

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Amendment of the Commission's Space  
Station Licensing Rules and Policies

IB Docket No. 02-34

2000 Biennial Regulatory Review --  
Streamlining and Other Revisions of  
Part 25 of the Commission's Rules  
Governing the Licensing of, and  
Spectrum Usage by, Satellite Network  
Earth Stations and Space Stations

IB Docket No. 00-248

**COMMENTS OF THE  
SATELLITE INDUSTRY ASSOCIATION**

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## SUMMARY

The Commission raises the possibility in its Notice of Proposed Rule Making (“*NPRM*”) of abandoning its rules and policies for the licensing of satellite communications networks and replacing them with an untested first-come, first-served approach for assigning satellite spectrum and orbital positions. The Satellite Industry Association (“*SIA*”) recommends against this approach. The Commission’s existing satellite licensing approach is the product of three decades of effort to grant authorizations in a fair and efficient manner and it has been an important factor in the successful development of a competitive satellite communications industry, both in the U.S. and in other regions.

The Commission’s use of processing rounds, combined with its licensing of space segment, has provided certainty and reliability to satellite operators, which has enabled them to provide services to consumers through the construction and operation of global networks. The Commission’s use of processing rounds has helped to promote the creation of new satellite communications services by identifying a fixed pool of applicants that have an incentive to assist in the difficult and expensive International Telecommunication Union (“*ITU*”) spectrum allocation process. By establishing a fixed applicant pool, processing rounds also enable the adoption of equitable solutions to the licensing of competing applications. Processing rounds also enable the Commission to promote the use of new technologies to maximize efficient spectrum use. Furthermore, processing rounds have had the practical effect of maximizing the number of independent competitive operators using spectrum because, in nearly every instance, the Commission has managed to complete its processing rounds by licensing all of the applicants.

In light of this success, SIA suggests measures to improve the current system rather than replace it as suggested in the *NPRM*. The Commission has recently adopted improvements to its licensing process, which have remedied some of the worst delays that occurred in the process during the late 1990s. SIA urges the Commission to adopt additional improvements, as discussed in these comments. For example, the Commission should reduce the time necessary to place new applications on public notice and promptly establish cut-off deadlines for new processing rounds when appropriate. The Commission should restrict periods for negotiation between pending satellite applicants. The Commission should also streamline certain of its other rules for satellite licensees, such as those for authorizing replacement satellites. This streamlining would have the additional beneficial result of freeing up Commission resources to address licensing and new service issues. In addition, the Commission should retain its anti-trafficking rules and its fungibility policy, both of which have recognized benefits for consumers and providers of satellite communications services.

The Commission should not, however, replace its current system with the first-come, first-served approach proposed in the *NPRM*. Adoption of this option would encourage speculation and inefficient use of spectrum, resulting in a significant retreat for the Commission from its statutory obligation to manage spectrum use in the public interest.

The Commission should also avoid adopting preferences for certain applicants that could delay the issuance of licenses and expose the Commission's licensing decisions to greater potential legal challenge. For example, subjective determinations regarding which applicants qualify as new entrants, or which are more committed to providing service to rural areas would only delay the issuance of licenses, thereby depriving consumers of the intended benefits.

Finally, the Commission should take steps to improve its milestone requirements for satellite licensees. Such improvements could help to reduce the average four year period between the time the Commission issues a space station license and when it revokes the license for failing to meet a milestone.

Most importantly, in considering improvements to its satellite licensing process, the Commission should take extreme care to ensure that any new rules or policies that are adopted do not compromise the Commission in its global leadership role in the development, successful licensing, and regulation of satellite communications services. While SIA supports the Commission in its goal of expediting the licensing of satellite communications networks, such improvements must not diminish the efficiency and equity that is the predominant characteristic of the current U.S. system.

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SATELLITE INDUSTRY ASSOCIATION**

The Satellite Industry Association ("SIA") hereby submits these comments pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. §1.415, and in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking and First Report and Order ("*NPRM*" or "*Order*") in the above referenced proceeding.<sup>1</sup>

**I. INTRODUCTION**

SIA is a national trade association representing the leading U.S. satellite manufacturers, service providers, and launch service companies. SIA's member companies provide a broad

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<sup>1</sup> SIA's members are: The Boeing Company; Globalstar, L.P.; Hughes Electronics Corp.; ICO Global Communications ("ICO"); Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; PanAmSat Corporation; SES Americom, Inc.; Teledesic Corporation; TRW Inc. and associate, non-voting member, Inmarsat. Teledesic and ICO did not, however, participate in the drafting of these comments.

range of products and services in the commercial satellite industry. Members include the recognized founders of commercial satellite communications, along with aspiring entrepreneurial companies seeking to provide new competitive services to consumers.

SIA serves as an advocate for the commercial satellite industry on regulatory and policy issues. SIA's diverse membership permits the association to present a unified voice of the U.S. commercial satellite industry. SIA is therefore uniquely qualified to provide to the Commission a consensus position on the important matters raised in this proceeding.

Introduced as an effort to "streamline" the Commission's satellite licensing process,<sup>2</sup> the Commission's *NPRM* raises the possibility of abandoning the current system and replacing it with an untested approach for issuing satellite spectrum assignments and orbital positions. The new alternative would constitute a significant, and unwelcome, retreat for the Commission from its statutory role as the regulator of the U.S. satellite communications industry. As described in the *NPRM*, licenses would be granted to any qualified applicant on a first-come, first-served basis without the use of adequate safeguards to prevent speculation, trafficking and inefficient use of spectrum resources.

The Commission's existing satellite licensing process is recognized throughout the world as a critical component in the successful development of the satellite communications industry. The success of the Commission's licensing approach is evidenced by the large number of U.S. licensed commercial satellites providing service to consumers not only to the United States, but also in other regions of the world.

While the Commission's licensing process has been successful, SIA agrees with the Commission that in recent years the processing of some applications and the completion of

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<sup>2</sup> *NPRM*, ¶ 1.

processing rounds for certain satellite services has been too protracted. While these delays may have hindered the timely deployment of service to consumers and impaired the satellite business,<sup>3</sup> they do not themselves constitute insurmountable problems that require jettisoning the system itself. SIA believes that rather than attempting to adopt the first-come, first-served option included in the *NPRM*, the Commission should simply improve the existing procedures for satellite application processing rounds.

Considerable evidence exists that the Commission's satellite licensing and orbital assignment process can be improved. In fact, some remedial measures have already been implemented and may have remedied some of the worst sources of delay that were experienced in the processing rounds of the 1990s. It may be too soon to quantify, however, the full extent of the resulting improvements.

In addition to the curative measures already implemented, further improvements can and should be undertaken. SIA recommends herein remedial measures that could improve the Commission's satellite licensing and orbital assignment process.

In evaluating proposals to improve the Commission's licensing process, however, extreme care must be taken to ensure that any remedial measures that are adopted do not undermine the Commission's critical worldwide leadership role in the promotion, licensing and regulation of satellite communications services. Any approach that champions expedience at the expense of effective and efficient licensing decisions would harm satellite service users and the public interest.

SIA therefore urges the Commission to employ considerable caution when considering any proposal, particularly proposals for radical change. After decades of development,

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<sup>3</sup> See *id.* ¶¶ 11-14, 21-22.

refinement and success, the Commission should improve the current system and reject the first-come, first-served approach included in the *NPRM*. The risk of this approach should not be borne by the commercial satellite industry and the public.

**II. THE COMMISSION’S PROCESS FOR DEVELOPING NEW SATELLITE SERVICES AND ISSUING SATELLITE LICENSES IS THE SUCCESSFUL PRODUCT OF DECADES OF EFFORT AND SHOULD BE IMPROVED RATHER THAN REPLACED**

The Commission’s satellite licensing and regulatory process has been a critical component in the successful development of the domestic and international satellite communications industries. The Commission’s licensing process was developed through decades of Commission experience with satellite industry regulation, experience that is not sufficiently acknowledged in the *NPRM*.

The Commission’s licensing approach includes two major elements: (1) the licensing of space segment, in addition to earth stations, and (2) the use of processing rounds. The Commission’s licensing of space segment is unique throughout much of the world. Some administrations issue licenses only for transmitting earth stations, leaving the coordination and “approval” of the space segment to the complex and lengthy ITU process.

In contrast, by licensing space segment, the Commission’s approach provides satellite operators with regulatory reliability, legitimacy and relative expediency. Because of the increased certainty that is provided, Commission applicants include U.S. companies and, since the adoption of the World Trade Organization, Fourth Protocol on Basic Telecommunications Services (“WTO Basic Telecommunication Agreement”), non-U.S. companies seeking to serve consumers both within the United States and in other regions of the world.

