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

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In the Matter of	)	
	)	
Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands	)))	IB Docket No. 01-185

ORDER ON RECONSIDERATION

Adopted: July 3, 2003 **Released: July 3, 2003**

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration (Order), we reconsider in part, *sua sponte*, our January 29, 2003, decision in this proceeding[1] in which we allowed flexibility in the delivery of communications by Mobile Satellite Service (MSS) providers. Specifically, we permitted authorized MSS systems to integrate ancillary terrestrial components (ATCs) into their MSS networks in three sets of radio frequency bands, the 2 GHz MSS band,[2] the L-band,[3] and the Big LEO band,[4] subject to the authorized MSS system meeting certain substantial satellite service and integrated service criteria ("gating requirements" or "gating criteria").[5] In this Order, we clarify certain issues relating to the time for filing applications to provide ATC, the time in which the Commission may grant such applications, the time in which MSS ATC licensees may construct, test, and commence commercial ATC operations, and our process for placing applications on public notice for comment.[6]

[1] *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, FCC 03-15, 18 FCC Rcd 1962 (2003) (*Decision* or *MSS Flexibility Decision*).

[2] The term "2 GHz MSS band" is used in this Order to refer to the 2000-2020 MHz uplink (Earth-to-space transmissions) and 2180-2200 MHz downlink (space-to-Earth transmissions) frequencies.

[3] The "L-band" is a general designation for frequencies from 1 to 2 GHz. In the United States, the Commission has allocated L-band spectrum for MSS downlinks in the 1525-1544 MHz and 1545-1559 MHz bands and for MSS uplinks in the 1626.5-1645.5 MHz and 1646.5-1660.5 MHz bands. *See* 47 C.F.R. § 2.106.

[4] The term "Big LEO band" is used in this Order to refer to the 1.6/2.4 GHz bands. In general, the Big LEO MSS systems rely on uplinks within the 1610-1626.5 MHz band and downlinks in the 2483.5-2500 MHz band.

[5] For a full discussion of the gating criteria see *MSS Flexibility Decision,* 18 FCC Rcd at 1999-2009, ¶¶ 66-88.

[6] We also correct a numbering error to Part 25 of our rules contained in Appendix B of our *MSS Flexibility Decision.* In the *MSS Flexibility Decision*, we errantly included in Section 25.146 certain provisions relating to ATC licensing for L-Band MSS systems that should have been incorporated in Section 25.136. *See MSS Flexibility Decision,* 18 FCC Rcd at 2105-06. Accordingly, we revise our rules to place these provisions in the proper rules section, Section 25.136, and reinstate prior Section 25.146.

II. BACKGROUND

2. Because of a concern that establishing the satisfaction of certain gating criteria could be complex and time consuming, we decided in the *MSS Flexibility Decision* to permit planned, authorized MSS systems to seek ATC authorization prior to launch and operation, but prohibited the provision of commercial ATC service prior to meeting the gating criteria and complying with MSS implementation milestones.[7] Following release of the *MSS Flexibility Decision*, AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (Wireless Carriers) made *ex parte* presentations stating that this portion of the *Decision* requires clarification. For example, the Wireless Carriers are concerned that paragraphs in the *Decision* in which we stated that we would grant MSS operators authority to provide ATC "conditioned" upon meeting certain gating criteria could be interpreted to mean that we would permit *commercial operation* of ATC *prior to* the MSS operator meeting the gating requirements.[8] Based on their *ex parte* presentations, it appears, the Wireless Carriers are also concerned that the Commission might *authorize* an MSS operator to provide ATC, prior to the MSS operator *meeting* the gating requirements, although not permitting commercial operations until the MSS operator has actually met the gating requirements. To resolve these concerns, the Wireless Carriers have asked that the Commission clarify that "the Commission will *consider* and *grant* ATC authority only after an MSS licensee has met the gating requirements."[9] In particular, the Wireless Carriers suggest that we replace references in the *Decision* to ATC authorizations being "conditioned upon" the MSS operator's satisfaction of the requirements and rules in the *Decision* with the phrase "granted upon."[10]

