#### **PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS, AND WATERBODIES**

2. The authority citation for part 423 continues to read as follows:

**Authority:** 43 U.S.C. 373b, 16 U.S.C. 460 1–31.

##### **§ 423.3 [Amended]**

3. In § 423.3 remove paragraph (a)(5).

[FR Doc. E6–15916 Filed 9–27–06; 8:45 am]

**BILLING CODE 4310-MN-P**

#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 25**

[IB Docket No. 06–160; FCC 06–120]

#### **Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission proposes licensing procedures and service rules for satellites providing Direct Broadcast Satellite (DBS) service. The Notice of Proposed Rulemaking (NPRM) seeks comment on proposals that will apply to any application for authority to provide DBS service in the United States using the 12.2–12.7 GHz band and associated feeder links in the 17.3–17.8 GHz band. This includes both unassigned channels at orbit locations assigned to the United States under the International Telecommunication Union (ITU) Region 2 Broadcasting-Satellite Service (BSS) and feeder-link Plans, and applications for DBS service from space stations located at orbital locations not assigned to the United States in the ITU Region 2 BSS and feeder-link Plans. The NPRM seeks comment on new licensing procedures, including the use of the first-come, first-served process for all DBS applications, regardless of the proposed orbit location. Alternatively, the NPRM requests comment on whether DBS should continue to be licensed outside the scope of the Commission's first-come, first-served satellite application processing procedures, and if so, what processing framework should be used to license DBS. The NPRM also seeks comment on: What additional issues the Commission should consider in situations involving non-nine-degree spaced DBS applications; whether all the licensing procedures applicable to other satellite services (e.g., performance bonds, milestones, and annual reports) should apply to DBS systems; how to resolve impasses in operator-to-operator coordination negotiations; whether new license terms should be adopted for all current and future U.S.-licensed DBS systems; and other issues, including what, if any, action is needed to address the impact of reduced spacing DBS on other services.

**DATES:** Comments are due on or before December 12, 2006, and reply comments are due on or before January 11, 2007. Public and agency comments on the Initial Paperwork Reduction Act of 1995 (IFRA) analysis are due November 27, 2006.

**ADDRESSES:** All comments should be addressed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information

collection(s) proposed herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy\_L.\_LaLonde@omb.eop.gov* or by fax to 202–395–5167.

You may submit comments, identified by IB Docket No. 06–160, 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.

- *Mail:* Filings not submitted electronically must be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–B204, Washington, DC 20554.

- *Mail courtesy copies to:* JoAnn Lucanik, Satellite Division, International Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Rm. 6–A660, Washington, DC 20554.

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

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

#### FOR FURTHER INFORMATION CONTACT:

JoAnn Lucanik (202) 418–0719, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) in IB Docket No. 06–160, FCC 06–120, adopted August 14, 2006 and released on August 18, 2006. The full text of the NPRM 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. The 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*.

Pursuant to the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Certification (IRFC) of the possible significant economic impact on small entities by the proposals considered in the NPRM. The text of the IRFC is set forth in Appendix A of the NPRM.

Written public comments are requested on this IRFC. Comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses to the IRFC.

#### Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (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. 104–121, Title II, 110 Stat. 857 (1996)) 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).

The rules proposed in this Notice of Proposed Rulemaking, if adopted, would affect applicants for the Direct Broadcast Satellite Service (DBS). The rules proposed in this Notice of Proposed Rulemaking apply only to entities providing DBS. Because DBS provides subscription services, DBS falls within the SBA-recognized definitions of “Cable and Other Program Distribution” or “Satellite Telecommunications.” These definitions provide that small entities are ones with \$12.5 million or less in annual receipts. Small businesses of that size (*i.e.*, \$12.5 million or less in annual receipts) will not have the financial

ability to become DBS system operators because of the high implementation costs, including construction of satellite space stations and the rocket launch process, associated with satellite systems and services.

The Commission therefore certifies, pursuant to the RFA, that the proposals in this Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities because all entities affected are large. The Commission will send a copy of the Notice of Proposed Rulemaking, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

In addition, the Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due November 27, 2006. Comments should address: (a) Whether the proposed 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

#### Paperwork Reduction Act Requirements

*OMB Control Number:* 3060–XXXX.  
*Title:* Service Rules for Direct Broadcast Service (DBS).

*Form No.:* Not Applicable.

*Type of Review:* New information collection.

*Respondents:* 5 respondents.

*Estimated Number of Responses:* 41 responses.

*Estimated Time Per Response:* 10 hours.

*Frequency of Response:* On occasion and annual reporting requirements.

*Estimated Total Annual Burden:* 410 hours.

*Estimated Total Annual Costs:* \$15,562,000.

*Privacy Act Impact Assessment:* Not Applicable.