The second major element of the Commission’s licensing approach is the use of processing rounds to assign spectrum and orbital positions to multiple applicants. Since

initiating the use of processing rounds in 1970,<sup>4</sup> the Commission's licensing approach has proven successful in promoting the development of competition and efficient spectrum use. As discussed in the next section, processing rounds:

- enable the adoption of practical and equitable solutions to the licensing of multiple service providers,
- provide reasonable regulatory certainty for licensees considering expenditures of hundreds of millions of dollars for the construction of satellite communications networks,
- help to foster customized spectrum sharing approaches that are appropriately tailored for particular satellite services,
- increase the productive and efficient use of spectrum, and
- facilitate the development of new satellite communications services.

In light of the significant benefits that processing rounds contribute to satellite operators and their users, the Commission should take steps to improve the current licensing system rather than replacing it with the first-come, first-served approach in the *NPRM*.

#### **A. The Commission's Use of Application Processing Rounds Provides Substantial Benefits in the Development and Licensing of Satellite Communications Networks**

For the past three decades, the Commission has employed application processing rounds to assign licenses for hundreds of satellites and satellite networks. The Commission's use of processing rounds promotes competitive spectrum use, and enables the licensing of the greatest number of systems using limited spectrum and orbital resources. In every recent processing round, the Commission has successfully licensed all of the applicants.

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<sup>4</sup> See *Establishment of Domestic Communication-Satellite Facilities by Nongovernmental Entities*, 22 FCC Rcd 86, 98 (1970) (establishing, *inter alia*, a time period for the filing of applications by applicants who desire to have their proposals considered in conjunction with the first proposal).

For example, the use of processing rounds facilitates the licensing of multiple applicants through customized spectrum sharing approaches. Under the current system, the Commission has a variety of different means available to resolve potential mutual exclusivity in processing rounds for new satellite services.<sup>5</sup> For example, in the 2 GHz MSS proceeding, the Commission assigned separate frequency segments to each licensee,<sup>6</sup> while in the Ku-band NGSO FSS proceeding, the Commission adopted a spectrum sharing approach that permits each operator to operate across the entire band.<sup>7</sup> In the Big LEO proceeding, the Commission adopted a combination of two approaches – spectrum sharing for CDMA systems, and band division for the TDMA applicant.<sup>8</sup>

In contrast, under the proposal included in the *NPRM*, the Commission would automatically resort to band division to resolve mutually exclusive situations.<sup>9</sup> While band division may be appropriate for some satellite services in some situations, it is not the most efficient approach for all services or situations. Furthermore, this approach ignores the preferences of applicants, the development of more efficient plans for spectrum sharing, the

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<sup>5</sup> Furthermore, in the fixed satellite service (“FSS”), the Commission has used its fungibility policy to avoid mutual exclusivity.

<sup>6</sup> See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, IB Docket No. 99-81, 15 FCC Rcd 16127, 16138 (2000) (“2 GHz MSS Order”).

<sup>7</sup> See *The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band*, Report and Order Further Notice of Proposed Rulemaking, FCC 02-123, ¶¶ 27-28 (April 26, 2002) (“Ku-band NGSO FSS Service Order”).

<sup>8</sup> See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, Report and Order, 9 FCC Rcd 5936 (Oct. 14, 1994) (“Big LEO Order”).

<sup>9</sup> See *NPRM*, ¶ 33.

impact of less than adequate spectrum assignments on applicants' business plans, and their ability to operate their proposed systems.

The existence of fixed applicant pools in processing rounds also promotes successful resolution of proceedings involving mutually exclusive applications. Fixed applicant pools facilitate negotiations on spectrum sharing solutions because they establish certainty regarding the relative standing of the various satellite system applicants. For example, in the first Little LEO processing round, the applicants developed a spectrum sharing plan, which the Commission adopted.<sup>10</sup> Additionally, in the Big LEO processing rounds, the applicants provided extensive technical information, which the Commission used to develop a spectrum sharing plan.<sup>11</sup>

Even when agreement cannot be reached among the applicants, the Commission can rely on a fixed applicant pool to help identify an equitable sharing approach for spectrum and orbital resources. For example, as discussed above, the Commission recently avoided mutual exclusivity in the 2 GHz MSS processing round by dividing the available spectrum between the pending applicants (a "total spectrum divided by 'n'" approach).<sup>12</sup> Such a solution may not be available without the use of a processing round. Without an established applicant pool, there is always the possibility that additional applicants may seek licenses in the near term, disrupting any agreement that was reached between the original applicants and the Commission.<sup>13</sup>

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<sup>10</sup> See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service*, Report and Order, 8 FCC Rcd 8450 (1993) ("Little LEO Order").

<sup>11</sup> See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, Report and Order, 9 FCC Rcd 5936 (1994) ("Big LEO Order").

<sup>12</sup> See *2 GHz MSS Order* at 16138.

<sup>13</sup> See *NPRM*, ¶ 50 (observing that clearly defined rights helps to facilitate successful negotiations).

The use of processing rounds also creates an incentive for system proponents to develop and implement improved technology to increase the number of satellite systems that can operate in the same spectrum. For example, the Commission adopted a spectrum sharing approach in the Ku-band NGSO FSS proceeding that encourages licensees to utilize new techniques for satellite and earth station diversity to maximize efficient spectrum use in the Ku-band.<sup>14</sup>

Not only has the process proven to be fair and efficient, but it has also helped to promote the creation of new satellite communications services and greater competition, all of which benefits consumers. As the Commission has observed, the applicants in a processing round for a new satellite service frequently provide the U.S. Government with critical assistance in the complex and resource intensive (both in terms of manpower and expenditures) process of securing new international spectrum allocations.<sup>15</sup> In contrast, without the use of processing rounds, few applicants would have a reasonable assurance of receiving a license and, thus, an incentive to participate in the international allocation process.<sup>16</sup> This reduction of stakeholders in the international spectrum allocation process could reduce the likelihood that proposals for new

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<sup>14</sup> See *Ku-band NGSO FSS Service Order* ¶¶ 27-28.

<sup>15</sup> See, e.g., *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5783 (1997).

We rely heavily on applicants to assist the U.S. in international fora to obtain spectrum allocations and we expect them to participate in the time consuming process of ITU notification and coordination. All of this activity requires significant expenditure of time and money by the applicants.

*Id.*

<sup>16</sup> Several of the subsequently filed applicants may have some expectation of receiving a license, but this expectation will likely be insufficient to justify the significant expense involved in pursuing a new international spectrum allocation.

satellite services will be successful in obtaining spectrum allocations in the international arena, potentially hindering U.S. future competitiveness in satellite services.

The use of processing rounds, particularly for new services, is also consistent with the Commission's cited precedent involving the licensing of FM radio stations.<sup>17</sup> As the Commission acknowledged, when the Commission adopted a first-come, first-served approach for FM radio, it used processing rounds for applications filed within thirty days after the creation of a new channel assignment.<sup>18</sup> This is analogous to the use of processing rounds when a new satellite service is created. It is irrelevant that FM radio is a "planned" service and most satellite services are not.<sup>19</sup> In both situations, the practical effect – the creation of a licensing opportunity when one did not exist previously – justifies the use of processing rounds because they maximize the opportunity to participate in the competitive provision of a new service.

Recognizing the numerous benefits that processing rounds contribute to the Commission's licensing process for satellite communications networks, the Commission should strive to improve the current system, rather than replace it with a process that would promote speculation and delay.

**B. The Commission Should Further Improve its Satellite Licensing Procedures – a Process that the Commission has Already Initiated**

In improving the current system, the Commission should take the following steps. First, the Commission should identify specific sources of delay in the satellite licensing process. Second, the Commission should distinguish between delay that the Commission can remedy and

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<sup>17</sup> See *NPRM*, ¶ 25 n.21.

<sup>18</sup> See *id.* ¶ 30.

<sup>19</sup> See *id.* ¶ 43.

delay that is largely outside of its control. Third, once it has identified delay within its sphere of influence, the Commission should determine whether additional measures are needed to reduce the delay, or whether existing procedures, alternately applied, can adequately address the problem.

**1. The Commission Should Identify Sources of Delay that are Largely Outside of its Control and Clearly Distinguish this Delay in the Licensing Process**

Before the Commission can make significant progress in eliminating delay in its satellite licensing process, the Commission must first distinguish between delay that the Commission can remedy, and delay that may be outside of its control. In order to eliminate any confusion, sources of delay that are beyond the Commission's control should be clearly identified in the Commission's licensing procedures.