3. In the *MSS Flexibility Decision*, we encouraged MSS operators to submit integrated service showings as early as possible to allow full evaluation without compromising the timing of ATC.[11] To reconcile this suggestion with the Wireless Carriers' desire that we not consider or grant ATC authority until an MSS operator has met the gating requirements, the Wireless Carriers suggest a procedure for establishing satisfaction of the integrated service offering gating criteria. In this procedure, MSS operators would, prior to satisfying the preconditions for seeking ATC authority, petition the Commission for a declaratory ruling that a proposed integrated service offering complies with Commission requirements.[12] The Wireless Carriers further suggest that favorable Commission action on such a petition could be used by the MSS operator to demonstrate satisfaction of the integrated service requirement when the operator subsequently applies for ATC authority.[13]

4. To avoid compromising the timing for deployment of ATC, in our *MSS Flexibility Decision*, we permitted construction of ATC facilities after physical construction has begun on the MSS system's satellites, after an ATC authorization has been issued and at the MSS operator's own risk and subject to the conditions specified in the *Decision*, but prior to commencement of the provision of MSS

[7] *MSS Flexibility Decision* at ¶ 3.

[8] *See* Letter from Kathryn A. Zachem, Counsel for the Wireless Carriers to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket No. 01-185 at 1 (filed March 6, 2003) (Wireless Carriers March 6, 2003, *Ex Parte* Letter). We note that while the Wireless Carriers March 6, 2003, *Ex Parte* Letter seeks clarification and reconsideration of certain aspects of the *MSS Flexibility Decision*, the opportunity to file formal petitions for reconsideration has not yet expired. Accordingly, the decisions that we reach today are without prejudice with respect to the filing of formal petitions for reconsideration and the parties remain free to include issues addressed in this Order in such formal petitions for reconsideration.

[9] Wireless Carriers March 6, 2003, *Ex Parte* Letter at 1 (emphasis added).

[10] Wireless Carriers March 6, 2003, *Ex Parte* Letter at 2.

[11] *MSS Flexibility Decision,* 18 FCC Rcd at 1965, ¶ 3.

[12] Wireless Carriers March 6, 2003, *Ex Parte* Letter at 4.

[13] Wireless Carriers March 6, 2003, *Ex Parte* Letter at 4.

services.[14] We also permitted MSS satellite operators to test ATC prior to commercial operation of their MSS systems. Specifically, during the process of constructing ATC facilities, the MSS operator, having obtained ATC authorization, may without further authority from the Commission conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of its ATC authorization.[15] We prohibited, however, commercial operation of ATCs until the MSS system is commercially operating and noted that such commercial operation of ATCs will result in enforcement action, including license revocation and/or the imposition of a monetary forfeiture.[16] The Wireless Carriers suggest that the Commission reconsider this portion of the *MSS Flexibility Decision*.[17] Because the Wireless Carriers would have us not consider or grant ATC authorizations prior to an MSS operator's demonstrating that it has, in fact, met the gating criteria, the Wireless Carriers suggest that we remove our restriction that MSS operators have a conditioned ATC authorization before engaging in preoperational construction and testing, and permit construction and testing after physical construction on the MSS system satellites has begun.[18]

5. Finally, in our *MSS Flexibility Decision*, we elected to treat applications to add an ancillary terrestrial component to an eligible satellite network as a request for a minor modification of the applicant's space station license if the particulars of operations provided by the applicant comply with the criteria specified in section 25.149.[19] We also stated that as with any minor modification if upon our review we deem it in the public interest to seek comment on an MSS ATC application, we may at our discretion provide public notice and opportunity for comment. On June 20, 2003, the Wireless Carriers filed an additional *ex parte* letter in this proceeding among other things noting that the *MSS Flexibility Decision* provided the Commission with discretion as to whether to place an MSS ATC application on notice for public comment and requesting that we "exercise our *sua sponte* authority. . . to remove the cloud of uncertainty and clarify that all ATC applications will be subject to public comment."[20]