**Needs and Uses:** The purpose of this new information collection is to address the Paperwork Reduction Act (PRA) requirements proposed in the Commission's Notice of Proposed Rulemaking (FCC 06–120) to establish service rules for the Direct Broadcast Satellite (DBS) Service under IB Docket No. 06–160. Among other requirements, the Commission proposes several new information collection requirements applicable to DBS licensees: (1) Annual reporting requirement on the status of construction and anticipated launch dates, (2) milestone schedules and (3) performance bonds that are posted within 30 days of the grant of the license. Additionally, applicants may be required to provide a technical showing that the proposed DBS system could operate satisfactorily if all assignments in the BSS and feeder link plans were implemented. If applicants seek U.S. licenses to launch and operate DBS satellites with characteristics that differ from those in the ITU's Plan, the Commission submits plan modifications to the ITU on behalf of such applicants. For U.S. plan modifications, the ITU Radio Regulations Appendix 4 information is prepared by the satellite operators and submitted to the Commission, which reviews the information and forwards it to the International Telecommunication Union's Radiocommunication Bureau (ITU/BR).

Without the information collected through the Commission's satellite licensing procedures, we would not be able to determine whether to permit applicants for satellite licenses to provide telecommunications services in the U.S. Therefore, we would be unable to fulfill our statutory responsibilities in accordance with the Communications Act of 1934, as amended; as well as the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

#### Summary of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (NPRM), the Commission invites comment on revisions to our licensing procedures and technical rules governing direct broadcast satellite (DBS) Service. The Commission proposes service rules for geostationary satellite orbit (GSO) DBS space stations in the 12.2–12.7 GHz frequency band. The Commission expects that adopting

these procedures for DBS applications will expedite the provision of beneficial services to the public, just as these procedures have done in other satellite services.

2. The approaches the Commission proposes in the NPRM are prompted, in part, by a recent decision by the U.S. Court of Appeals for the District of Columbia Circuit that the Commission's July 2004 auction of DBS licenses was unauthorized. *Northpoint Technology, Ltd. and Compass Systems, Inc. v. Federal Communications Commission*, 412 F.3d 145 (DC Cir. 2005) (*Northpoint v. FCC*). The proposed rules would replace processing procedures that were designed to assign DBS licenses by auctions. If adopted, these rules will apply to any application for authority to provide DBS service to the United States using the 12.2–12.7 GHz band and associated feeder links in the 17.3–17.8 GHz band, including unassigned channels at orbit locations assigned to the United States under the International Telecommunication Union (ITU) Region 2 Broadcasting Satellite Service and feeder-link Plans, as well as applications for DBS service from space stations located at orbital locations not assigned to the United States in the ITU Region 2 BSS and feeder-link Plans. As described in more detail in the following paragraphs, the Commission has authorized only DBS satellites that are a minimum of nine degrees apart on the geostationary arc. Nine degree spacing derives from the International Telecommunication Union (ITU) Region 2 Broadcast Satellite Service (BSS) Plan, which assigned to the United States eight DBS orbital locations, each spaced a minimum of nine degrees away from the next. In this NPRM, the Commission refers to orbital locations other than those in the original Region 2 Plan as “reduced spacing” or “non-nine-degree-spaced” locations.

3. Specifically, the Commission seeks comment on using first-come, first-served processing procedures for all DBS applications, regardless of the proposed orbit location. (As used in this NPRM, unless otherwise indicated, the term “DBS applications” refers to any application, including requests for market access relating to a foreign-licensed space station, for authority to provide DBS service to the United States using the 12.2–12.7 GHz band and associated feeder links in the 17.3–17.8 GHz band, including unassigned channels at orbit locations assigned to the United States under the ITU Region 2 BSS and feeder-link Plans as well as requests to provide DBS service from space stations located at orbital locations not assigned to the United

States in the ITU Region 2 BSS and feeder-link Plans (requests by both foreign and domestic operators.)) Alternatively, the Commission seeks comment on whether DBS should continue to be licensed outside the scope of the *First Space Station Licensing Reform Order's* first-come, first-served processing procedures, and if so, what processing framework should be used to license DBS. See Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02–34, 18 FCC Rcd 10760 (2003) (“*First Space Station Licensing Reform Order*”). The Commission specifically seeks comment on whether, pursuant to Section 309(j) of the Communications Act, 47 U.S.C. 309(j), and in light of the *Northpoint* case, the Commission could design a competitive bidding system, or auction, to assign mutually exclusive applications for DBS licenses or spectrum.

