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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 25**

[IB Docket No. 95-91; GEN Docket No. 90-357; FCC 97-70]

**Satellite Digital Audio Radio Service****AGENCY:** Federal Communications Commission.**ACTION:** Further notice of proposed rulemaking.

**SUMMARY:** After carefully reviewing the comments and information the Commission received following issuance of the Notice of Proposed Rulemaking, the Commission issued this Further Notice of Proposed Rulemaking (FNPRM) to seek comment on its proposal to permit deployment of satellite Digital Audio Radio Service ("DARS") terrestrial repeaters, or "gap-fillers", on an as-needed basis by satellite DARS licensees to meet their service requirements. The intended effect of the Commission's action in issuing the NPRM is to seek comment on whether to adopt the Commission's proposed rules for terrestrial repeaters which are based upon proposals suggested by comments from CD Radio. The Commission also seeks comment on its tentative conclusion to prohibit the use of terrestrial repeaters to transmit locally originated programming which would be inconsistent with the allocation of the DARS spectrum.

**DATES:** Comments must be submitted on or before May 2, 1997. Reply comments must be submitted on or before May 23, 1997.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Rosalee Chiara at (202) 418-0754 or Ron Repasi at (202) 418-0768 with the International Bureau, or Amy Zoslov or Christina Eads Clearwater at (202) 418-0660 with the Auctions Division of the Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Further Notice of Proposed Rulemaking in the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 62 FR 11083 (March 11, 1997), IB Docket No. 95-91; GEN Docket No. 90-357; RM No. 8610; PP-24; PP-86; and PP-87, FCC 97-70 (adopted and

released March 3, 1997). The complete text of the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

**Synopsis of the Further Notice of Proposed Rulemaking in the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking**

*Further Notice of Proposed Rulemaking on Terrestrial Repeaters*

1. As discussed in the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, the Commission is not mandating a specific service link margin that satellite DARS operators must provide in a given geographic area, such as urban areas. It is important, however, for the satellite DARS systems to maintain sufficient service link margin to reproduce the original information transmitted by the satellite. In the NPRM, 60 FR 35166 (July 6, 1995), the Commission noted that some satellite DARS applicants intend to implement, as necessary, terrestrial repeaters, or "gap-fillers", in urban canyons and other areas where it may be difficult to receive DARS signals transmitted by a satellite. These terrestrial gap-fillers would re-transmit the information from the satellite to overcome the effects of signal blockage and multipath interference. Since the Commission had no information in the record on the specifics of operation of these terrestrial gap-fillers, it sought comment on their operation to determine what rules should govern their use.

2. Some commenters expressed concern about use of terrestrial repeaters to complement satellite DARS. Tichenor Media Systems, for example, contends that satellite DARS should not be permitted to originate local programming through the use of terrestrial repeaters. Similarly, NAB and WFAN express concern that the use of terrestrial gap fillers would transform satellite DARS into a terrestrial based service. Indeed, in the NPRM the Commission proposed to prohibit the operation of terrestrial gap-fillers except in conjunction with an operating satellite DARS system to ensure its complementary nature and so that there would be no transformation of satellite

DARS into an independent terrestrial DARS network.

3. Satellite DARS applicants provided additional information on how terrestrial gap-fillers will be used with their satellite DARS systems. The commenters agree that terrestrial repeaters would be used to improve satellite DARS service in the authorized satellite coverage areas only and on the same frequencies, and that they would not be used to extend the satellite coverage area or be used to originate programming. CD Radio and DSBC maintain that terrestrial gap-fillers will only be complementary to the satellite DARS systems because they will operate on the same frequency as the satellite transmission and only re-transmit the signals of operating satellite DARS space stations to improve service link margin in difficult propagation environments, especially in urban areas. Additional spectrum is therefore unnecessary for satellite DARS gap-fillers. Primosphere asserts further that no commercial inserts or local programming would be permitted over terrestrial gap-fillers. Furthermore, terrestrial gap-fillers will not extend satellite DARS coverage outside of the systems' already authorized service area. AMRC asserts that they will be used only to fill in coverage gaps within the authorized service area caused by various signal obstructions. Terrestrial gap-fillers will also be transparent to the end users because the receiver will automatically select the stronger of the satellite or repeater signal.