6. ICO Global Communications (Holdings), Ltd. (ICO) opposes the Wireless Carriers' suggested approach.[21] According to ICO, the *MSS Flexibility Decision* expressly contemplates that licensing, construction and testing activities for ATC can occur prior to commencement of mobile satellite service operations.[22] ICO urges the Commission not to reconsider or clarify *sua sponte* its *Decision* in a way that would prohibit an authorized MSS provider from obtaining ATC authorization prior to commencement of MSS.[23] According to ICO, allowing MSS operators to obtain such authorization before the MSS system is commercially operational and gating criteria are met will help ensure that the Commission has adequate time to review the application and solicit public comment, if appropriate, and helps ensure that the MSS operators will not be delayed in offering ATC services once

[14] *MSS Flexibility Decision,* 18 FCC Rcd at 2082-83, ¶ 250.

[15] *MSS Flexibility Decision,* 18 FCC Rcd at 2082-83, ¶ 250.

[16] *MSS Flexibility Decision,* 18 FCC Rcd at 2082-83, ¶ 250.

[17] Wireless Carriers March 6, 2003, *Ex Parte* Letter at 2-3.

[18] Wireless Carriers March 6, 2003, *Ex Parte* Letter at 2-3.

[19] *MSS Flexibility Decision* 18 FCC Rcd at 2077, ¶ 240; 47 C.F.R. § 25.117(f).

[20] *See* Letter from Kathryn A. Zachem, Counsel for the Wireless Carriers to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket No. 01-185 at 1 (filed June 20, 2003) (Wireless Carriers June 20, 2003, *Ex Parte* Letter).

[21] Letter from Suzanne Hutchings, ICO Global Communications (Holdings) Ltd. to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket No. 01-185 at 1 (filed March 13, 2003) (ICO March 13, 2003, *Ex Parte* Letter).

[22] ICO March 13, 2003, *Ex Parte* Letter at 1.

[23] ICO March 13, 2003, *Ex Parte* Letter at 1.

their systems are commercially operational.[24] ICO further urges the Commission to retain its articulated policy decision to allow an authorized MSS provider a degree of flexibility in deciding when to seek ATC authority.[25] ICO states that it acknowledges that ATC services cannot be offered commercially until the authorized MSS system is commercially operating and the gating criteria are met.[26]

III. DISCUSSION

7. We find, upon reconsideration, that there is benefit to adopting, in part, the authorization approach suggested by the Wireless Carriers, albeit to address concerns somewhat different from those raised by the Wireless Carriers. We will consider ATC applications from authorized MSS providers prior to the MSS operator meeting each of the gating criteria.[27] Nevertheless, we will grant ATC authority to an operating MSS system in actual compliance with our MSS system geographic and temporal coverage, replacement satellite, and commercial service gating criteria if the MSS ATC applicant makes a satisfactory prospective substantial showing that its ATC operations will meet our integrated service and other gating criteria. Because we will not grant ATC authorizations prior to an MSS operator satisfying the gating requirements, we expect that authorized MSS providers will not file ATC applications until they either have met, or are very close to meeting, each of the gating requirements. In the event an MSS operator anticipates that its proposal will present complex or controversial issues that may warrant a longer deliberative process, an authorized MSS operator may seek a ruling that certain aspects of its operations satisfy particular gating criteria. For example, at any time, an MSS operator may seek an initial finding from the Commission that its proposed service offerings are "integrated" as required by the Commission's Order. Nevertheless, we will not grant ATC authority until the applicant has demonstrated that it has actually satisfied each of the gating criteria. Because we will not grant ATC authorizations prior to an MSS operator's demonstrating that it has, in fact, met the gating criteria, we remove our requirement that MSS operators have a conditioned ATC authorization before engaging in preoperational construction and testing. Thus, we will permit construction and testing of ATC facilities, at the MSS operator's risk, in compliance with our technical rules after physical construction on the MSS system satellites has begun. Finally, we find that the public interest will be best served by ensuring that applications for ATC authority are vetted publicly to ensure the applicant has met our gating criteria. Accordingly, we require that the Commission place on notice for public comment any initial application for authority to add an ATC component to an eligible satellite network.