4. As a threshold matter, the Commission observes that up until the recent *Northpoint* ruling by the U.S. Court of Appeals for the DC Circuit, applications for DBS licenses to operate at any orbital location assigned to the United States under the ITU Region 2 Plan were filed in accordance with an auctions track, as specified by section 25.148(d) and (e) of the Commission's rules. (47 CFR 25.148). This track included both filing requirements for applications and a method by which to process them. Given the recent *Northpoint* ruling by the U.S. Court of Appeals for the DC Circuit, however, we cannot conduct an auction to award DBS licenses unless we change our current policy that permits DBS licensees to provide both domestic and international services. (See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd 2429 (1996)). Consequently, we cannot now use the auction filing requirements. Nevertheless, residual application filing requirements exist for DBS applications—i.e., the general application filing requirements set forth in sections 25.114 and 25.156 of the Commission's rules. In 2002, when the Commission merged the Part 100 rules governing DBS into Part 25, these sections became applicable on their face to DBS and can consequently be used for any DBS space station authorization application that was not covered by a more specific filing procedure. (See Policies and Rules for the Direct Broadcast Satellite Service, *Report and*

Order, IB Docket No. 98–21, 17 FCC Rcd 11331 (2002) (“*Part 100 Order*”). Thus, for DBS applications that specified operations at locations other than the eight U.S. orbital locations covered by the ITU Region 2 Plan—and which were consequently ineligible for filing under the auction rules—the filing requirements under sections 25.114 and 25.156 applied. There have been, however, no processing rules in place for such applications; the only processing track currently in our rules for DBS is the now-defunct auctions track, which, prior to *Northpoint*, clearly applied to ITU Region 2 Plan locations only. Despite the lack of specific rules, the Commission can process the DBS applications for non-ITU Region 2 Plan locations that are currently on file on an *ad hoc* basis, pursuant to our existing statutory authority. Specifically, given our general statutory authority under sections 308 and 309 of the Communications Act, coupled with the application filing requirements and rules regarding non-interference showings, we may process the existing DBS applications provided that they are complete and consistent with the public interest, convenience, and necessity. Any application granted prior to resolution of this proceeding would be conditioned upon operator to operator coordination and the applicant would be required to comply with the outcome of this proceeding.

5. *Licensing Procedures:* In the *First Space Station Licensing Reform Order*, the Commission adopted various procedural reforms to expedite the licensing process for most satellite services, with an exception for DBS and the Digital Audio Radio Satellite (DARS) Service. In light of the *Northpoint* decision, the Commission requests comment on the appropriate procedures to be used in licensing future DBS systems.

6. The Commission proposes to treat applications for GSO DBS space stations at both Region 2 Plan orbital locations and reduced spacing locations under a “first-come, first-served” licensing approach. The Commission seeks comment on this proposal. The Commission also proposes that the first-come, first-served license procedures, if adopted for DBS, should also apply to requests from foreign-licensed DBS space station operators to serve the United States. The Commission notes that it decided in the *DISCO II* proceeding that entities wishing to serve the United States with a non-U.S. satellite, including DBS satellites, must file the same information as applicants for a U.S. space station license, whether

or not that satellite is already licensed by another administration. (See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96–111, 12 FCC Rcd 24094, 24175 at ¶ 190 (1997) (*DISCO II* or *DISCO II Order*). *DISCO II* specifically said that foreign DBS operators seeking access to the United States must file the same information as U.S. applicants under Section 100.13, but that rule has since been eliminated as DBS applications are now filed in accordance with the general part 25 satellite rules. See *Part 100 Order*, 17 FCC Rcd 11349 at ¶¶ 35–36.) Consequently, if we adopt a first-come, first-served licensing procedure, foreign-licensed DBS operators seeking U.S. market access and entities filing earth station applications to access foreign-licensed DBS satellites must file the same information requested under section 25.114 of the Commission’s rules that U.S. DBS applicants must file (including, without limitation, the technical characteristics of the satellite as specified in sections 25.114(c) and 25.114(d)(1)–(5) and the analyses required under section 25.114(d)(13)). (See 47 CFR 25.114. The analyses required under section 25.114(d)(13) must take into account both the Appendix 30 BSS Plans and the Appendix 30A feeder link Plans. *Id.*)

7. Our experience with the first-come, first-served approach indicates that it would also allow us to issue licenses for DBS satellites quickly, while still accommodating existing or new competitive systems in the same spectrum. Further, this approach would give applicants flexibility to design systems that will best serve their targeted customers. As evidenced by the reduced-spacing DBS applications and petitions received to date, reduced spacing proposals are likely to vary based on the location selected, the operating parameters of adjacent operators, and the applicant’s own system design. These factors would then guide the ITU agreement-seeking process, which must be completed before a proposed modification can be entered into the Region 2 Plans. The Commission believes that the first-come, first-served approach permits interested parties to find, through the negotiation process, the most suitable technical solutions to operate DBS satellites. The Commission seeks comment on this approach for processing future applications and petitions to operate all

DBS satellites in the 12.2–12.7 GHz service bands.

