Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

III. Solicitation of Public Comments

In order to address the requirements of section 205 of Public Law 104–191, we are requesting public comments from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts. A detailed explanation of justification or empirical data supporting the suggestion would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 20, 1996.

June Gibbs Brown,

Inspector General, Department of Health and Human Services.

Approved: December 20, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–33277 Filed 12–30–96; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–220; FCC 96–426]

Non-Voice Non-Geostationary Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rules and policies to govern the second processing round for the non-voice, non-geostationary mobile satellite service (''NVNG MSS'') also referred to as the ''Little LEO'' service. The Commission's proposals include limiting the licensees in the second processing round to ''new entrants;'' adopting strict financial rules; adopting rules requiring licensees to time-share spectrum with existing commercial and government licensees; and seeking comment on conducting auctions if mutual exclusivity arises.

DATES: Comments must be submitted on or before January 6, 1997; reply comments must be submitted on or before January 13, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Paula Ford, International Bureau, Satellite Policy Branch, (202) 418–0760; Brian Carter, International Bureau, Satellite Policy Branch, (202) 418–2119; Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418–0753.

Summary of Notice of Proposed Rulemaking

1. This Notice of Proposed Rulemaking (''NPRM'') reflects the Commission's commitment to licensing applicants in the second processing round to provide Little LEO service and the Commission's continued efforts to promote competition in the U.S. satellite services market. With this NPRM, we propose service rules and polices for the licensing of three applicants in the second processing round.

2. In order to promote multiple entry and competition, the Commission proposes to limit the participation in the second processing round to pending applicants who are not Little LEO licensees or affiliated with a Little LEO licensee. We propose to identify an applicant as an affiliate if the applicant: (1) Directly or indirectly controls or influences a licensee; (2) is directly or indirectly controlled or influenced by a licensee; or (3) is directly or indirectly controlled or influenced by a third party or parties that also have the power to control or influence a licensee.

3. Given that future entry may not be possible in the Little LEO service and grant to an under-financed applicant will likely prevent a capitalized applicant from going forward, we propose to amend the current financial standard to require that each applicant demonstrate that it has finances necessary to construct, launch, and operate the entire system for a year. In cases where there are more applicants than the spectrum can accommodate, a grant to an under-financed space station applicant may preclude a capitalized applicant from implementing its system, and delay service to the public. In the past we have required a stringent financial showing in such cases.

4. We propose to license three Little LEO systems to operate in particular spectrum blocks: the first system in the 149.81 MHz/400.5050–400.5517 MHz bands; the second in the 148.905–149.81 MHz/137–138 MHz bands; the third system in the 149.95–150.05 MHz/400.150–400.5050 MHz/400.645–401.0 MHz bands. The proposal requires all systems to time-share the spectrum and coordinate use of the spectrum with users of the bands. In the 137–138 MHz band, the Little LEO licensee would have to time-share spectrum with meteorological satellites of the National Oceanic and Atmospheric Administration. The Little LEO system operating in the 400.150–400.5050 MHz and 400.645–401 MHz bands would have to time-share the spectrum with meteorological satellites of the Department of Defense.

5. We also request comments on a number of other issues. If we have more qualified applicants than available spectrum in which they can operate, we asked for comment on how to resolve mutually exclusive applications and whether we should conduct an auction. We also ask for comment on effective methods of preventing transmissions into countries which have not authorized Little LEO service. Little LEO earth terminals have the physical capability to roam from one region or country to the next. Because of their inherent mobility, users may attempt to operate their earth terminals in a country in which the Little LEO licensee is not authorized to operate. In order to protect against this, we seek comment on methods to address this such as requiring each Little LEO user terminal to be equipped with position determination capabilities. In addition, we seek comment on whether we should adopt limitations on licensee's ability to enter into exclusive arrangements with other countries concerning communications to and from the United States. An exclusive arrangement may foreclose other Little LEO licensees from serving a foreign market and preventing that licensee from providing global service.

6. Finally, we also ask parties to submit amended applications on or before January 27, 1997 to operate in the spectrum blocks outlined in the NPRM. Amended applications must comply with the proposed rules. However, applicants are required to demonstrate finances sufficient to construct and operate only two satellites in their system for a year. Applicants will be allowed to further amend their applications once the Report and Order has been released only to the extent necessary because of the new obligations we have proposed that are different from the proposals in the Notice. If we adopt a strict financial standard we will allow applicants to amend their applications.

Ordering Clauses

7. Accordingly, it is ordered that pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 308, and 309(j), notice is hereby given of our intent to adopt the policies and rules set forth in this Notice and that comment is sought on all the proposals in this Notice.

8. It is further ordered that E-SAT, Inc.'s Petition for Rulemaking in Establishing Rules for Licensing Second-Round Applicants in the Non-voice, Non-geostationary Mobile Satellite Service dated February 14, 1996 and requesting that the Commission initiate a rulemaking proceeding to develop regulations for processing the second-round Little LEO applications is granted.