A significant percentage of the delay that currently exists in the licensing of satellite networks is caused by external factors. For example, most of the delay in the creation of a new satellite service involves the international spectrum allocation phase, which the Commission can influence, but cannot control.<sup>20</sup> An additional external source of delay results from the fact that the Commission is often required to consult with other federal government agencies, such as the FAA and NTIA.<sup>21</sup>

The Commission also cannot, by changing its licensing procedures, address any delay that may be caused by the ITU's satellite network notification and coordination process. It is unclear, moreover, whether such delays actually hinder the Commission in licensing satellite

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<sup>20</sup> See *id.* ¶¶ 9, 25 (noting that “the allocation process can extend substantially the time needed to issue satellite licenses”).

<sup>21</sup> See *id.* ¶ 8.

networks. The Commission suggests in its *NPRM* that “the current three-year backlog in publishing ITU submissions” has been a significant source of delay in U.S. licensing because the backlog “makes it difficult to determine whether we are assigning an applicant to an orbit location that has been encumbered by an ITU filing from another country.”<sup>22</sup>

The Commission has never been obligated to refrain from issuing authorizations for orbital positions until their availability to U.S. applicants has been assured in the coordination process. It has always been an obligation of the applicant to assess the coordination prospects for the orbital slots that it requests to use and to undertake those risks and obligations once licensed, an approach that SIA supports. In fact, virtually every space station authorization that the Commission issues is conditioned on successful completion of ITU coordination. In any event, the ITU’s public database of filed, but unpublished, advance publication and coordination requests eliminates the need to await publication before determining the prospects for coordination.

In those instances where externally caused delays cannot be avoided, the Commission should modify its processing rules so that delay that is beyond its control is publicly identified. For example, the Commission could refrain from assigning “pending” status to an application for a license in a new satellite service until all necessary international spectrum allocations have been adopted (or a consensus for such allocations appears likely) for the new service.

Such an approach would enable the Commission to more accurately identify the actual amount of delay that is within the Commission’s power to remedy. In doing so, the Commission would also make its licensing process more transparent and predictable.

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<sup>22</sup> See *id.* ¶ 80.

## **2. The Commission Should Determine Whether Additional Measures are Needed to Correct Delay that Exists Within the Commission's Licensing Process**

While some sources of delay may be outside of the Commission's control, other sources of delay can be remedied – in fact, some already have. For example, the Commission's first step in processing an application usually is to place the application on public notice for comment. This permits the development of a record in an application proceeding and also makes public all the relevant issues implicated by an application.

In certain instances, significant delays have occurred between the time applications were filed and their placement on public notice. For example, the Commission refrained from placing the second round Ka-band FSS applications on public notice until fifteen months after they were filed with the Commission.<sup>23</sup>

The International Bureau remedied this problem by adopting a new policy of placing applications on public notice within 10 days after their receipt by the Commission.<sup>24</sup> This policy has expedited the consideration of some recently filed applications. The new policy was not applied, however, to applications filed prior to the adoption of the policy, such as the satellite

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<sup>23</sup> See Public Notice, *Satellite Policy Branch Information: Satellite Applications Accepted For Filing in the Ka-band Cut-off Established for Additional Applications in the 28.35-28.6 GHz, 29.1-30 GHz, 17.7 - 18.8 GHz, and 19.3 - 20.2 GHz Frequency Bands*, Rep. No. SPB-106 (Oct. 15, 1997) (setting Dec. 22, 1997 filing deadline for second rounds Ka-band applications); Public Notice, *Ka-band Satellite Applications Accepted for Filing*, Report No. SAT-00012 (March 16, 1999) (placing applications on public notice fifteen months after they were filed).

<sup>24</sup> See Public Notice, *International Bureau to Streamline Satellite and Earth Station Processing*, Report No. SPB-140 at 1 (Oct. 28, 1998) (streamlining the process for placing applications on public notice as a part of the Bureau's "continuing commitment to improve the efficiency of the satellite licensing process")

network applications in the 40 GHz proceeding.<sup>25</sup> SIA believes that the International Bureau should engage in a renewed effort to apply its 10-day public notice requirement universally in order to reduce unnecessary delay in the initial steps of a new proceeding.

In cases where it would be appropriate to initiate a processing round, the International Bureau could refrain from immediately placing new applications on public notice for comment. Instead, a cut-off notice should be issued within thirty days of the filing of a new application, which should announce the filing of the initial application and set a deadline for the filing of competing applications.<sup>26</sup> By promptly establishing a deadline for competing applications, the Commission could concurrently implement its *NPRM* proposal to place all potentially competing applicants in a processing round on public notice at the same time with identical pleading cycles.<sup>27</sup> Such an approach would expedite the processing of applications for new satellite networks without prejudicing underlying public policy or technical issues that may be raised by the applications.

Another improvement that is already being implemented involves the use of uniform service rules for different satellite services. The development of rules for new services has often been a significant source of delay. Much of this delay could be eliminated by adopting default service rules that could be utilized in most cases. For example, in the 2 GHz MSS proceeding

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<sup>25</sup> See Public Notice, *Applications Accepted For Filing; Cut-Off Established For Additional Space Station Applications And Letters Of Intent In The 36-51.4 GHz Frequency Band*, Report No. SPB-89 (July 22, 1997). The Public Notice set a cut off deadline of September 22, 1997 for applications to be filed for satellite networks operating in the 36-51.4 GHz band. The applications that were filed still have not been placed on public notice.

<sup>26</sup> While the Commission should promptly establish a deadline for the filing of potentially competing applications, the Commission should continue to provide adequate time for parties to prepare and file in advance of the cut-off deadline the detailed technical information that is required in a satellite system application.

<sup>27</sup> See *NPRM*, ¶ 77.

the Commission concluded that it should adopt the same service rules that were used in the Big LEO proceeding with limited exceptions.<sup>28</sup>

### **3. Where Necessary, the Commission Should Adopt New Procedures to Reduce Delay in Satellite Licensing**

While some significant sources of delay are already being remedied, other sources of delay warrant the adoption of new procedures. As the Commission acknowledges in its *NPRM*, the most significant source of delay in the licensing phase of a processing round for a new satellite service is lengthy settlement negotiations among the applicants.<sup>29</sup> This delay could be reduced dramatically through the implementation of the Commission's proposal to adopt deadlines for settlement negotiations.<sup>30</sup>

For example, with respect to existing services, the Commission could issue a public notice immediately after the passage of an application cut-off date. This public notice would (1) establish a 30-day deadline for the filing of comments and petitions addressing the applications (along with subsequent deadlines for oppositions and replies) and (2) establish a concurrent 60- to 90-day deadline for filing any proposals that some or all of the applicants may successfully negotiate during the brief intervening period for resolving any mutual exclusivity.<sup>31</sup> Once the pleading cycle and negotiation period are completed, the Commission would receive

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<sup>28</sup> See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Notice of Proposed Rulemaking, FCC 99-50, ¶ 3 (March 25, 1999) (indicating that in order to avoid the addition of “duplicative and unnecessary rules,” the Commission intends to use the Big LEO service rules as a starting point for developing service rules for 2 GHz MSS).

<sup>29</sup> See *NPRM*, ¶¶ 10, 68-69.

<sup>30</sup> See *id.* ¶¶ 50, 70.

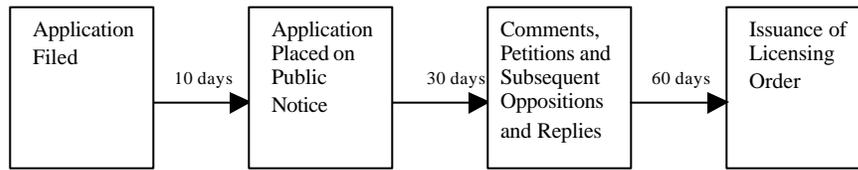
<sup>31</sup> Such a pleading schedule could also allow for the filing of oppositions, replies and other responsive pleadings.

and consider *ex parte* presentations only for a period of 30 days. The Commission would then issue an order within 90 days following the close of the *ex parte* period, which would include a decision on the distribution of spectrum and orbital assets among the applications.