8. If, however, the Commission decides that it is more appropriate to treat all DBS satellites in the 12.2–12.7 GHz service bands outside the scope of the *Space Station Reform Order*, the Commission seeks comment on what processing framework it should use for licensing these satellites. The Commission specifically seeks comment on whether, pursuant to section 309(j) of the Communications Act, (47 U.S.C. 309(j)) a competitive bidding system, or auction, could be designed to assign mutually exclusive license applications for all DBS satellites in the 12.2–12.7 GHz service bands in the United States. In this regard, we note that the U.S. Court of Appeals’ decision in the *Northpoint v. FCC* case found the Commission’s July 2004 auction of DBS licenses was unauthorized in light of section 647 of the ORBIT Act, which prohibits the Commission from using competitive bidding to assign orbital locations or spectrum used “for the provision of international or global satellite communications services.” (See Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106–180, 114 Stat. 48 section 647 (enacted Mar. 12, 2000), codified at 47 U.S.C. 765f (ORBIT Act)). The Commission seeks comment on whether the Commission could conduct an auction for all DBS satellites in the 12.2–12.7 GHz service bands consistent with the *Northpoint* ruling and, if so, how such an auction would be implemented. The Commission also seeks comment on what, if any, limitations ITU procedures may place on a Commission auction (for example, the ITU first in time filing policy applies to the 12.2–12.7 GHz service). Thus, a country filing first at the ITU obtains superior international coordination rights at that orbital location. See ITU Appendices 30 and 30A. Further, if future legislative action authorizes the Commission to award DBS licenses in the 12.2–12.7 GHz service bands via competitive bidding, we request comment on how we could structure the auction. Commenters should specify whether, and the extent to which, such an auction would be different from one conducted without such legislation.

9. *Safeguards against Speculation.* The Commission’s first-come, first-served approach for processing space station applications contains several safeguards to ensure that licensees remain committed and able to proceed with system implementation in a timely manner. The Commission’s rules require all GSO-like applicants awarded a

license under this procedure to post a \$3 million performance bond with the Commission within 30 days of license grant. They also require licensees to construct and launch the satellite consistent with a specified milestone schedule. If the licensee fails to meet an implementation milestone, the license becomes null and void and the bond is executed. The rules also limit applicants to a total of five pending applications and licenses for unbuilt satellites in a specific frequency band at any one time. If the Commission adopts a first-come, first-served processing procedure for DBS satellites, the Commission proposes to apply these accompanying safeguards, including applying the standard milestone schedule in section 25.164 of the Commission's rules (which includes completion of critical design review within two years of license grant) to DBS systems, in lieu of the due diligence milestones set forth in section 25.148(b). The Commission requests comment on these proposals. Additionally, the Commission seeks comment on whether there are any public interest rationales for imposing a higher performance bond and/or whether it should impose tighter limits on the number of pending applications and licenses that applicants for DBS systems may have for unbuilt satellites at any one time.

10. *Annual Reporting Requirement.* Most space station operators, both GSO and NGSO, other than DBS operators, are subject to annual reporting requirements. These reports must include, among other things, the status of space station construction and anticipated launch dates. We believe that these reports help to keep us apprised of whether DBS operators are taking all necessary action to meet their milestones. A reporting requirement would also put DBS operators on equal regulatory footing with other satellite operators that must file annual reports, including FSS operators providing direct-to-home services. We seek comment on whether DBS licensees and foreign DBS operators that are authorized to access the United States should be required to submit similar annual reports regardless of the licensing mechanism we ultimately adopt in this proceeding.

11. *Technical Rules for the Operation of Reduced Spacing DBS Satellites:* As previously noted, the Commission believes that current Commission rules can accommodate the filing of DBS applications that specify operations at locations other than the eight orbital slots assigned to the United States in the ITU Region 2 Plan (as specified in Appendices 30 and 30A of the ITU