A. Time for Filing ATC Applications

8. We will consider ATC applications from authorized MSS operators prior to the MSS operator meeting each of the gating criteria. We agree with ICO that permitting MSS operators to file ATC applications prior to actually meeting all of the gating requirements ensures that the Commission has adequate time to review the application and solicit public comment, if appropriate, and that the MSS operators will not be delayed in offering ATC services once their MSS systems are commercially operational. The Wireless Carriers have not provided any arguments to persuade us that it is in the public interest to restrict our ability to entertain applications to provide ATC until after an MSS operator has, in fact, satisfied all of the gating criteria. Rather, we find that the public interest lies in ensuring that the

[24] ICO March 13, 2003, *Ex Parte* Letter at 2.

[25] ICO March 13, 2003, *Ex Parte* Letter at 2.

[26] ICO March 13, 2003, *Ex Parte* Letter at 1.

[27] In order to ensure that there is not unnecessary regulatory delay associated with the ATC application process, for all parties not filing pursuant to 25.149(f), the Commission will endeavor to act on each perfected ATC application no longer than 90 days after the relevant ATC applicant actually meets all ATC gating criteria contained in our rules. See 47 C.F.R. § 25.149(b).

Commission has adequate time to properly process and consider the application without unnecessarily delaying the offering of ATC services.

9. To this end, we clarify that the recently adopted Section 25.149 does not prohibit an MSS operator from filing an ATC application prior to actually meeting all of the gating requirements. We note that Section 25.149, which governs the information required to be contained in an application for authority to provide ATC, could be construed to preclude the filing of ATC applications prior to meeting the gating criteria, insofar as the rule requires an applicant to certify that it meets the applicable gating requirements. To the extent that an applicant might not be able to certify it currently meets the gating requirements, it could be argued that the ATC application is not acceptable for filing. Accordingly, we modify Section 25.149 so that it cannot be read to preclude the filing of ATC applications prior to an MSS operator meeting all of the gating requirements. Moreover, we do not find any benefit in precluding an MSS operator from exercising discretion in deciding when it is appropriate to seek Commission approval for ATC sufficient for us to alter our decision in the *MSS Flexibility Decision* to permit MSS providers to file ATC applications prior to meeting all of the gating criteria.

B. Time for Granting ATC Applications

10. We reconsider our decision to grant MSS ATC applications prior to, and conditioned upon, the MSS operator meeting all of the gating criteria. We find that the public interest will best be served by not granting an MSS operator's ATC application until we are satisfied that the MSS operator is in compliance with each of the gating criteria. This decision is not related to a concern that ATC "conditioned" upon meeting certain gating criteria could be interpreted to mean that we would permit *commercial operation* of ATC *prior to* the MSS operator meeting the gating requirements. Given the numerous references in the text indicating we would not permit such operations, we find that the *MSS Flexibility Decision* is clear that we intended to prohibit commercial operation of ATCs until the MSS system is commercially operating and has met all the gating requirements specified in the *Decision*, and that an MSS ATC licensee's failure to observe this condition would result in severe enforcement action, including license revocations and/or the imposition of monetary forfeitures.[28] Nevertheless, we find that