9. It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Administrative Matters

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically exempted. 47 CFR 1.1203.

11. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 6, 1997 and reply comments on or before January 13, 1997. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, N.W. Washington, D.C. 20554. For further information concerning this rulemaking contact Paula Ford at (202) 418–0760 or Virginia Marshall (202) 418–0778.

Initial Regulatory Flexibility Act Statement

12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 25 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—SATELLITE COMMUNICATIONS

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

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Sections 25.259 and 25.260 are added to Subpart C to read as follows:

§ 25.259 Time Sharing Between NOAA Meteorological Satellites and NVNG Satellites in the 137–138 MHz Band.

(a) An NVNG licensee time-sharing spectrum in the 137–138 MHz band shall not transmit signals into the ''protection areas'' of National Oceanic and Atmospheric Administration (''NOAA'') satellites. The protection area shall be calculated by using ephemeris data and an earth station elevation angle of zero degrees towards the NOAA satellite. The NVNG licensee is responsible for obtaining the necessary ephemeris data. This information shall be updated system-wide on at least a biweekly basis.

(b) NVNG licensees shall establish a 24-hour per day contact person and telephone number so that claims of harmful interference into the NOAA earth stations and other issues can be reported and resolved expeditiously. This contact information shall be made available to NOAA.

(c) NVNG satellites shall be designed to cease transmissions automatically if, within a forty-eight hour period, a valid reset signal has not been received from the NVNG gateway Earth station. All NVNG satellites shall be capable of instantaneous shutdown on any sub-band upon command from the gateway earth station.

§ 25.260 Time Sharing Between DoD–NOAA Meteorological Satellites and NVNG Satellites in the 400.15–401 MHz band.

(a) An NVNG licensee time-sharing spectrum in the 400.15–401.0 MHz band shall not transmit signals into the ''protection areas'' of Department of Defense (''DoD'')-National Oceanic and Atmospheric Administration (''NOAA'') meteorological satellites. The protection area shall be calculated by using ephemeris data and an earth station elevation angle of zero degrees toward the DoD–NOAA meteorological satellite. The NVNG licensee is responsible for obtaining the necessary ephemeris data. This information shall be updated system-wide on at least a weekly basis.

(b) NVNG licensees shall establish a 24-hour per day contact person and telephone number so that claims of harmful interference into DoD–NOAA earth station users and other operational issues can be reported and resolved expeditiously. This contact information shall be made available to DoD–NOAA.

(c) NVNG satellites shall be designed to cease transmissions automatically if, within forty-eight hours, a valid reset signal has not been received from the NVNG gateway earth station. All NVNG satellites shall be capable of instantaneous shutdown on any sub-

band upon command from the gateway earth station.

(d) Notwithstanding other provisions of this section, NVNG satellites sharing the 400.15–401 MHz with DoD–NOAA meteorological satellites shall implement within ninety minutes of receiving notice of a DoD–NOAA system frequency change, all appropriate modifications and updates to operate on a non-interference basis in accordance with subsection (a), above.

(e) At DoD–NOAA's instruction, the Little LEO System-3 operator will test, up to four times a year, the Little LEO system's ability to implement a DoD–NOAA requested frequency change.

[FR Doc. 96–33143 Filed 12–30–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 61

[CC Docket Nos. 87–313 and 93–197, FCC 96–454]

Policy and Rules Concerning Rates for Dominant Carriers; Revisions to Price Cap Rules for AT&T

AGENCY: Federal Communications Commission.

ACTION: Proposed Rules; termination.

SUMMARY: This Order terminates as moot proceedings concerning the treatment of AT&T Corp.'s (AT&T) offerings of promotions and optional calling plans (OCPs) under price cap regulation in light of the Commission's determination that AT&T is non-dominant and the resultant removal of AT&T's services from price cap regulation.

DATES: Proceedings were terminated November 26, 1996.

FOR FURTHER INFORMATION CONTACT: Joel Taubenblatt, 202–418–1513.

SUPPLEMENTARY INFORMATION: The text of the Commission's Order in CC Dockets Nos. 87–313 and 93–197, FCC 96–454, adopted November 21, 1996, and released November 26, 1996, appears below:

I. Introduction

1. In this Order, we terminate as moot proceedings concerning the treatment of AT&T Corp.'s (AT&T) offerings of promotions and optional calling plans (OCPs) under price cap regulation [1] in light of our determination that AT&T is non-dominant and the resultant removal of AT&T's services from price cap regulation.[2]

II. Background

2. In 1989, the Commission replaced traditional rate of return regulation with an incentive-based system of regulation, called price caps, for most of AT&T's services.[3] To implement the price cap system, the Commission defined three categories of AT&T services, or baskets, and defined a price cap index (PCI) for each basket.[4] The basket structure was designed so that AT&T would not be able to raise prices for services in one basket in order to lower prices for dissimilar services in another basket. Therefore, a change in rates in one basket or in services outside of price caps would not affect either the PCI or the actual price index (API)[5] for the other baskets.