Radio Regulations). Nevertheless, the Commission seeks comment whether new technical DBS rules for processing applications are necessary. The Commission's part 25 rules refer to and incorporate provisions of the ITU Radio Regulations for purposes of analyzing applications for DBS with technical parameters that differ from those in the Region 2 Plan. Specifically, section 25.114(d)(13)(i) requires that for satellites in the DBS service, applicants must submit a "sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented." (25 CFR 25.114(d)(13)(i)). This showing is intended to demonstrate that the proposed system will meet its performance objectives given the Region 2 Plan assignments. Section 25.114(d)(13)(ii) requires "[a]nalysis of the proposed systems with respect to the limits in Annex 1 to Appendices 30 and 30A" of the International Telecommunication Union (ITU) Radio Regulations. (25 CFR 25.114(d)(13)(ii)). This showing is intended to demonstrate how the proposed system will affect operating DBS systems and those systems that are subject to pending Region 2 modification proposals. Section 25.148(f) requires that "DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices 30 and 30A of the ITU 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." (47 CFR 25.148(f)). Section 25.111(c) provides additional guidance regarding the filing of plan modifications at the ITU. In particular, this rule indicates what U.S. applicants and licensees must provide to the Commission so that it may file plan modifications on the licensee's/applicant's behalf. See 47 CFR 25.111(c)). Further, as noted previously, the *Part 100 Report and Order* contemplated reduced spacings. Thus, if an applicant can coordinate its proposal with other U.S. DBS operators and secure agreement with other operators already having assignments in the Region 2 Plans or with prior requests for Plan modifications, the Commission believes its rules allow it to consider these applications without establishing technical/operational rules. However, the Commission recognizes that the DBS agreement seeking process can be complex, and therefore the Commission

seeks comment below on methods to facilitate the coordination process should we decline to establish new technical rules.

12. In its *DBS Reduced Spacing Public Notice* (International Bureau Seeks Comments on Proposals to Permit Reduced Orbital Spacings Between U.S. Direct Broadcast Satellites, *Public Notice*, Report No. SPB-196, 18 FCC Rcd 25683 (2003) (*DBS Reduced Spacing Public Notice*)) comments, DIRECTV suggested that reduced-spacing DBS satellites may not be a matter of urgency because a number of other capacity options are available for the provision of DTH to U.S. consumers. In particular, DIRECTV points out that "there is an abundance of FSS Ku and Ka band capacity that could be used to provide direct-to-home \* \* \* video and broadband services, as well as the prospect of future BSS capacity \* \* \* in the 17 GHz band \* \* \*." (DIRECTV Comments at 3). The Commission agrees that existing and potential DBS operators have other options at their disposal to expand their service. Reduced spacing DBS would provide existing and potential DBS operators with another valuable option with which they can expand their service offerings. The Commission seeks comment on whether existing Plan modification processes are sufficient to allow room for expansion of existing DBS service.

13. *Resolution of Impasse in Operator Negotiations and Protection Margins:* The Commission foresees three possible scenarios in which interference issues could be presented with respect to an application seeking to provide DBS service from an orbital location spaced less than nine-degrees from an existing DBS space station or seeking to provide DBS service from a "nine-degree" location with parameters different from those contained in the Plan (including requests from foreign satellite operators to access the United States from such a satellite), namely:

(i) The applicant has negotiated an operating arrangement with the other potentially-affected U.S. DBS service providers,

(ii) The applicant has demonstrated that the proposed DBS system would not affect the systems of other U.S. DBS service providers as defined by the ITU in Annex 1 of Appendix 30 and 30A, and has not negotiated operating arrangements, or

(iii) The applicant has conducted interference analyses, the results of which the applicant considers should be acceptable to other U.S. DBS service providers, but one or more of the U.S. DBS service providers disagree.

14. In the first two scenarios, the Commission could proceed with public notice and review, and, taking any comments into account, could take action on the application. In the third scenario, the Commission could also proceed with public notice and review, although it could not take action on the application until agreements are reached. Furthermore, if the application is for a U.S.-licensed space station, the Commission will not submit it to the ITU until agreement has been reached with affected U.S. operators. In the case of such a coordination impasse, the Commission could take one of several approaches.

15. The simplest approach would be to set a deadline for reaching agreement and to dismiss the application when the deadline expires if no agreement has been reached. The Commission seeks comment on whether this should be the preferred approach and, if so, what would be the appropriate time period to allow for additional negotiations before dismissing the application.

16. Another approach would be to grant or dismiss the application depending on the acceptability of the interference as evaluated by the Commission. The Commission seeks comment of whether this should be the preferred approach and, if so, what criteria the Commission should use in evaluating what constitutes "acceptable" interference.

17. The DIRECTV Petition suggests certain levels of C/I and certain other technical parameters an applicant should use in designing its system. DIRECTV proposes single-entry C/I levels of 24 dB for "acceptable" interference into an existing system and 12 dB from the existing system into the new system. While this is an approach that operators may take in negotiating operating arrangements, we do not believe that such asymmetries, which would lead to dictating two different classes of service in our rules, are appropriate for regulatory enforcement.