[28] *See, e.g.*, *MSS Flexibility Decision,* 18 FCC Rcd 1962 at: ¶ 1 ("We will authorize MSS ATC subject to conditions that ensure that the added terrestrial component remains ancillary to the principal MSS offering. We do not intend, nor will we permit, the terrestrial component to become a stand-alone service."); n.5 ("As we have repeatedly indicated, we intend to authorize ATC *only* as an ancillary service to the provision of the principal service, MSS. We have established a number of gating requirements to ensure that ATC may only operate after the provision of MSS has commenced and during the period in which MSS continues to operate."); ¶ 3 ("For planned, licensed MSS systems, licensees may seek ATC authorization prior to launch and operation, but shall not provide ATCs prior to meeting the above criteria, and must have complied with MSS implementation milestones imposed on licensees at the time of seeking authority."); n.32 ("MSS ATC may not commence operation without a grant of authority pursuant to the licensing and service rules we adopt today, which, among other things, require the MSS ATC applicant to demonstrate that it provides substantial satellite service to the public."); ¶ 34 ("ATC cannot be provided without continued provision of MSS under the terms specified in this *Decision* and can only be provided in the MSS licensees' authorized frequency bands. If an MSS licensee using ATC were to disregard the rules and conditions adopted in this Order, we would cancel its ATC authorization and, if circumstances warrant, cancel its MSS license as well. We also have the authority to impose monetary forfeitures and other penalties. ATC authority wholly depends on MSS licensees' fulfillment of their construction, launch and operation requirements, and the continuing provision of substantial satellite service to the public."); ¶ 75 ("Thus, an eligible MSS licensee that wishes to implement ATC must provide space-segment service across the entire geographic area stipulated in our rules and policies for that operator's particular space-station system geometry and frequency band. We incorporate into Part 25 of our rules the specific geographic coverage requirements applicable to each type MSS system under consideration in this Order as a prerequisite for the provision of ATC."); ¶ 85 ("We require MSS to be commercially available in accordance with the coverage requirements that pertain to each band as a prerequisite to an MSS licensee's offering ATC service."); ¶ 86 ("Therefore, authorizations to provide MSS ATC shall be conditioned upon the commercial availability of MSS in accordance with the requirements of this Order prior to or at the same time ATC operations are initiated."); ¶ 250 ("We prohibit, however, commercial operation of ATCs before or until the

(continued....)

the licensing process changes suggested by the Wireless Carriers, somewhat modified, would be easier for the Commission to administer and would provide greater clarity regarding when an MSS operator seeking to provide ATC can engage commercial operation. In particular, we note that the date on which commercial ATC operations would be permitted would be the date on which the Commission grants the MSS ATC applicant's application. We find that providing greater clarity would benefit all parties and would benefit the Commission by reducing the likelihood of dispute or litigation concerning the date on which an MSS ATC applicant/licensee is authorized to initiate commercial ATC service. We also find that, because we will not grant ATC authorizations prior to an MSS operator's demonstrating that it has, in fact, met the gating criteria, an MSS ATC applicant will be less likely to file an ATC application until it has either met, or is close to meeting, all of the gating requirements, and could demonstrate how it is, or will, meet each of the gating requirements. We find this result will reduce the likelihood that Commission staff will be faced with processing speculative, prematurely filed ATC applications. In short, administrative efficiency, and consequently the public interest, will be served by granting ATC applications only after we are satisfied that each of the gating criteria has in fact been met, or will be met at the same time that the application is granted.

11. We do not intend, however, for this process to result in unnecessary delay or regulatory burden for licensees of MSS systems that are operational at the time an ATC application is filed. To this end, we adopt a new section 25.149(f). This section clarifies that we will grant ATC authority to an operating MSS system in actual compliance with our MSS system geographic and temporal coverage, replacement satellite, and commercial service gating criteria if the MSS ATC applicant makes a satisfactory, prospective, substantial showing that its ATC operations will meet our integrated service and other gating criteria. We require an MSS operator that is granted ATC authority pursuant to section 12.149(f) to notify the Commission within 30 days once it begins providing ATC service. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket and shall contain a certification that the MSS ATC service is consistent with its ATC authority.

12. Because we will not grant ATC authorizations prior to an MSS operator satisfying the gating requirements, we expect that MSS providers will not file ATC applications until they either have met, or are very close to meeting, each of the gating requirements. In the event an MSS operator anticipates that its proposal will present complex or controversial issues that may warrant a longer deliberative process, we agree with the Wireless Carriers that an authorized MSS operator may seek a ruling that certain aspects of its operations satisfy particular gating criteria.[29] For example, at any time, an MSS operator may seek an initial finding from the Commission that its proposed service offerings are "integrated" as required by the Commission's Order. However the Commission will not grant ATC authority until the applicant has demonstrated that it has actually satisfied each of the gating criteria.

