

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

PUBLIC NOTICE

CC Docket No. 92-76

Released: April 16, 1992

**FCC ASKS FOR COMMENTS REGARDING THE
ESTABLISHMENT OF AN ADVISORY COMMITTEE
TO NEGOTIATE PROPOSED REGULATIONS**

1. The Commission is considering establishing an Advisory Committee to negotiate regulations defining the technical and service rules appropriate to the provision of data messaging and position determination services using low-Earth orbit (LEO) satellites operating in the 137-138, 148-150.05, 399.9-400.05 and 400.15-401 MHz frequency bands ("small" LEOs). In a *Notice of Proposed Rulemaking*, 6 FCC Rcd 5932 (1991) (allocation NPRM) we proposed to allocate these bands to a LEO satellite service. The negotiations contemplated by this *Notice* will help develop regulations designed to facilitate the shared use by the maximum number of service providers in the spectrum. The rules would cover all qualifications for a Commission license to provide small LEO services. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101-648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules. *See also Initial Policy Statement and Order*, 6 FCC Rcd 5669 (1991).

I. REGULATORY NEGOTIATION

2. Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Commission's proposal. If consensus is not reached, majority and minority input may be used by the Commission in ultimately proposing regulations. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

3. When making a determination regarding the suitability of a candidate for the negotiated rulemaking process, the Commission must consider whether:

- (a) there is a need for the rule,
- (b) there are a limited number of identifiable interests that will be significantly affected by the rule,

(c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

- (1) can adequately represent the identifiable interests and
- (2) are willing to negotiate in good faith to reach a consensus on the proposed rules,

(d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time,

(e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules,

(f) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and

(g) the agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. NRA §3, 5 U.S.C. §583(a).

**II. SUBJECT AND SCOPE OF RULE PROPOSED
FOR NEGOTIATION**

4. The proposed rulemaking process is intended to develop the rules that will govern the provision of mobile and fixed-LEO satellite services operating in the frequency bands below 1 GHz. These regulations are necessary to establish a new domestic satellite service in accordance with our allocation NPRM, *supra*, to define and regulate this service in such a way as to maximize use of these frequency bands and to protect existing users of these bands from harmful interference.

5. The Commission is here proposing that the service and technical rules governing the provision of small LEO services be developed through negotiation. We believe that such rules are appropriate for negotiated development. The Commission's staff has made preliminary inquiries of a number of potential parties and representatives of identified interests to determine if the regulations satisfy the applicable selection criteria for negotiation. On the basis of these inquiries, the Commission believes that the regulations meet the selection criteria and that the negotiations can be successful. Affected interests are relatively small in number, and our initial contacts indicate that an appropriate balance and mix of groups will be willing to participate in good faith. The Commission also believes that a Committee comprised of representatives of these groups could reach a consensus in a reasonable amount of time so as not to unduly delay the issuance of a notice of proposed rulemaking or a final order. The Commission has adequate resources to devote to the negotiations, and it will use the consensus of the Committee as the basis for its rules to the extent possible.

6. The Commission has identified the following issues, among others, that will be addressed in developing the rules for small LEO services:

- (a) whether small LEO services should be offered on a common carrier basis,
- (b) which modulation method should be employed by the parties in order to co-exist with other satellite and terrestrial systems in the band,
- (c) whether separate rules should be established to govern the provision of non-profit, as opposed to commercial, small LEO services,
- (d) the extent to which the spectrum may be shared by future applicants,
- (e) whether coordination disputes between LEO uplinks and terrestrial services should be resolved in an open forum or through the Frequency Assignment Subcommittee of the Interagency Radio Advisory Committee, and
- (f) whether, and to what extent, the other proposals set forth in our allocation NPRM should be implemented.

All proposals must comply with International Telecommunications Union treaty obligations, and conform to any operating restrictions ultimately negotiated between the National Telecommunications and Information Administration and the Commission with regard to the final spectrum allocation.

III. POTENTIAL INTERESTS AND PARTICIPANTS

7. The Commission has identified the following interests as those likely to be significantly affected by the small LEO service rules:

- all applicants to provide small LEO services in the affected bands
- all existing users of these frequencies for terrestrial or space services

8. The following have initially indicated their willingness to participate in the negotiation Committee, if the Commission decides to proceed with its implementation: Volunteers in Technical Assistance, Albert Halprin for Orbital Communications Corporation, Alan Renshaw and/or Raul R. Rodriguez for STARSYS, Inc., and the Domestic Facilities Division, Common Carrier Bureau, for the Federal Communications Commission.