18. The Commission could use the ITU's approach in resolving cases of disagreement between the applicant and the licensees concerning the acceptability of interference. However, the calculations are difficult and complex and the acceptable C/I levels depend on the reference situation such that, the higher the interference level initially, the higher the acceptable level of interference would be. As discussed above, the ITU considers a network to be "affected" by a proposed Plan modification if it were to experience a change in OEPM of more than 0.25 dB. In order to reduce the OEPM by less than 0.25 dB, the single entry C/I needs

to be at least 12.25 dB higher than the aggregate C/I implicit in the reference situation. Thus, for example, if the reference OEPM were -10 dB (aggregate reference C/I = 18 dB), the single entry C/I from the new network would have to be at least 30.25 dB in order to maintain the OEPM within 0.25 dB of the reference situation. By way of comparison, a single entry C/I level of 24 dB would reduce the OEPM by about 1.0 dB in this example. Indeed, a single entry C/I of 24 dB would reduce by more than 0.25 dB any OEPM higher than -17.25 dB (aggregate reference C/I = 11.75 dB).

19. Another benchmark the Commission can use when coordination negotiations reach an impasse is system "unavailability." This DBS performance criterion is meaningful to the consumer, as it is the amount of time each year that the consumer's DBS receiver is not providing video and audio signals to the consumer's television display and sound system. When the total time that signals are available during some time period is divided by the length of the time period, the resulting metric is known as "availability." This metric is usually expressed in percentage terms. The complementary metric, the total time that signals are not available in some time period, divided by the length of the time period, is called "unavailability," or "outage." Mathematically, unavailability is equal to 100%—availability, when availability is expressed in terms of a percentage. The ITU Region 2 BSS Plan was based on a target of 99.7% availability, which corresponds to an outage of about 26.3 hours per year. (Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 4096, 4177 at ¶ 214 (2000) (*NGSO-FSS/MVDDS First R&O*)). This target is usually exceeded by the domestic DBS operators, who typically aim for at least 99.9% availability for their systems, except in the high-precipitation and fringe coverage areas.

20. In the *NGSO-FSS/MVDDS First R&O*, the Commission adopted criteria to protect DBS systems from interference from non-geostationary

orbit fixed-satellite (NGSO-FSS) systems. These interference protection criteria took the form of equivalent power flux density (EPFD) limits. These limits were based on a goal of limiting the increase in the unavailability of DBS systems due to interference from the NGSO-FSS systems to 10%, without interference from the MVDDS systems. In the *NGSO-FSS/MVDDS Second R&O* (Amendment of parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO-FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (2002) (*NGSO-FSS/MVDDS Second R&O*)), the Commission adopted EPFD limits for Multichannel Video Distribution and Data Service (MVDDS) systems, again based on a goal of limiting the increase in unavailability of DBS systems to 10% over the unavailability that the DBS systems would experience without interference from the MVDDS systems. (Amendment of parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (2002) (*NGSO-FSS/MVDDS Second R&O*)). This increase in unavailability is in addition to the 10% increase in unavailability that is allocated to NGSO-FSS systems. The Commission noted that the typical service availability of DBS systems is on the order of 99.8 to 99.9%, corresponding to a level of unavailability of 0.1 to 0.2%. The Commission stated that a 10% increase in unavailability is insubstantial and does not approach a level that could be considered harmful interference. The Commission also noted that the increase in unavailability might be below or above the 10% nominal level in different parts of the country.

21. The unavailability of a digital radiocommunication system, such as a DBS system, is dependent on the ratio of the carrier power (C) of the desired signal to the sum of the powers of the thermal noise and interference (N + I) at the receiver. The received carrier power of microwave signals, such as DBS signals, is reduced by precipitation in the path between the DBS satellite and the subscriber's receiver. (If the interfering signal seen by a DBS receiver is from another DBS satellite, the power of the interfering signal will probably be reduced as well, but most likely by a different amount than the power of the desired signal.) The thermal noise seen by the receiver is also increased by precipitation. The resulting reduction in C/N ratio in the presence of precipitation is commonly known as a "rain fade." The intensity of the rain in the path between the satellite and the subscriber's receiver is the determining factor in how much the C/N ratio will be reduced. Therefore, the precipitation statistics at each specific DBS receiver location will influence the average carrier-to-noise-plus-interference ratio (C/(N+I)) experienced at that location, and hence the average unavailability at that location. The Commission took this into account in the NGSO-FSS/MVDDS Second R&O, in which it recognized that a single EPFD limit for all areas of the country was inappropriate, due to the differing precipitation-induced propagation degradations in different geographic regions. The Commission therefore adopted four different EPFD limits for four different geographic regions of the contiguous United States, based on the statistics describing the precipitation characteristics of these regions.

22. Given the Commission's previous use of increase in unavailability as an indirect DBS metric, the Commission seeks comment on whether it could use a limit on the percentage of increase in unavailability in various cities distributed around the United States as the criterion for acceptability of the interference caused by reduced spacing satellites, as evaluated by the Commission. Alternatively, the Commission seeks comment as to whether it could use regional EPFD limits, similar to what the Commission established in the NGSO-FSS/MVDDS Second R&O. The Commission notes that it is not revisiting the unavailability criteria previously adopted as they pertain to MVDDS and NGSO-FSS systems.