4. Several commenters suggest that regulation of terrestrial gap-fillers be as unrestrictive as possible. CD Radio favors rules to permit flexible deployment of terrestrial gap fillers without prior Commission approval or notification. Primosphere contends that it will be important for the Commission to provide a flexible scheme to implement terrestrial gap-fillers without the necessity to seek separate licenses. DSBC notes that the use of terrestrial gap-fillers for satellite DARS comports with the Commission's authorization of "boosters" as defined in Part 22 of the Commission's rules. The comments of all applicants appear to be reflected in a proposal by CD Radio, seen for the first time in its Comments to the NPRM.

5. The Commission did not set forth a specific proposal for authorizing terrestrial repeaters in the NPRM. The Commission now seeks comment on the proposal to permit deployment of satellite DARS gap-fillers, on an as-needed basis by satellite DARS licensees to meet their service requirements. To accomplish the following important objectives, the Commission seeks

comment on whether to adopt rules for terrestrial repeaters based on CD Radio's proposals, as set forth in Appendix C to the Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking. The Commission agrees that it would be burdensome for both the Commission and the licensees if licensees were to seek separate authorization for each terrestrial repeater. To this end, the Commission seeks comment on whether to adopt a regulatory structure for satellite DARS terrestrial repeaters similar to the blanket authorizations used for mobile earth stations of other services. At the same time, the Commission must consider and address any potential impact that the operation of these repeaters would have on services of adjacent countries, any potential effects of radio frequency emissions to the public, and must determine how to ensure any use of terrestrial repeaters is complementary to the DARS service and is only for retransmission of signals received from the satellite. The Commission also seeks comment on its tentative conclusion to prohibit the use of terrestrial repeaters to transmit locally originated programming which would be inconsistent with the allocation of this spectrum.

6. The Commission certifies that the proposed rules relating to the authorization of terrestrial repeaters will not have a significant economic impact on a substantial number of small entities. These rules, if adopted, would permit but not require the use of such repeaters to assist in providing higher quality service and should not significantly increase the cost of the systems.

7. The Paperwork Reduction Act does not apply to the rules adopted herein as such rules apply to less than ten persons.

8. 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 Commission rules. See generally 47 CFR Sections 1.202, 1.203, and 1.1206(a).

9. 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 May 2, 1997 and reply comments on or before May 23, 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, you must file an original plus nine copies. You should send comments and reply comments 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 FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

10. This action is taken pursuant to Sections 1, 4(i), 4(j), 7, 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157, 303(r) and 309(j).

#### List of Subjects in 47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.  
**William F. Caton,**  
*Acting Secretary.*

#### Proposed Rule Changes

For the reasons stated in the preamble, the Commission proposes to amend 47 CFR part 25 as follows:

#### PART 25—SATELLITE COMMUNICATIONS

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

**Authority:** 47 U.S.C. 701–744, Sec. 4, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301–303, 307, 309, and 332, unless otherwise noted.

2. A new paragraph (e) to § 25.144 is added to read as follows:

#### § 25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.

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(e) Licensing of satellite DARS complementary terrestrial repeaters.

Satellite DARS licensees may construct and operate terrestrial transmitters to retransmit signals received from their operating DARS satellite(s) on the exclusive frequency assignment of the licensee and for use of the same bandwidth as the satellite space station(s). Terrestrial gap-fillers shall not be used to originate programming or transmit signals other than those received from the authorized DARS satellite. Nor shall terrestrial gap fillers be used to extend satellite DARS coverage outside of the satellite systems' authorized service area. Terrestrial gap-fillers may be implemented by a satellite DARS licensee only after obtaining prior Commission authorization and the licensee demonstrates the following:

(1) *International coordination.* Satellite DARS licensee must demonstrate that its repeating transmitter is located at a distance sufficiently away from the Canadian and Mexican borders or otherwise obtain prior coordination with adjacent country co-frequency systems;

(2) *Antenna structure clearance required.* Satellite DARS licensees shall demonstrate that its repeating transmitter construction or alteration will comply with the requirements of § 17.4 of this Chapter;

(3) *Environmental.* Satellite DARS licensee shall demonstrate that its repeating transmitter(s) comply with the Commission's Rules for environmental effects as defined by §§ 1.1301 through 1.1319 of this Chapter.

3. The definition of satellite digital audio radio service in § 25.201 is revised to read as follows:

#### § 25.201 Definitions

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Satellite Digital Audio Radio Service ("satellite DARS"). A radiocommunication service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters.

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