C. Time for construction and testing

13. As discussed above, we will not grant ATC authorizations prior to an MSS operator's demonstrating that it has, in fact, met all of the gating criteria. We agree with ICO that our *MSS Flexibility Decision* expressly contemplates that construction and testing activities for ATC can occur prior to commencement of MSS operations, and we do not see any benefit in precluding such construction and testing, at the applicant's risk. Accordingly, as suggested by the Wireless Carriers, we revise pending rule Section 25.143(j) to eliminate the language requiring that MSS operators have a conditioned ATC

(...continued from previous page)
MSS system is commercially operating as specified in this Order, and such commercial operation of ATCs will result in enforcement action, including license revocation and/or the imposition of a monetary forfeiture.").

[29] 47 C.F.R. § 1.2. We will place any such request for an initial ruling concerning an MSS licensee's meeting the ATC gating criteria on public notice for a comment period of not less than 30 days.

authorization before engaging in preoperational construction and testing, and instead, clarify that we will permit such construction and testing, at the operator's risk, at any time after an MSS provider has initiated physical construction on the MSS system satellites and notified us concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. This notification must take the form of a letter formally filed in with the Commission in the appropriate MSS license docket. The letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. Upon the filing of such a notification letter, the Commission will issue an informational public notice stating that such a notification letter has been filed with the Commission and listing the appropriate technical and contact information. We require pre-operational construction and testing operations be in compliance with all appropriate technical rules including section 25.255 relating to procedures for resolving possible harmful interference. In addition, we require MSS licensees engaging in pre-operational build-out and testing to comply with sections 5.83, 5.85(c), 5.111 and 5.117 of the Commissions rules relating to experimental operations.

D. Public notice requirement

14. Finally, we require that the Commission place on notice for public comment any initial application for authority to add an ATC component to an eligible satellite network. We find that the public interest is best served by ensuring that applications for ATC authority are subject to transparent public process including the opportunity for comment to ensure the applicant has met our gating criteria. Accordingly, we modify Section 25.117(f) to require that notwithstanding the treatment of such an application as a minor modification, the Commission shall place any initial application for the modification of a space station license to add an ancillary terrestrial component on notice for public comment. We do not, however, intend to create an opportunity for abuse of process. In the event an ATC application relies on a certification that the applicant is in compliance with a previously issued favorable Commission ruling concerning the applicant's meeting of ATC gating criteria, any public notice issued by the Commission pursuant to Section 25.117(f) shall contain a statement that any party objecting to the portion of the application relating to the initial ruling bears the burden of demonstrating that the applicant's proposed use of ATC is not consistent with the initial ruling. We caution parties that when we have resolved issues raised by objecting parties in an initial ruling process concerning the satisfaction of gating criteria, we will not entertain the same objections in the context of an ATC application relying in part on the initial ruling. To consider such issues in the application process would in essence give parties opposing an MSS operator's efforts to initiate ATC services two bites at the regulatory apple, could result in unnecessary delay in the provision of important communications services to the public, and would unnecessarily consume additional Commission resources.

IV. ORDERING CLAUSES

15. IT IS ORDERED that, pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this Order on Reconsideration IS ADOPTED and that Part 25 of the Commission's Rules IS AMENDED, as specified in Appendix A, effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A: Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 25--SATELLITE COMMUNICATIONS

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

AUTHORITY: 47 U.S.C. 701-744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.117 is amended to read as follows:

§ 25.117 Modification of station license.

* * * * *

(f) An application for modification of a space station license to add an ancillary terrestrial component to an eligible satellite network will be treated as a request for a minor modification if the particulars of operations provided by the applicant comply with the criteria specified in § 25.149. Notwithstanding the treatment of such an application as a minor modification, the Commission shall place any initial application for the modification of a space station license to add an ancillary terrestrial component on notice for public comment. Except as provided for in § 25.149(f), no application for authority to add an ancillary terrestrial component to an eligible satellite network shall be granted until the applicant has demonstrated actual compliance with the criteria specified in § 25.149(b).

* * * * *

3. Section 25.136 is amended to read as follows:

§ 25.136 Licensing provisions for the L-Band mobile-satellite service.