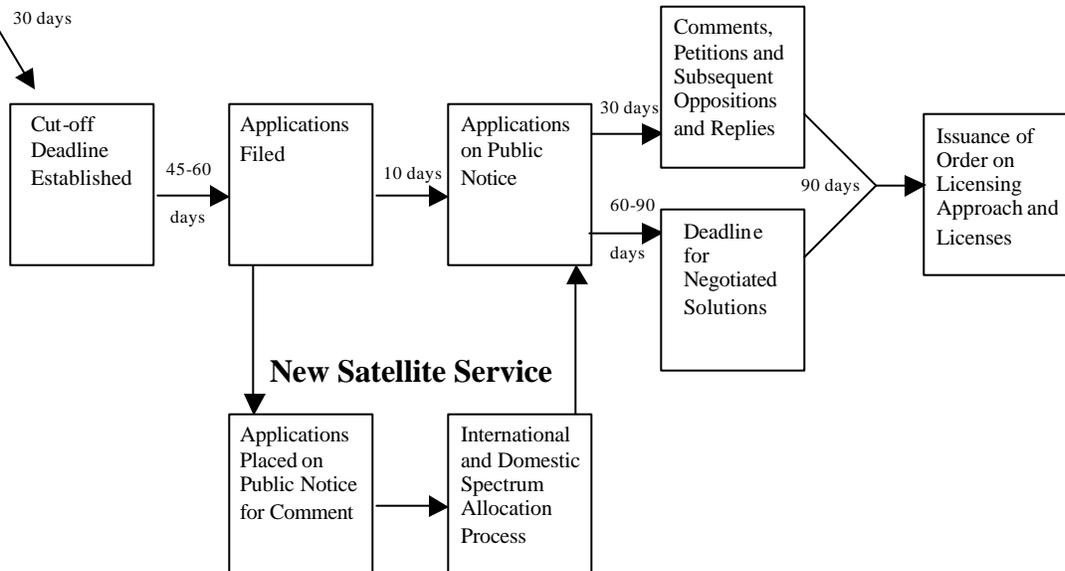
The Commission could also utilize an accelerated pleading/negotiation process for new satellite services that involve international allocations. Under such an approach, the Commission would simply suspend the deadline for the filing of settlement proposals until adequate international spectrum allocations have either been adopted (or are likely to be adopted) for the new service.

As indicated in the diagram shown below, such an approach could expedite substantially the process for licensing satellite networks. Authorizations for existing services that are granted through processing rounds could be issued in less than eight months, while authorizations that do not necessitate processing rounds could be granted in less than five months.

### Existing Satellite Service Without Processing Rounds



### Existing Satellite Service With Processing Rounds



While the Commission should issue decisions expeditiously, the Commission should not restrict itself with respect to the options that are available to resolve mutual exclusivity. The *NPRM* suggests that the Commission should automatically resort to band division to resolve mutually exclusive situations.<sup>32</sup> As noted previously in these comments, however, the Commission has demonstrated in numerous proceedings that different satellite services can be accommodated most efficiently using different spectrum sharing and orbital assignment approaches.<sup>33</sup>

<sup>32</sup> See *NPRM*, ¶ 33.

<sup>33</sup> See *supra* at text accompanying notes 5-8.

### **III. THE COMMISSION SHOULD ADOPT OTHER STREAMLINING MEASURES, FREEING COMMISSION RESOURCES TO ADDRESS LICENSING ISSUES**

The Commission should adopt other streamlining measures that would eliminate unnecessary regulations and procedures, enabling Commission staff to devote more time to licensing issues. In this regard, the Commission proposes some streamlining measures in its *NPRM*. SIA suggests that the Commission adopt the following streamlining measures to improve its regulatory process:

- Require applicants to file electronically.
- Eliminate unnecessary technical disclosures in satellite applications.<sup>34</sup>
- Require applicants to include with their applications the ITU advance publication and request for coordination information in electronic format.
- Reinforce its milestone enforcement procedures in order to reduce delay in revoking the authorizations of unsuccessful licensees.<sup>35</sup>
- Permit operators of multiple satellites to move satellites between authorized and coordinated orbital positions following notification to the Commission and other affected licensed spectrum users.
- Streamline the process for requesting and issuing grants of Special Temporary Authority (“STA”).
- Automatically renew licenses for satellite networks authorized for ten year terms for an additional period of five years.
- Streamline and improve the approval process for replacement satellites.<sup>36</sup>

In addition, SIA urges the Commission to continue to take steps to identify other methods that can be utilized to further streamline and improve its regulatory framework for satellite licensing. Such measures could have a significant impact in eliminating unnecessary delay in the licensing

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<sup>34</sup> *See infra.* at Section IX.

<sup>35</sup> *See infra.* at Section VI.

<sup>36</sup> *See infra.* at Section X.

and regulatory process. As noted previously, however, in evaluating proposals to improve the Commission's licensing process, the Commission should exercise extreme care in order to ensure that any remedial measures or new approaches do not compromise the Commission in its global leadership role in the promotion, licensing, and regulation of satellite communications services.

**A. The Commission Should Require Satellite License Applicants To File Electronically**

In order to help streamline the processing of satellite applications, the Commission should require satellite operators to file applications and letters of intent electronically. As the Commission observes in its *NPRM*, the Commission staff has managed to expedite considerably the processing of earth station applications that are filed electronically.<sup>37</sup> On occasion this has included earth station applications that included more than one hundred pages of exhibits.<sup>38</sup>

In order to further enable the electronic filing of satellite applications, the Commission should streamline its technical disclosure requirements for applicants. SIA provides specific suggestions on outdated and unnecessary technical disclosure requirements in Section IX of these comments. The Commission will also need to make changes to the electronic filing

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<sup>37</sup> See *NPRM*, ¶ 118.

<sup>38</sup> While satellite applicants should be required to file electronically, applicants should still be permitted the option of submitting application filing fees manually, just as they are currently permitted to do with earth station applications. SIA observes, however, that earth station applicants that submit fees manually are often subjected to a two-week delay in processing. The Commission should take steps to reduce this delay. Additionally, the Commission should eliminate its policy of refraining from processing earth station applications until Mellon Bank has received and processed the filing fee payments. See [http://svartifoss2.fcc.gov/prod/ib/forms/payment\\_instructions.htm#PayingByCheck](http://svartifoss2.fcc.gov/prod/ib/forms/payment_instructions.htm#PayingByCheck). Instead, the Commission could expedite the processing of applications by placing them on public notice immediately and refraining from granting the application if the payment is not timely submitted.

system to enable this requirement for all types of space station applications (*e.g.*, to allow filing for hybrid satellites with multiple frequencies, and other characteristics).

**B. The Commission Should Require the Submission of ITU Materials as Part of an Application**

The Commission should require that applicants submit with their application the advance publication and coordination information required by Appendix 4 to the ITU's Radio Regulations in electronic format.<sup>39</sup> In a case where the Commission does not plan to conduct a processing round, the Commission should submit the advance publication information to the ITU as soon as the application is filed. In the case where the Commission does plan to use a processing round, the Commission should submit the information to the ITU as soon as it has consolidated the ITU information of each of the competing applicants in order to ensure that the ITU filings do not prejudice the interests of any of the applicants with respect to divergent system designs.

This two-prong approach accomplishes a number of major Commission goals in this proceeding. It achieves standardization in the presentation of technical information in electronic format.<sup>40</sup> Filing early with the ITU would also help to prevent other administrations from leapfrogging ahead of U.S. applicants. Finally, streamlining technical requirements and providing expedient notifications to the ITU would encourage satellite operators to utilize the Commission's licensing process.

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<sup>39</sup> Appendix 4 of the Radio Regulations specifies the information required for advance publication of satellite networks (pursuant to Section I of Article 9 of the Radio Regulations) and for initiating coordination of satellite networks (pursuant to Section II of Article 9 of the Radio Regulations).

<sup>40</sup> In Section IX of these comments, SIA proposes that the Commission not adopt Schedule S but instead rely on the ITU material and information provided in the narrative application. See *infra* at Section IX.

Obviously, in order to implement early filing with the ITU, satellite applicants should be required to file concurrently with their applications: (1) correctly formatted advance publication and coordination information for the satellite network, which can be forwarded electronically to the ITU, and (2) an executed certificate indicating that: (i) regardless of the disposition of the application, the applicant agrees to be responsible for the cost recovery fees associated with the ITU filing, and (ii) the applicant acknowledges that the filing of the information with the ITU does not place the applicant in a preferential position with respect to the eventual assignment by the Commission of authorizations to use particular spectrum or orbital positions.

**C. The Commission should grant flexibility to satellite operators that hold licenses for satellites at multiple orbital positions**

The Commission should also streamline its rules by permitting operators to proactively manage their satellite resources by moving previously licensed satellites between authorized orbital positions. Satellite operators should be allowed to make such adjustments following ten day advance notification to the Commission and any potentially affected licensed spectrum users, as long as the new arrangements comply with the technical restrictions of the operators' licenses, the Commission's rules, and all relevant coordination agreements.<sup>41</sup> Operators that rearrange satellites between authorized orbital positions should be required to include in their notification to the Commission a certification that (1) the relocated satellites will continue to meet all of the Commission's rules, technical restrictions in the operator's licenses, and any technical or operational restrictions in the coordination agreements for the orbital locations they are being relocated to; and (2) the operator will continue to maintain coordination agreements with all relevant licensed spectrum users.