23. The Commission seeks comment on whether there is a single symmetric interference criterion that the Commission could use to make findings

of acceptability of interference to existing DBS systems and, if there is, what that criterion should be. If such a criterion exists, the Commission seeks comment on what would be the appropriate calculation methodology to determine the value of this criterion for a particular coordination, and what would be the appropriate values for any parameters, such as antenna mispointing angle, antenna pattern mask, and DBS receiver threshold C/(N+I) level to existing DBS systems, that the Commission should use in its calculations.

24. *License Term:* The Commission proposes to continue the ten year non-broadcast DBS license term, and we seek comment on this proposal. Licensees for Reduced Spacing DBS satellites will, of course, be subject to geographic service requirements imposed by 47 CFR 25.148(c) and public interest obligations imposed by 47 CFR 25.701.

25. *Effect of Reduced Spacing DBS Satellites on Multichannel Video Distribution and Data Service:* The Commission proposes that MVDDS protection of DBS (and DBS protection of MVDDS) under Part 101.1440 applies to less-than-nine-degree-spaced DBS satellites. The Commission requests comment on whether there is a need to revisit these rules as a result of authorization of additional U.S. services in the future at orbital locations that are not currently assigned to the United States in the Region 2 BSS plan. The Commission believes that all DBS service in the 12.2–12.7 GHz band should be subject to the same regulatory treatment.

26. *Non-Geostationary Satellite Orbit Fixed Satellite Services:* The Commission's rules apply footnote 5.487A of the International Radio Regulations to the frequency band 12.2–12.7 GHz in the U.S. domestic allocation. Thus, the Commission tentatively concludes that since it intends to treat reduced spacing DBS space stations the same as Region 2 Plan DBS space stations, reduced spacing DBS satellites need not consider interference into NGSO/FSS systems, and NGSO/FSS systems must protect any non-nine-degree-spaced DBS satellite that is a part of the Region 2 Plan. The Commission requests comment on whether the Commission's rules are adequate to accommodate new DBS systems relative to NGSO/FSS sharing, and whether there is a need to revise its rules to account for non-nine-degree-spaced DBS satellites.

27. *Mobile DBS Receivers:* The Commission concluded in the NGSO-FSS Order that it was not necessary to

adopt any additional measures to protect DBS service to aircraft. (NGSO-FSS Ku-Band R&O & FNPRM, 16 FCC Rcd at 4173 ¶ 204). The Commission also notes that the original Region 2 Plan was based on 1.0-meter-diameter subscriber antennas. The current ITU Radio Regulations require that the gain, beam width, co-polar radiation pattern, cross-polar radiation pattern, and antenna diameter in meters be supplied as part of the information filed in accordance with Appendix 4 of the ITU Radio Regulations for a new Region 2 Plan modification. In their filings requesting modifications to the Region 2 Plan, DBS applicants and licensees have specified subscriber antenna diameters as small as 45 cm, but no smaller. Consequently, the smallest antenna diameter that must be considered in the international agreement-seeking process for U.S. Region 2 Plan modification requests is currently 45 cm. Thus, DBS receiving antennas smaller than 45 cm in diameter are not protected under the ITU Radio Regulations or the Commission's rules. The Commission requests comment on whether Commission rules can or should accommodate smaller antennas in order to facilitate DBS service to mobile receivers. If we rely on the ITU process for protection of mobile antennas, and decide not to adopt new rules for their protection, the Commission seeks comment on whether mobile antenna manufacturers' earth station licenses should be conditioned to require disclosure to customers that their mobile equipment is not protected from interference.

28. *Full-CONUS Spectrum Cap:* As the Commission observed in 2002, DBS offers a strong competitive alternative to cable systems, and we have not found any competitive problems with allowing a DBS operator to operate in more than one full-CONUS orbital position. Indeed, allowing such operation may enable DBS operators to better compete with cable systems in the future. As recently as 2004, the Commission declined to adopt any eligibility restrictions based on spectrum usage for the three DBS licenses available in Auction No. 52. The Commission requests comment on whether a spectrum cap on the number of full-CONUS orbital locations that one satellite company can control is now necessary in light of the rule changes proposed in this NPRM.

29. For the reasons discussed above, the Commission invites comment on revising the processing procedures for DBS applications. Parties opposing the proposed approaches should explain their reasons for opposition with



particularity, recommending alternatives or explaining in detail why they believe the proposed approaches are unnecessary. Interested parties are also invited to recommend alternative license processing procedures. Based on our experience with space station processing over the past several years with comparable first-come, first-served procedures, the Commission believes the proposed approaches will similarly expedite the provision of new DBS service to the public.