* * * * *

(f) Incorporation of ancillary terrestrial component base station into an L-band Mobile-Satellite Service System. Any licensee authorized to construct and launch an L-band mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 of this part at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(g) Pre-Operational Build-out and Testing. An MSS licensee may, without further authority from the Commission and at its own risk engage in pre-operational build-out and, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, ATC operation requirements, the rules and regulations in this Part and the applicable engineering standards. Prior to engaging in such pre-operational build-out and testing, an MSS licensee must notify the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket. Such letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. MSS licensees engaging in pre-operational build-out and testing must also comply with sections 5.83, 5.85(c),

5.111 and 5.117 relating to experimental operations. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority.

(h) Aircraft. All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5-1660.5 MHz and 1525-1559 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

4. Section 25.143 is amended to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and the 2 GHz mobile-satellite service.

* * * * *

(i) Incorporation of ancillary terrestrial component base stations into a 1.6/2.4 GHz mobile-satellite service network or a 2 GHz mobile-satellite service network. Any licensee authorized to construct and launch a 1.6/2.4 GHz or a 2 GHz mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 of this part at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(j) Pre-Operational Build-out and Testing. An MSS licensee may, without further authority from the Commission and at its own risk, engage in pre-operational build-out and conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, ATC operation requirements, the rules and regulations in this Part and the applicable engineering standards. Prior to engaging in such pre-operational build-out and testing, an MSS licensee must notify the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket. Such letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. MSS licensees engaging in pre-operational build-out and testing must also comply with sections 5.83, 5.85(c), 5.111 and 5.117 relating to experimental operations. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.149 and must have been granted ATC authority.

(k) Aircraft. ATC mobile terminals must be operated in accordance with 25.136(a). All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 2000-2020/2180-2200 MHz or 1610-1626.5 MHz/2483.5-2500 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

* * * * *

5. Section 25.146 is reinstated to read as follows:

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

[Text to be reinstated as established by 66 FR 10619 (Feb. 16, 2001); 67 FR 53510 (Aug. 16, 2002); and 68 FR 16447 (April 4, 2003). All changes to §25.146 made in 68 FR 33649 (June 5, 2003) to be disregarded.]

6. Section 25.149 is amended to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5./1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

(a) Applicants for ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the following through certification or explanatory technical exhibit, as appropriate:

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 2000-2020 MHz/2180-2200 MHz bands (2 GHz band), the 1626.5-1660.5 MHz/1525-1559 MHz bands (L-band), and the 1610-1626.5 MHz/2483.5-2500 MHz bands (Big LEO band).

(2) ATC operations shall be limited to certain frequencies:

(i) In the 2000-2020 MHz/2180-2200 MHz bands (2 GHz MSS band), ATC operations are limited to the selected assignment of the 2 GHz MSS licensee that seeks ATC authority.

(ii) In the 1626.5-1660.5 MHz/1525-1559 MHz bands (L-band), ATC operations are limited to the frequency assignments authorized and internationally coordinated for the MSS system of the MSS licensee that seeks ATC authority.

(iii) In the 1610-1626.5 MHz/2483.5-2500 MHz bands (Big LEO band), ATC operations are limited to the 1610-1615.5 MHz, 1621.35-1626.5 MHz, and 2492.5-2498.0 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority.

(3) ATC operations shall not exceed the geographical coverage area of the mobile-satellite service network of the applicant for ATC authority.

(4) ATC base stations shall comply with all applicable antenna and structural clearance requirements established in Part 17 of the Commission's rules.

(5) ATC base stations and mobile terminals shall comply with Part 1 of the Commission's rules, Subpart I – Procedures Implementing the National Environmental Policy Act of 1969, including the guidelines for human exposure to radio frequency electromagnetic fields as defined in §§ 1.1307(b) and 1.1310 of the Commission's rules for PCS networks.

(6) ATC base station operations shall use less than all available MSS frequencies when using all available frequencies for ATC base station operations would exclude otherwise available signals from MSS space-stations.

(b) Applicants for an ancillary terrestrial component shall demonstrate that the applicant does or will comply with the following criteria through certification:

(1) Geographic and Temporal Coverage.

(i) For the 2 GHz MSS band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, consistent with the coverage requirements for 2 GHz MSS GSO operators.

(ii) For the L-band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, unless it is not technically possible for the MSS operator to meet the coverage criteria from its orbital position.