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<sup>41</sup> The Commission should also publicize the existence of these advance notifications through periodic public releases, but should not place the notifications on public notice for comment.

Licensees that move satellites between authorized orbital positions should be required to limit the operations of the satellites to TTC&M frequencies during the drift. The operators should also be required to coordinate the TTC&M operations of the satellite with other satellite operators in order to ensure that no unacceptable interference results from its TTC&M operations during the drift.

#### **D. The Commission Should Simplify its Process for Granting STA requests**

SIA also recommends that the FCC codify its policies for granting STA requests and, to the extent possible, streamline the process.<sup>42</sup> The Commission has in the past refused to grant a STA request for more than 30 days without seeking public comment on the request and has refused to grant a STA request for more than 60 days unless the operator also files an application for permanent authority.<sup>43</sup> If the Commission continues to believe these policies are appropriate, then it should codify these policies in its rules.

The Commission should also streamline treatment of STA requests. SIA proposes that the Commission require STAs to be submitted electronically with a courtesy copy to an International Bureau designee. Unless the FCC notifies the applicant to the contrary, properly filed STA requests could be “deemed granted” for a period of 30 days commencing on the seventh business day after filing. Requests for special temporary authority for longer than 30 days should be “deemed granted” on the fifth business day following the expiration of the public notice period if no opposition is received. As is the case now, any STA granted would be

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<sup>42</sup> SIA notes that these recommendations would not apply, however, to STA requests to operate a satellite whose initial license term has expired, but remains capable of continued operation beyond its license term. If the Commission accepts SIA’s recommendation that it automatically renew license terms for an additional five-year period, the number of STA requests will fall dramatically. *See infra* Subsection V, E.

<sup>43</sup> These policies are based on the statutory requirements set out in 47 U.S.C. § 309(c)(2)(G).

subject to the condition that the licensee not cause interference to, and accept interference from, any other lawfully operating radio station.

SIA's proposed modification and codification of the FCC's STA grant procedures would further regulatory certainty, reduce administrative costs and thus serve the public interest. The certainty of receiving STA within a specified time frame unless an opposition is filed will offer satellite operators necessary flexibility to respond to market demands for service.

**E. The Commission Should Automatically Renew Existing Satellite Authorizations for an Additional Five Years**

The Commission should also revise its rules so that existing licenses for satellite networks (those authorized prior to the adoption of the *Order* in this proceeding) renew automatically for an additional five years. Such an approach would eliminate the need for STAs for satellites that successfully outlive their initial license term. Such an approach would also make the Commission's existing space station licenses more consistent with its new approach, which is to license space stations for an initial period of 15 years.<sup>44</sup>

**IV. REGARDLESS OF THE OTHER MEASURES THAT ARE ADOPTED, THE COMMISSION WOULD NOT SERVE THE PUBLIC INTEREST BY ADOPTING THE FIRST-COME, FIRST-SERVED APPROACH INCLUDED IN THE *NPRM***

The first-come, first-served option that is outlined in the *NPRM* would create more problems for the Commission and the satellite communications industry than the option purports to resolve. The *NPRM* raises the idea of issuing licenses to any qualified applicant on a first-come, first-served basis, but fails to propose adequate and necessary safeguards to prevent widespread speculation, trafficking and inefficient use of radiocommunications spectrum, let alone address the international implications of the proposed approach.

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<sup>44</sup> See *Order* ¶ 141.

Such a hands off approach would be comparable to the ITU's first-come, first-served approach for satellite coordinations. As the Commission is well aware, the ITU's process has spawned an overwhelming number of speculative filings that were submitted by administrations on behalf of entities seeking to take advantage of the ITU's relatively unrestricted first-come, first-served procedures. The ITU process is also flooded with adversarial and defensive filings that were submitted by administrations on behalf of entities seeking to block legitimate operators, or try to hold spectrum fallow for possible later use.

This same result could be expected to occur in the domestic licensing process. Not only would a first-come, first-served approach prompt the filing of speculative applications, but it would also force legitimate satellite operators to file numerous precautionary applications for orbital assignments that they might need in the future, and also for orbital positions that they have no definite intention of using, but which might result in an interference concern if occupied by competing operators. The resulting influx of applications before the Commission would be extremely difficult to manage.

The Commission's *NPRM* seems to acknowledge that any first-come, first-served approach would need to be accompanied by "measures to discourage speculative or frivolous satellite applications."<sup>45</sup> The proposals that are mentioned briefly in the *NPRM*, however, would clearly be inadequate to remedy the problem. For example, a limit on the number of concurrent applications that an applicant can have pending, or a 33% attribution rule would only reduce the amount of speculation and blocking that a single entity could cause, it would not prevent it.<sup>46</sup>

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<sup>45</sup> See *NPRM*, ¶ 51.

<sup>46</sup> See *id.*

The possibility of preventing applicants from allowing other entities to assume their place in any queue would also do nothing to prevent speculative and adversarial applications.<sup>47</sup> First, an applicant seeking to block other entities from launching new satellite systems would arguably have no interest in transferring its application to other parties. Second, an applicant seeking to speculate on a Commission authorization would simply need to refrain from transferring the authorization until after the license has been granted, at which point the authorization would arguably achieve its greatest value.

Finally, the Commission proposes to refrain from assigning automatically all available spectrum in a particular frequency band to a first-filed non-geostationary (“NGSO”) applicant, but instead make a pre-licensing determination regarding the possible spectrum needs of the prospective licensee.<sup>48</sup> Such an approach, however, would also do little to prevent speculative and adversarial applications from being filed with the Commission. It might also result in multiple band segmentations that could make it difficult for NGSO applicants to gain access to adequate spectrum to operate their systems,<sup>49</sup> or to establish efficient mechanisms for spectrum sharing between NGSO and geostationary (“GSO”) systems in the same bands.

Not only does the *NPRM* fail to suggest adequate safeguards to prevent abuse, but it also raises the possibility of eliminating safeguards that have already proven to be effective. For example, as discussed in the following section of these comments, the Commission proposes to eliminate its anti-trafficking rules. The Commission raises this possibility even though it acknowledges that its “[a]nti-trafficking rules discourage speculators and prevent unjust

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<sup>47</sup> See *id.* ¶ 53.

<sup>48</sup> See *id.* ¶ 54.

<sup>49</sup> See, e.g., *Ku-band NGSO FSS Service Order* (concluding that it would be most efficient to permit NGSO licensees to operate across the entire available spectrum band).

enrichment of individuals or companies that have no intention of building facilities and actually operating satellite systems.’<sup>50</sup> In stark contrast, shortly after the Commission adopted a first-come, first-served approach for its FM radio service, it adopted measures to deter such speculation in order to respond to the wave of applications that was prompted by the new first-come, first-served procedures.<sup>51</sup>

The Commission should therefore reject outright the first-come, first-served option that is outlined in the *NPRM*. Instead, the Commission should engage in a concerted effort to improve its current system. Options exist for the Commission that would enhance significantly the current process for issuing satellite licenses and orbital assignments. Such a curative approach would be a significantly better option than engaging in real-time experimentation by attempting to implement the radically different and untested approach to issuing satellite authorizations that is outlined in the *NPRM*.

## **V. THE COMMISSION SHOULD RETAIN OTHER LONG STANDING POLICIES THAT CONTRIBUTE TO THE FAIR AND EFFICIENT LICENSING OF SPECTRUM AND SATELLITE ORBITAL RESOURCES**

The Commission proposes in its *NPRM* that, in addition to eliminating application processing rounds, the Commission should cease to employ several other longstanding rules and policies for satellite network licensing. For example, the Commission requests comment on the

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<sup>50</sup> *Id.* ¶ 116 (quoting *Big LEO Order* at 6014; *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Third Report and Order, 12 FCC Rcd 22310, 22339-40 (1997)).

<sup>51</sup> See, e.g., *Settlement Agreements*, Report and Order, 6 FCC Rcd 85 (1990), *modified in part*, Memorandum Opinion and Order, 6 FCC Rcd 2901 (1991) (limiting the payment an applicant can receive for withdrawing an application).

possibility of eliminating its fungibility policy and its anti-trafficking rules.<sup>52</sup> The Commission provides no evidence that these policies and rules fail to serve the public interest.<sup>53</sup> Instead, the Commission appears to acknowledge that both its anti-trafficking rules and its fungibility policy have beneficial effects for satellite communications services.<sup>54</sup> SIA believes that these policies are essential to the current licensing regime and should be maintained.