3. The Commission was silent in the AT&T Price Cap Order as to the treatment of promotional rates under price caps.[6] After the Commission adopted the price cap rules, AT&T filed tariffs for a significant number of promotions in which it treated the rates associated with these offerings as rate reductions for purposes of API calculations. MCI Telecommunications Corporation (MCI) and Sprint Communications Company LP (Sprint) sought reconsideration of the AT&T Price Cap Order, requesting clarification of the price cap treatment of promotions. In the AT&T Price Cap Reconsideration Order, the Commission decided to exclude promotions from the price cap index prospectively. It reasoned that including promotional rates in price caps would give AT&T a greater degree of flexibility than warranted to offset the discounted promotional rates with increases in residential and small business rates within Basket 1.[7]

4. AT&T sought judicial review of the AT&T Price Cap Reconsideration Order. The United States Court of Appeals for the District of Columbia Circuit found that the Commission's decision to exclude promotional tariffs from the price cap index was not a reasoned decision supported by the record. The court remanded the AT&T Price Cap Reconsideration Order to the Commission with instructions either to show that its action was a clarification of the original AT&T Price Cap Order, or to ''offer a reasoned explanation of why promotional rates should be treated differently from other rates.'' [8]

5. In response, the Commission vacated its prior decision on this issue and issued the Promotions NPRM in Docket 87–313.[9] In the Promotions NPRM, the Commission tentatively concluded that promotions should be excluded from price cap regulation prospectively. The Commission found that AT&T was able to insulate itself from revenue losses created by promotional discounts by raising its rates for other residential services in Basket 1.[10] The Commission relied upon evidence that AT&T had taken advantage of any downward price flexibility generated by promotions to raise other rates in Basket 1, thereby keeping aggregate rates at the price cap maximum. According to the Commission, ''[p]ermitting promotional offerings to be used as a basis for raising basic schedule rates, without limitation, would strongly encourage the proliferation of excessive promotional offerings and undercut the efficiency incentives of the price cap program.'' [11] As an alternative, the Commission sought comment on whether to treat promotions as either new or restructured services.[12]

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[1] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, Order and Notice of Proposed Rulemaking, 8 FCC Rcd 3715 (1993), 58 FR 31936, June 7, 1993 (Promotions NPRM); Revisions to Price Cap Rules for AT&T, CC Docket No. 93–197, Notice of Proposed Rulemaking, 8 FCC Rcd 5205 (1993), 58 FR 44157, August 19, 1993 (OCP NPRM); Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, and Revisions to Price Cap Rules for AT&T, CC Docket No. 93–197, Further Notice of Proposed Rulemaking, 10 FCC Rcd 7854 (1995), 60 FR 28774, June 2, 1995 (Further NPRM).

[2] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995) (AT&T Reclassification Order), recon. pending. In a subsequent order, the Commission removed AT&T's remaining price cap services, international services, from price cap regulation. Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96–209 (rel. May 14, 1996).

[3] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, Notice of Proposed Rulemaking, 2 FCC Rcd 5208 (1987), 52 FR 33962, September 9, 1987; Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195 (1988), 53 FR 22356, June 15, 1988; Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989), 54 FR 19836, May 8, 1989 (AT&T Price Cap Order); Erratum, 4 FCC Rcd 3379 (1989); Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 665 (1991), 56 FR 5952, February 14, 1991 (AT&T Price Cap Reconsideration Order), remanded sub nom. AT&T v. FCC, 974 F.2d 1351 (D.C.Cir. 1992) (Remand Order). Those services that are not under price cap regulation are subject to streamlined regulation, which reduces their regulatory obligations under Part 61 of the Commission's rules, 47 CFR Part 61.

[4] See Further NPRM, 10 FCC Rcd at 7855–56, for an explanation of how the price cap index is calculated.

[5] The API represents a weighted average of actual prices of the services within the basket. *Id.*

[6] *Id.* at 7857.

[7] AT&T Price Cap Reconsideration Order at 671.

[8] Remand Order, 974 F.2d at 1355.

[9] Promotions NPRM, 8 FCC Rcd 3715.

[10] *Id.* at 3716.

[11] *Id.*

[12] *Id.* at 3717. Under price cap regulation, a service is classified as new if it provides an additional option to a service, but does not replace the existing service. A service is classified as a restructured offering if it replaces an existing service. See Sections 61.44(g), 61.46(b), and 61.47(b) of the Commission's rules, 47 CFR §§ 61.44(g), 61.46(b), and 61.47(b).