(iii) For the Big LEO band, an applicant must demonstrate that it can provide space-segment service (i) to all locations as far north as 70° North latitude and as far south as 55° South latitude for at least seventy-five percent of every 24-hour period, i.e., that at least one satellite will be visible above the horizon at an elevation angle of at least 5° for at least 18 hours each day, and (ii) on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, i.e., that at least one satellite will be visible above the horizon at an elevation angle of at least 5° at all times.

(2) Replacement Satellites.
  (i) Operational NGSO MSS ATC systems shall maintain an in-orbit spare satellite.
  (ii) Operational GSO MSS ATC systems shall maintain a spare satellite on the ground within one year of commencing operations and launch it into orbit during the next commercially reasonable launch window following a satellite failure.
  (iii) All MSS ATC licensees must report any satellite failures, malfunctions or outages that may require satellite replacement within ten days of their occurrence.
(3) Commercial availability. Mobile-satellite service must be commercially available (*viz.*, offering services for a fee) in accordance with the coverage requirements that pertain to each band as a prerequisite to an MSS licensee's offering ATC service.
(4) Integrated Services. MSS ATC licensees shall offer an integrated service of MSS and MSS ATC. Applicants for MSS ATC may establish an integrated service offering by affirmatively demonstrating that:
  (i) The MSS ATC operator will use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component to provide the proposed ATC service; or
  (ii) Other evidence establishing that the MSS ATC operator will provide an integrated service offering to the public.
(5) In-band Operation.
  (i) In the 2 GHz MSS band, MSS ATC is limited to an MSS licensee's selected assignment. MSS ATC operations on frequencies beyond the MSS licensee's selected assignment are prohibited.
  (ii) In the Big LEO band, MSS ATC is limited to no more than 5.5 MHz of spectrum in each direction of operation. Licensees in these bands may implement ATC only on those channels on which MSS is authorized, consistent with the Big LEO band-sharing arrangement.
  (iii) In the L-band, MSS ATC is limited to those frequency assignments available for MSS use in accordance with the Mexico City Memorandum of Understanding, its successor agreements or the result of other organized efforts of international coordination.

(c) Equipment certification.
(1) Each ATC MET utilized for operation under this part and each transmitter marketed, as set forth in Sec. 2.803 of this chapter, must be of a type that has been authorized by the Commission under its certification procedure for use under this part.
(2) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.
(3) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. MSS ATC base stations must comply with the requirements specified in 1.1307(b) for PCS base stations. MSS ATC mobile terminals must comply with the requirements specified for mobile and portable PCS transmitting devices in 1.1307(b). MSS ATC mobile terminals must also comply with the requirements in 2.1091 and 2.1093 for Satellite Communications Services devices. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) Applicants for an ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the provisions of §§ 1.924 and 25.203(e)-(g) and with §§ 25.252, 25.253, or 25.254, as appropriate, through certification or explanatory technical exhibit.

(e) Except as provided for in paragraph (f) of this section, no application for an ancillary terrestrial component shall be granted until the applicant has demonstrated actual compliance with the provisions of subsection (b) of this section. Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and §§ 25.252, 25.253, or 25.254, as appropriate.

(f) Special Provision for Operational MSS Systems. Applicants for MSS ATC authority with operational MSS systems that are in actual compliance with the requirements prescribed in subparagraphs (b)(1), (b)(2), and (b)(3) of this section at the time of application may elect to satisfy the requirements of subparagraphs (b)(4) and (b)(5) of this section prospectively by providing a substantial showing in its certification regarding how the applicant will comply with the requirements of subparagraphs (b)(4) and (b)(5). Notwithstanding §25.117(f) and paragraph (e) of this section, the Commission may grant an application for ATC authority based on such a prospective substantial showing if the Commission finds that operations consistent with the substantial showing will result in actual compliance with the requirements prescribed in subparagraphs (b)(4) and (b)(5) of this section. An MSS ATC applicant that receives a grant of ATC authority pursuant to this paragraph (f) shall notify the Commission within 30 days once it begins providing ATC service. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket and shall contain a certification that the MSS ATC service is consistent with its ATC authority.