**A. The Commission Should Continue To Utilize its Fungibility Policy Because it Provides Significant Assistance in Resolving Mutual Exclusivity Between Applicants**

An important component of the Commission's satellite licensing process is its use of a policy of fungibility in order to resolve potential mutual exclusivity between multiple applicants in processing rounds. As the Commission has previously acknowledged, its fungibility policy serves the public interest because it increases efficient use of spectrum and orbital resources by maximizing the number of independent systems that can be accommodated to provide competitive and diverse services to consumers.<sup>55</sup> SIA also believes that the Commission's fungibility policy can expedite substantially the licensing of multiple applications by avoiding mutually exclusive conflicts.

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<sup>52</sup> See *NPRM* ¶¶ 79-81; 109-117

<sup>53</sup> The Commission apparently proposes to eliminate the rule because it believes that the rule may be a potential source of delay in the licensing and launch of satellite networks. See *NPRM*, ¶¶ 108, 111.

<sup>54</sup> See *infra* at notes 55, 60-61.

<sup>55</sup> See, e.g., *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, Order on Reconsideration, 16 FCC Rcd 15579, ¶ 30 (Aug. 16, 2001) (indicating that "[t]reating orbital locations as fungible has allowed us to grant multiple applications for the same location, without holding comparative hearings or devising another time-consuming procedure to select among applications requesting the same orbital location").

Despite these recognized benefits, the Commission proposes to eliminate its fungibility policy, claiming that it is a source of delay in the processing of applications.<sup>56</sup> The Commission indicates that efforts to “find a way to accommodate each applicant as much as possible can substantially increase the time needed to complete a processing round.”<sup>57</sup> The Commission argues that the task is made harder by the current backlog in publishing ITU submissions, which “makes it difficult to determine whether we are assigning an applicant to an orbit location that has been encumbered by an ITU filing from another country.”<sup>58</sup>

As indicated in Section II, B, 1 of these comments, however, in implementing its fungibility policy, the Commission has never had to delay issuing authorizations for orbital positions until the ITU coordination process has advanced appreciably. Furthermore, the ITU’s public database of filed, but unpublished, advance publication and coordination requests makes it possible to assess the prospects for completing coordination on particular orbital positions shortly after they are submitted to the ITU.

Most importantly, in the context of application processing rounds, the Commission’s fungibility policy can expedite the licensing of new satellite systems by providing a tool that can be used to remedy mutually exclusive conflicts. Thus, while the fungibility policy might not be needed in the context of a first-come, first-served approach, the fungibility policy remains a critical component in the fair and efficient resolution of processing rounds.

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<sup>56</sup> See *NPRM*, ¶ 80.

<sup>57</sup> *Id.*

<sup>58</sup> See *id.*

## **B. The Commission Should Retain its Anti-Trafficking Rules Because They are an Important Deterrent to Speculative License Applications**

The Commission should continue to apply its anti-trafficking rules to satellite communications services, and should modify its rules so that they apply to all satellite services, rather than just selected services.<sup>59</sup> As noted previously, the Commission acknowledges in its *NPRM* that its “[a]nti-trafficking rules discourage speculators and prevent unjust enrichment of individuals or companies that have no intention of building facilities and actually operating satellite systems.”<sup>60</sup> Furthermore, in an order released two months after the Commission’s *NPRM*, the Commission concluded that “we believe that the policies of deterring speculation and unjust enrichment have been well served by the anti-trafficking rule.”<sup>61</sup>

Despite these conclusions, the Commission speculates in its *NPRM* that its anti-trafficking rules may have the unintended effect of restraining licensees that no longer want to construct their licensed systems from selling the authorizations to more interested parties.<sup>62</sup> Any licensee that obtains a license with a legitimate intent to construct its system, and later decides not to construct, will have every incentive to sell the license if it can recoup its expenses. As the

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<sup>59</sup> See 47 C.F.R. § 25.143(g) (2001) (applying anti-trafficking rules to the Big LEO and 2 GHz MSS services); 47 C.F.R. § 25.145 (2001) (applying anti-trafficking rules to the FSS service in the Ka-band); 47 C.F.R. § 25.146(i) (applying anti-trafficking rules to the Ku-band NGSO FSS service).

<sup>60</sup> *Id.* ¶ 116 (quoting *Big LEO Order* at 6014; *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Third Report and Order, 12 FCC Rcd 22310, 22339-40 (1997)).

<sup>61</sup> *The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band*, Report And Order Further Notice Of Proposed Rulemaking, FCC 02-123, ¶ 82 (April 26, 2002).

<sup>62</sup> See *NPRM*, ¶ 111.

Commission acknowledges in its *NPRM*, the cost of securing a satellite authorization is sizable.<sup>63</sup> Such a licensee would also have a strong incentive to sell its license very quickly because of the Commission's policy that the transferee of a satellite license must construct the system using the milestones that were included in the original authorization.

Furthermore, the application of the Commission's anti-trafficking rules include adequate safety measures to ensure that enforcement of the rules do not inhibit legitimate transactions from taking place. For example, the rules permit licensees to transfer bare satellite licenses, so long as the transaction does not result in a profit.<sup>64</sup> Furthermore, the Commission also permits the transfer of control of a licensed but unbuilt satellite system or satellite system applicant if the transfer results from an effort to raise capital and the original parties remain involved in the operation.<sup>65</sup> The Commission also waives application of its anti-trafficking rules when a change in ownership is an incidental part of a larger corporate acquisition.<sup>66</sup>

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<sup>63</sup> See *id.*, ¶ 117.

<sup>64</sup> See, e.g., *NetSat 28 Company, L.L.C.; For Authority to Transfer Control of its Authorization to Launch and Operate a Geostationary Satellite in the Ka-Band Fixed-Satellite Service at 95° W.L.*, 16 FCC Rcd 14471, 14476 (2001).

<sup>65</sup> See, e.g., *KaStar 73 Acquisition, LLC, and KaStar 109.2 Acquisition, LLC, Applications for Consent to Transfer of Control*, 15 FCC Rcd 1615, ¶ 12 (Int'l. Bur. 1999) (transfer of control of licensee); *Satellite CD Radio, Inc.*, 9 FCC Rcd 2569, 2571 (Com. Car. Bur. 1994) (transfer of control of applicant).

<sup>66</sup> See *Air Signal International, Inc.*, 81 F.C.C.2d 472, 475 (1980) (permitting Xerox to acquire Air Signal's parent, WUI, Inc. because such an acquisition was clearly for "an independent business purpose, and not primarily for acquiring pending applications"); see also *Starsys Global Positioning, Inc.*, Order and Authorization, 11 FCC Rcd 1237, 1238 (Int'l Bur. 1995) (finding that anti-trafficking rules would not prohibit GE Americom from acquiring an 80% interest in Starsys).

While the Commission suggests in its *NPRM* that its anti-trafficking rules may result in administrative delay,<sup>67</sup> the delay is arguably minimal compared to the delay that would result from the wave of speculative transfer applications that would likely occur if the Commission eliminates its anti-trafficking rules. In any event, regardless of the ultimate impact on the administrative process, the Commission should not eliminate rules that have proven to be effective and beneficial simply for its administrative convenience.

Because of the tremendous value of spectrum resources, the potential for speculation has always been a legitimate concern for the Commission. Speculation increases costs for consumers and delays the launch of new services. The Commission has long recognized the significant importance of deterring speculation in satellite service authorizations. The Commission has also long recognized the ability of its anti-trafficking rules to deter speculation. The Commission should therefore retain its anti-trafficking rules as an important component of its licensing and regulatory processes.

## **VI. THE COMMISSION SHOULD TAKE STEPS TO IMPROVE ITS MILESTONE REQUIREMENTS FOR SATELLITE LICENSEES**

The Commission should take steps to improve its milestone requirements in order to reduce the amount of time required for the Commission to recover spectrum and orbital authorizations from licensees that are unable or unwilling to construct their licensed networks. The following chart lists the Commission's recent cases involving milestone compliance for FSS and mobile satellite service ("MSS") licensees. As the chart indicates, in those cases where licenses have been revoked for failure to proceed, an average of four years has passed between the issuance of a license and a final Commission order recovering the unbuilt authorization.

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<sup>67</sup> See *NPRM*, ¶ 115.