IV. FORMATION OF THE NEGOTIATING COMMITTEE

A. Procedure for Establishing an Advisory Committee

9. As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group which includes members of the public as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with the General Services Administration (GSA) and filing of a charter. The Commission will prepare a charter and initiate the requisite consultation process prior to formation of the Committee and the commencement of negotiations.

B. Participants

10. The number of participants in the group is estimated to be about 10 and should not exceed 25 participants. A number larger than this could make it difficult

to conduct efficient negotiations. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. We must be satisfied, moreover, that the group as a whole reflects a proper balance and mix of interests.

11. Persons who will be significantly affected by the proposed rules and who believe that their interests will not be adequately represented by any person specified in paragraph 8, *supra*, may apply for, or nominate another person for, membership on the negotiated rulemaking Committee to represent such interests with respect to the proposed rules. Each application or nomination shall include:

- (a) the name of the applicant or nominee and a description of the interests such person will represent,
- (b) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent,
- (c) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rules under consideration, and
- (d) the reasons that the persons specified in this *Notice* do not adequately represent the interests of the person submitting the application or nomination.

12. If, in response to this *Notice*, any additional individuals or interests request membership or representation in the negotiating group, the Commission will determine whether that individual or representative should be added to the group. The Commission will make that decision based on whether the individual or interest would be substantially affected by the rule, and is already adequately represented in the negotiating group.

C. Agenda

13. If the Commission ultimately decides to establish a negotiating committee and its charter is approved, it is expected that the Committee's first meeting will take place in September 1992, at 2000 L Street, N.W., Washington, D.C., at a room, date and time that will be announced. At this initial meeting, the Committee will complete action on all procedural matters and establish a target date for submission of its recommendations. We expect that this target date will be no later than December 31, 1992. We anticipate publication of a notice of proposed rulemaking not later than March 1993.

V. NEGOTIATION PROCEDURES

14. The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this *Notice* or during the negotiation process.

A. Facilitator

15. The Commission will nominate a person to serve as a neutral facilitator for the negotiations of the Committee, subject to the approval of the Committee by consensus.

The facilitator will not be involved with the substantive development or enforcement of the regulations. The facilitator's role is to:

- chair negotiating sessions;
- help the negotiation process run smoothly;
- help participants define and reach consensus; and
- manage the keeping of records and minutes.

B. Good Faith Negotiation

16. Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a qualified individual(s) to represent its interest. This applies to the Commission as well, and Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, will be the Commission's representative.

C. Meetings and Compensation

17. Meetings will be held in the Washington area at the convenience of the Committee. The Commission, if requested, will provide the facilities needed for the conduct of the meetings, and will provide any necessary technical support. Private sector members of the Committee will serve without government compensation or reimbursement of expenses.

D. Committee Procedures

18. Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the procedures for Committee meetings that they consider most appropriate.

E. Consensus

19. The goal of the Committee is consensus. We expect the participants to fashion their own working definition of this term. In the event the Committee is unable to reach consensus, the Commission will proceed to develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Commission will evaluate whether the Committee should continue.

F. Record of Meetings

20. In accordance with FACA's requirements, the Committee will keep a record of all Committee meetings. This record will be placed in the public docket for this rulemaking. The Commission will announce Committee meetings in the Federal Register. Such meetings will be open to the public.

VI. CONCLUSION

21. The Commission requests public comment, within 30 days of the issuance of this *Notice*, on whether: (1) it should establish a Federal Advisory Committee, (2) it has properly identified interests that are significantly affected by the key issues listed above, (3) the proposed Committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

22. Pursuant to the applicable procedures set forth in Section 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. §584(c), interested parties may file comments and

applications for Committee membership on or before [thirty days from release date]. You should send your comments and/or applications to the Office of the Secretary, CC Docket No. 92-76, Federal Communications Commission, Washington, D.C. 20554. Comments and applications will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

23. For further information pertaining to the establishment of the negotiation committee and associated matters, contact Kristi L. Kendall, Satellite Radio Branch, 2025 M Street, N.W., Washington, D.C. 20554, (202) 634-7058.

FEDERAL COMMUNICATIONS COMMISSION