

new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permit, Reporting and recordkeeping requirements.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00-258; RM-9911; FCC 01-256]

New Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Denial of Petition for Reconsideration of Notice of Proposed Rule Making.

SUMMARY: This document responds to the Petition for Reconsideration filed by Satellite Industry Association. The petition requested that we reconsider our decision not to allocate the 2500-2520 MHz and 2670-2690 MHz bands for Mobile Satellite Service use for 3G services. We affirm our finding that the Mobile Satellite Service has sufficient spectrum without those band segments.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's

Memorandum Opinion and Order, ET Docket No. 00-258, FCC 01-256, adopted September 6, 2001, and released September 24, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863-2893, Room CY-B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order* ("MO&O"), we deny a petition for reconsideration filed by the Satellite Industry Association ("SIA") of the *Notice of Proposed Rule Making and Order*, 66 FR 7483, January 23, 2001, in this proceeding. SIA requested that we reconsider our decision not to allocate the 2500-2520 MHz and 2670-2690 MHz bands for Mobile Satellite Service ("MSS") use for 3G services, but we affirm our prior determination that reallocation of the 2.5 GHz band to the MSS is unwarranted because sharing between terrestrial and satellite systems would present substantial technical challenges in that band and MSS already has access to a significant amount of spectrum below 3 GHz to meet its needs in the foreseeable future.

2. In its petition for reconsideration, SIA maintains that there is no evidence that spectrum sharing between fixed services and MSS will result in interference and that existing MSS spectrum allocations are insufficient. SIA cites Telecommunications Industry Association ("TIA") joint working group TR14.11/TR34.2 as finding in its Telecommunications System Bulletin ("TSB") 86 that sharing between fixed services and MSS is feasible. SIA also argues that the geographic separation of MSS and Instructional Television Fixed Service/Multichannel Multipoint Distribution Services ("ITFS/MMDS") users should significantly alleviate any potential interference between the services. Finally, SIA argues that interference from MSS spacecraft was addressed by the International Telecommunication Union ("ITU") over the 1994-1996 period and power flux density limits were developed to protect fixed services operating in the 2500-2520 MHz and 2670-2690 MHz bands. SIA contends that these limits have been incorporated into the ITU's Radio Regulations, and ITFS/MMDS interests have presented no technical evidence to

support their claim that those limits are insufficient to protect ITFS/MMDS licensees from MSS interference. Therefore, SIA contends that we must reconsider our decision to dismiss its petition for reconsideration and request comment on the merits of allocating the 2500-2520 MHz and 2670-2690 MHz bands to MSS on a shared basis with fixed services.

3. Commenters opposed SIA's petition for reconsideration on both procedural and substantive grounds. We agree with these commenters that SIA's petition for reconsideration relies on facts that have not been presented to the Commission previously. Section 1.429(b) of our rules states:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.

4. SIA submitted its petition for rulemaking in April 2000, significantly after the October 1999 TSB 86 document was published and even more significantly after the 1994-1996 ITU work that SIA cites in its petition for reconsideration. Thus, SIA properly should have cited the TSB 86 document and the ITU work in its petition for rulemaking. Even in its petition for reconsideration, SIA does not explain the relevance of this material to its petition. TSB 86 is titled "Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165-2200 MHz" and thus was prepared for analyzing interference in another frequency band for space-to-Earth satellite links. Further, the working group that prepared TSB 86 "was formed under the auspices of TIA following a number of informal discussions among representatives of the mobile satellite and terrestrial fixed microwave point-to-point service industry sectors." Thus, contrary to SIA and Globalstar, TSB 86 does not appear relevant either to the 2500-2690 MHz band or to the ITFS/MMDS point-to-multipoint licensees that use that band.

Additionally, neither SIA nor Globalstar explains how power flux density limits that they contend the ITU developed for that band would permit sharing of the 2500–2520 MHz and 2670–2690 MHz band segments by the MSS and ITFS/MMDS. Globalstar cites Recommendation ITU–R M.1142–1; however, the Recommendation “applies only for sharing in the space-Earth direction. No specific criteria have been developed for sharing in the Earth-to-space direction.”

5. We also agree with opponents of SIA’s petition for reconsideration that ITFS/MMDS licensees are deploying services in rural, as well as urban, areas; thus, in a best case scenario, the areas in which geographical sharing with MSS could occur would be quite limited. Moreover, given the fact that we are herein permitting mobile, as well as fixed, use of the 2500–2690 MHz band by ITFS/MMDS licensees, the possibility of such sharing is further sharply diminished. Therefore, we find that authorizing MSS use of the 2500–

2520 MHz and 2670–2690 MHz band segments would result in little, if any, actual MSS use of those segments while greatly complicating their use for ITFS/MMDS.

6. Finally, we affirm our finding that MSS has sufficient spectrum without those band segments, and note that our International Bureau recently authorized eight new MSS systems in the 1990–2025 MHz and 2165–2200 MHz bands. While we recognize that our Further NPRM solicits comment on reallocating portions of those bands for advanced mobile terrestrial services and that a companion *Notice of Proposed Rule Making*, IB Docket No. 01–185 and ET Docket No. 95–18, 66 FR 47621, September 13, 2001, solicits comment on bringing flexibility to the delivery of communications by MSS providers, final decisions on these proposals will take into account the needs of the MSS. We note that the ITU has adopted a resolution inviting studies of the sharing and coordination issues in several bands, including the 2500–2520 MHz

and 2670–2690 MHz bands, “related to use of the mobile-satellite service allocations for the satellite component of IMT–2000 and the use of this spectrum by the other allocated services . . .” Our action here is without prejudice to renewal of SIA’s request, in the event ITU studies develop new methods for sharing or coordination that would result in enhanced service to the public, without creating significant complications for provision of existing service. Accordingly, we deny SIA’s petition for reconsideration. The petition for reconsideration filed by the Satellite Industry Association *Is Denied*.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26840 Filed 10–24–01; 8:45 am]

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