About half this delay – two years – involves the passage of time between the licensee’s first milestone deadline and the issuance of an initial order voiding the license. A significant portion of this two-year interval involves an exchange of correspondence between the licensee and the Commission regarding the submission by the licensee of a copy of its non-contingent satellite construction contract.

Cancellation Order	Date of Licensing	FCC Milestone Determination	IB Order of Cancellation	FCC Order on Review	Approx. Interval
DA 01-1315	July 1, 1997	Signed non-contingent contract, but later introduced contingency	May 31, 2001	Not requested	4 years, 11 months
DA 00-1266	May 9, 1997	Did not enter into construction contract	June 26, 2000	May 25, 2001	4 years
DA 00-1265	May 9, 1997	Entered into contingent contract after deadline	June 26, 2000	May 25, 2001	4 years
DA 00-1264	May 9, 1997	Entered into contract 18 months after deadline	June 26, 2000	Not requested	3 year
DA 96-363	July 7, 1992	Entered into contingent contract after one extension	Mar. 14, 1996	Oct. 10, 1997	5.25 years
DA 92-292	Dec. 7, 1988	Did not enter into contract following one extension	Mar. 11, 1992	June 27, 1993	4.5 years

In order to reduce this delay, the Commission should reinforce its first milestone requirement for FSS and MSS licensees. A variety of options are available to the Commission to help reduce delay in its application of the initial milestone. For example, the Commission could expedite the initiation of inquiries regarding licensees that may not have complied fully with the first milestone requirement. The Commission could also establish fixed procedures and a set time limit for the submission of copies of non-contingent satellite construction contracts

following receipt by the licensee of an inquiry from the Commission.<sup>68</sup> Each of these options could help reduce the need for the Commission to engage in an often time consuming exchange of correspondence with licensees regarding the submission of copies of their contracts for Commission review.

While SIA supports improvements to the Commission's milestone process, SIA questions whether it is necessary or beneficial to add a fixed milestone date for Critical Design Review ("CDR"). As indicated in the previous chart, in every recent license cancellation case involving FSS and MSS satellites, the licensee failed to comply (or maintain its compliance) with its initial milestone requirement. SIA believes that a similar trend exists in the DBS service.<sup>69</sup> Therefore, it is unclear whether subsequent milestones are needed.

If the Commission does adopt a milestone for completion of CDR review, however, it should permit licensees to develop their own CDR deadlines. Licensees should be required to disclose to the Commission a deadline date for CDR at the same time that they certify that they have entered into a non-contingent satellite construction contract. The Commission could then

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<sup>68</sup> For example, with respect to those cases in which the Commission believes that a licensee should be required to submit a copy of its contract to the Commission, the Commission could clarify its rules to require that, within 15 days upon receiving notification from the Commission, the licensee must submit: (1) a redacted copy of the contract for public inspection, (2) a less redacted copy of the contract for Commission review, and (3) if desired, a request for confidential treatment of the less redacted contract.

<sup>69</sup> See, e.g., *Continental Satellite Corporation For Assignment of Direct Broadcast Satellite Orbital Positions and Channels For Consent to Transfer of Control to Loral Aerospace Holdings, Inc.*, 10 FCC Rcd 10473 (1995) (rejecting Continental's satellite contract because initiation of construction was contingent on an initial payment that Continental was not obligated under the terms of the contract to make).

use the licensee's CDR completion date as the milestone requirement for the license.<sup>70</sup> If the CDR completion date that is put forth by the licensee is unreasonable, of course, the Commission would still have the option of initiating an inquiry. Such an approach would enable licensees to have reasonable flexibility in the construction of their networks, while ensuring that licensees proceed expeditiously with the provision of new services to consumers.

In any event, the Commission should refrain from imposing penalties – other than the loss of the license in question – on licensees that fail to meet their milestones.<sup>71</sup> Creating such a penalty for missed milestone would discourage companies from seeking licenses for new and innovative types of satellite communications systems. For example, the present day success of the direct broadcast satellite industry followed an earlier period of missed milestones incurred by the initial applicants for DBS licenses.

Furthermore, such a rule would not encourage compliance with the Commission's milestone requirements.<sup>72</sup> Satellite companies, especially publicly traded companies, have a fiduciary duty to shareholders to continually reassess investment decisions. Such companies should not be penalized for making economically efficient and commercially reasonable decisions based on circumstances that may have changed significantly since the time the application was filed. Such a rule could also be easily bypassed by speculators through the use of multiple corporate entities.

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<sup>70</sup> In establishing a milestone for CDR, however, the Commission should clarify that if, through no fault of the licensee, actual CDR is delayed from the disclosed milestone date, the Commission will consider requests to grant reasonable extensions of the CDR deadline. Without such an avenue, licensees could be prejudiced by design and schedule delays of the manufacturing process.

<sup>71</sup> See *NPRM*, ¶ 106.

<sup>72</sup> See *id.*

## **VII. THE COMMISSION SHOULD NOT DISCARD WITHOUT FURTHER CONSIDERATION FINANCIAL QUALIFICATION REQUIREMENTS**

Section 308(b) of the Communications Act, 47 U.S.C. § 308(b), obligates the Commission to ensure that an applicant is qualified to hold a license.<sup>73</sup> To satisfy this obligation, the Commission may prescribe necessary qualifications, including requiring an applicant to demonstrate that it is financially qualified to construct and operate its proposed system.<sup>74</sup>

For decades the Commission enforced financial qualification requirements, while also seeking to ensure that licensing qualifications do not pose a barrier to entry for entrepreneurial companies. Despite this past use, the Commission suggests in its *NPRM* that financial qualification rules are “duplicative” with milestone requirements because “[b]oth are designed to ensure that applicants are positioned to provide service to the public in a timely manner.”<sup>75</sup>

In reality, however, properly designed financial qualification requirements can serve as a complement to milestones, rather than as a substitute for them. SIA therefore believes that the Commission should give further consideration to improving its financial requirements, rather than eliminating them. A properly functioning financial qualification process should be sufficiently flexible to accommodate entrepreneurial applicants and unique proposals for satellite networks. In order to achieve such results, the current rules may need significant revision in order to ensure that they are not overly burdensome to new entrants in the industry. SIA believes, however, that further investigation should be made into potential improvements to the financial qualification rules rather than eliminating this regulatory tool.

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<sup>73</sup> See 47 U.S.C.A. § 208(b) (2001).

<sup>74</sup> See *id.*

<sup>75</sup> *NPRM* ¶ 102.

### **VIII. IN IMPROVING THE COMMISSION’S SATELLITE LICENSING PROCESS, THE COMMISSION SHOULD NOT ADOPT PREFERENCES FAVORING PARTICULAR APPLICANTS**

In attempting to identify measures that can be used to improve the Commission’s satellite licensing process, the Commission should avoid the use of preferences for applicants that could delay the issuance of licenses and expose the Commission’s licensing decisions to potential challenge.

First, the Commission should not adopt a preference for new entrants because of the difficulty that would often result in determining which applicants qualify as newer to the industry.<sup>76</sup> Such an approach also raises questions regarding whether a strict count of licensed satellites is a valid indicator of new entrants and does not address how the resources of NGSO applicants and licensees would be evaluated.<sup>77</sup> Such an approach would require the adoption of detailed affiliation restrictions. Furthermore, the proposed approach would encourage speculation and greenmail by new entrants seeking to profit from the transfer of satellite licenses to existing operators, increasing costs for legitimate operators and consumers. Finally, such an approach would unfairly discriminate against existing satellite operators that may be successful in the communications industry, even though they do not hold sufficient market share to be considered dominant in any market.

Second, as discussed in a previous section, the Commission should refrain from adopting a preference for satellite applicants that have not missed a milestone.<sup>78</sup> Satellite companies should not be penalized for making economically efficient and commercially reasonable

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<sup>76</sup> See *id.* ¶ 71.

<sup>77</sup> See *id.*

<sup>78</sup> See *id.* ¶ 72.

decisions regarding the continued viability and advisability of constructing new satellite communications networks. A penalty for missed milestones will discourage companies from seeking licenses for new and innovative types of satellite communications systems.

Third, the Commission should not adopt a preference for satellite applicants that have, at their own risk, made the most progress in constructing a satellite system prior to licensing.<sup>79</sup> Such an approach would make it harder for new entrants to secure licenses to provide satellite communications service. It would be difficult for a new entrant to obtain financing to construct a satellite network at its own risk, particularly when the applicant would have no assurance of eventually securing a license to provide service. Such a situation would force the Commission to make subjective determinations about which applicants have made legitimate progress on satellite construction. It could also place the Commission and the applicant into a significant conflict over the technical and operational parameters that a company used in the network design of satellites that it began building at its own risk.