#### Ex Parte Presentations

30. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules as well.

#### Initial Regulatory Flexibility Certification

31. Pursuant to the Regulatory Flexibility Act (RFA), (See 5 U.S.C. 603. The RFA, see U.S.C. 601 et seq., has been amended by the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)) the Commission has prepared an Initial Regulatory Flexibility Certification of the possible significant economic impact on small entities by the policies and actions considered in this NPRM. The text of the Certification is set forth in Appendix B. Written public comments are requested on this Certification. Comments must be identified as responses to the RFA Certification, and must be filed by the deadlines for comments on the NPRM as provided in the caption, above. The Commission will send a copy of the NPRM, including the Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### Initial Paperwork Reduction Act of 1995 Analysis

32. *Paperwork Reduction Act.* The NPRM contains proposed new and modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office

of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days from date of publication of the NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### Comment Filing Procedures

33. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments in response to this NPRM no later than on or before 75 days after **Federal Register** publication. Reply comments to these comments may be filed no later than on or before 105 days after **Federal Register** publication. All pleadings are to reference IB Docket No. 06-160. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties are strongly encouraged to file electronically. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Parties should transmit one copy of their comments to the docket in the caption of this rulemaking. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov) and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

35. Parties choosing to file by paper must file an original and four copies of each filing in IB Docket No. 06-160. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc. will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

36. Comments submitted on diskette should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, IB Docket No. 06-160), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

37. All parties must file one copy of each pleading electronically or by paper to each of the following: (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). (2) Arthur Lechtman, Attorney, Satellite Division, International Bureau, 445 12th Street, SW., Washington, DC 20554; e-mail [Arthur.Lechtman@fcc.gov](mailto:Arthur.Lechtman@fcc.gov). (3) Mark Young, Attorney, Satellite Division, International Bureau, 445 12th Street, SW., Washington, DC 20554; e-



mail [Mark.Young@fcc.gov](mailto:Mark.Young@fcc.gov). (4) John Martin, Sr. Engineer, Satellite Division, International Bureau, 445 12th Street, SW., Washington, DC 20554; e-mail [John.Martin@fcc.gov](mailto:John.Martin@fcc.gov). (5) Chip Fleming, Engineer, Satellite Division, International Bureau, 445 12th Street, SW., Washington, DC 20554; e-mail [Chip.Fleming@fcc.gov](mailto:Chip.Fleming@fcc.gov). (5) JoAnn Lucanik, Associate Bureau Chief, Satellite Division, International Bureau, 445 12th Street, SW., Washington, DC 20554; e-mail [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov).

38. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). The pleadings will be also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554 and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's World Wide Web site, [www.fcc.gov](http://www.fcc.gov).

39. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this NPRM in order to facilitate our internal review process.

40. Commenters who file information that they believe is proprietary may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 CFR

0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally.

41. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of an FOIA exemption.

#### Further Information

42. For further information regarding this proceeding, contact Arthur Lechtman, Attorney, Mark Young, Attorney, Chip Fleming, Engineer, or John Martin, Sr. Engineer, Satellite Division, International Bureau at (202) 418-0719. Information regarding this proceeding and others may also be found on the Commission's Web site at <http://www.fcc.gov>.

#### Ordering Clauses

43. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), this *Notice of Proposed Rulemaking* is adopted.

44. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Notice of Proposed Rulemaking*, including the initial regulatory flexibility certification, 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.*

[FR Doc. E6-15951 Filed 9-27-06; 8:45 am]  
BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No 06-121; MB Docket No 02-277; FCC 06-93]

### 2006 Quadrennial Regulatory Review; 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** In this document, the Media Bureau extends the comment and reply comment period in this proceeding. The

Commission seeks comment on how to address issues raised by the U.S. Court of Appeals for the Third Circuit with respect to rules, as adopted or revised in the 2002 Biennial Review of the Commission's broadcast ownership rules.

**DATES:** Comments are due October 23, 2006, and Reply Comments are due on December 21, 2006.

**ADDRESSES:** You may submit comments, identified by MB Docket No 06-121 and/or MB Docket No 06-277, 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.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

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

**FOR FURTHER INFORMATION CONTACT:** Mania Baghdadi, Industry Analysis Division, Media Bureau, Federal Communications Commission, (202) 418-2330. Press inquiries should be directed to Rebecca Fisher, (202) 418-2359, TTY: (202) 418-7365 or (888) 835-5322.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in MB Docket No. 06-121, DA 06-1663, adopted and released September 18, 2006. Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments by October 23, 2006 and reply comments on or before the dates December 21, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of*