Fourth, the Commission should not adopt a preference for satellite applicants that commit to provide service to rural and unserved areas.<sup>80</sup> As a preliminary note, virtually all satellite network applicants could make a commitment to the Commission to serve rural and unserved areas. Satellite communications services are uniquely suited to provide competitive services to rural and unserved areas on an identical basis to urban areas. Despite this fact, the Commission should not adopt a preference for satellite applicants that make such a commitment because it will force the Commission to make subjective determinations about negligible differences in satellite service offerings that could delay significantly the licensing process.

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<sup>79</sup> *See id.* ¶ 73.

<sup>80</sup> *See id.* ¶ 74.

Fifth, the Commission should not adopt a preference in processing rounds for satellite applicants that file earlier than competing applicants.<sup>81</sup> Such an approach would encourage applicants to file incomplete and poorly prepared applications and would certainly not result in more advanced system designs to serve the public interest. As the Commission is aware, the preparation of a satellite application involves substantial engineering analysis. Encouraging applicants to abbreviate this work would result in poor designs and less efficient spectrum use. This would be another instance of merely shifting delay to another stage of the process, which would neither advance the Commission's objectives in this proceeding nor serve the public interest.

#### **IX. THE COMMISSION SHOULD REVISE THE TECHNICAL DISCLOSURE REQUIREMENTS FOR SATELLITE APPLICATIONS**

The Commission has proposed revising its requirements for technical information to be filed by applicants both in this *NPRM*<sup>82</sup> and in the *Part 25 Earth Station Streamlining NPRM*.<sup>83</sup> SIA supported the Commission's streamlining efforts in the *Part 25 Earth Station Streamlining NPRM*.<sup>84</sup> In the context of this new *NPRM* and the Commission's express interest in rationalizing the entire satellite licensing process, SIA now urges the Commission to go even further in streamlining the technical information required of applicants for space stations.

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<sup>81</sup> See *id.* ¶ 75.

<sup>82</sup> *Id.*, ¶¶ 84-97.

<sup>83</sup> See *2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking, 15 FCC Rcd 25128 (200) (“*Part 25 Earth Station Streamlining NPRM*”).

<sup>84</sup> SIA not only submitted comments in the proceeding, but also produced a detailed review of the Part 25 rules. See SIA, *Reply Comments*, May 7, 2001 and *Further Comments and Submission*, “Proposed Revision of FCC Technical Rules,” November 5, 2001.

The following SIA suggestions reflect a balance among various objectives: (1) the need of satellite operators to obtain sufficient information from applications filed by others to resolve interference questions; (2) the importance of providing sufficient information so that the Commission can determine that the applicant is technically qualified and *bona fide*; and (3) the interest in avoiding duplicative requirements. These suggestions also reflect SIA's proposal that the Commission require applicants to submit as a part of their initial filings the advance publication and coordination information required by Appendix 4 to the ITU's Radio Regulations.

SIA recommends against adopting Schedule S.<sup>85</sup> Much of the technical information which the Commission proposes to collect is either unnecessary, duplicative, or both.<sup>86</sup> The Commission should reduce to the necessary minimum the technical information that space station applicants are required to provide in order for the Commission to verify compliance with its rules and policies and to evaluate and resolve interference issues. Much of that information already is contained in Appendix 4, and should not have to be filed a second time in a different form. Any information that is not included in Appendix 4 and remains essential can be required as part of the narrative application. The Commission also should eliminate the elements of 25 CFR 114(c) that are duplicative of the information contained in Appendix 4 and also repeal those

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<sup>85</sup> In the *Part 25 Earth Station Streamlining NPRM*, SIA stated that it supported the adoption of Schedule S, but also wanted applicants to be able to provide more information in the narrative portion of their filing. In the larger context of streamlining the entire licensing process, it makes more sense to limit the information that is requested and rely, where possible, on the ITU filings.

<sup>86</sup> For example, the Commission proposes to both require more precise calculations to confirm that power flux density ("PFD") levels in 47 C.F.R. 25.208 are met, and a certificate that the same PFD levels are met.<sup>86</sup> See *NPRM*, ¶¶ 91-92. If the Commission is requiring applicants to certify compliance, it seems unnecessary to provide the detailed calculations unless the Commission has some reason to question the validity of the certification.

information requirements in 25 C.F.R. 114(c) which are outdated and no longer absolutely necessary for Commission review.

The Appendix 4 advance publication and coordination information enables other satellite operators to assess inter-system interference and assist the Commission in determining whether an applicant is technically qualified. Moreover, relying on Appendix 4 coordination information where possible meets Commission objectives of avoiding duplicative information requests and standardizing the presentation of technical information so the Commission can more easily analyze it.<sup>87</sup>

The adoption of this streamlined approach to the technical information required to be filed should also resolve the Commission's concerns with respect to filing requirements for non-U.S. licensed satellite systems.<sup>88</sup>

**X. THE COMMISSION SHOULD RETAIN AND IMPROVE ITS APPROACH FOR PROCESSING APPLICATIONS FOR REPLACEMENT SATELLITES**

As the Commission indicates in its *NPRM*, given the huge costs of building and operating space stations, operators must have assurance that they will be able to continue to serve their customers through the use of replacement satellites.<sup>89</sup> The Commission should provide this assurance by continuing to authorize routinely replacement satellites whenever an orbit location remains available for a U.S.-licensed satellite.

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<sup>87</sup> The Commission already proposes to use the ITU \*gxt format for satellite antenna gain contours. *See NPRM*, ¶ 93. This format certainly facilitates analysis of proposed systems. Since the information is already in the ITU submission, it is duplicative to require it again in 25 C.F.R. 114(c).

<sup>88</sup> *NPRM*, ¶ 131.

<sup>89</sup> *See id.* ¶ 119.

The Commission should also adopt its proposal to deem unopposed applications for replacement satellites to be granted automatically following the deadline for petitions to deny, unless the Commission issues a public notice indicating a need to conduct a further review of the application.<sup>90</sup> This treatment should be provided to all replacement satellites that have technical characteristics consistent with those of the satellite to be retired.<sup>91</sup>

In authorizing the launch of replacement satellites, the Commission should also employ a broad definition of satellites “with technical characteristics consistent with those of the satellite to be retired.”<sup>92</sup> As the Commission acknowledges in the *NPRM*, “replacement satellites need not be exactly the same as the satellites they replace.”<sup>93</sup> Furthermore, the Commission encourages satellite operators to utilize the most up to date technology in replacement satellites to serve consumers.<sup>94</sup>

In order to encourage technical innovation, the Commission should treat any replacement satellite as ‘technically consistent’ if it:

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<sup>90</sup> *See id.* ¶ 120.

<sup>91</sup> *See id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* ¶ 120 n.160 (citing *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 3 FCC Rcd 6972, 6976 n.31 (1988); *Hughes Communications Galaxy, Inc.*, Order and Authorization, 6 FCC Rcd 72, 74 n.7 (1991).

<sup>94</sup> *See id.* (citing *An Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It*, First Report and Order, 100 FCC 2d 976, 1006 (1985) (concluding that “replacement satellites should incorporate appropriate improvements in technology that will inevitably have arisen since the original satellite was first designed”))

- Does not use any new frequency bands, except for expanded frequencies within a band that is already authorized (*e.g.*, adding extended Ku-band frequencies to a satellite that already has Ku-band authority),<sup>95</sup>
- Limits any changes to the coverage area to those that can be made within the Commission’s rules, and any relevant coordination agreements, and
- Is able to operate at power levels, emissions characteristics and signal modulation techniques that comply with the limits included in the Commission’s technical regulations and any existing coordination agreements with other spectrum users.

Such a flexible approach would enable satellite operators to continue to provide service to their customers that is technically competitive with the offerings of terrestrial-based communications services. Such an approach is also warranted because, if a proposed replacement satellite raises any potential concerns for other spectrum users or the Commission, they can always remove the application from streamline processing by filing an opposition or, with respect to the Commission, on its own motion.

## **XI. CONCLUSION**

For the foregoing reasons, SIA respectfully requests that the Commission take steps to improve its existing licensing process for satellite authorizations and orbital assignments. The Commission should also engage in other measures to streamline its regulatory process, so that

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<sup>95</sup> Providing “technically consistent” treatment for replacement satellites that propose to use expanded frequencies should not be permitted, however, if the expanded frequencies have been subdivided between multiple licensees, such as between GSO and NGSO licensees, as is the case in the Ka-band.

additional resources can be dedicated to licensing issues. Finally, the Commission should refrain from adopting the first-come, first-served approach that is outlined in the *NPRM*.

Respectfully submitted,

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