II. Part 78 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 78 -- CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.11(f) is amended by replacing the text "1990-2110 MHz" with the text "2025-2130 MHz."

3. Section 78.18 is amended as follows:

a. Add the following to the end of subparagraph (a)(7)

* * * * *

(3) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025-2130 MHz. The following channel plan will apply, subject to the provisions of § 74.604.

Frequency Band (MHz)

2025-2040
2040-2055
2055-2070
2070-2085
2085-2100
2100-2115
2115-2130

4. Add the new Section 78.40 as follows:

§ 78.40 Transition of the 1.990-2.025 GHz band from the Cable Television Relay Service to Emerging Technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Cable Television Relay Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other authorized bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the Existing Licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested

parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any existing or emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Existing Licensees in the 1.99-2.11 GHz band allocated for licensed emerging technology services will maintain primary status in these bands until an ET Licensee completes relocation of the Existing Licensee's operations.

(c) The Commission will amend the operating license of the Existing Licensee to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee might incur as a result of operation in another authorized band or migration to another medium.

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television Transmission frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the Existing Licensee back to its former or equivalent frequencies.

5. In Section 78.101(a), the table is amended by replacing "1,990 to 2,110" in the first line with "1,990 to 2,130"

6. In Section 78.103(e), replace the table with the following:

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
1,990 to 2,110	17 or 18.[1]
6,425 to 6,525	8 or 25.
6,875 to 7,125	25.
12,700 to 13,250	25.
17,700 to 19,700	80.
31,000 to 31,300	25 or 50.

[1] After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2,025 to 2,130 MHz will be 15 MHz.

* * * * *

7. In Section 78.111, the table is amended by replacing the first line with the following:

Frequency Band (MHz)	Frequency tolerance	
	Fixed (percent)	Mobile (percent)
1,990 to 2,130	.....	0.005

* * * * *

APPENDIX E

Final Regulatory Flexibility Analysis
Report and Order

As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making (Notice)* in ET Docket No. 95-18.[174] The Commission sought written public comment on the proposals in the *Notice*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.[175]

A. Need for and Objectives of the Proposed Rule.

In this *Report and Order* the Commission allocates 70 megahertz of spectrum for use by the Mobile-Satellite Service (MSS). The proposals adopted herein comport with international actions at the 1995 World Radiocommunications Conference and provide needed spectrum for mobile satellite communications.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA.

No comments were submitted in direct response to the IRFA. The Association for Maximum Service Television, *et al* (MSTV) and Creative Broadcast Techniques, Inc. and the New Vision Group, Inc. (CBT) assert that licensees in the Broadcast Auxiliary Service (BAS) and the Local Transmission Television Service (LTTS), many of whom may be small entities, must be compensated for the costs of relocation, if they are required to relocate from spectrum being reallocated to MSS.[176] Similarly, The American Petroleum Institute (API), the Association of American Railroads (AAR), BellSouth Corporation (BellSouth), and UTC insist that Fixed Service (FS) licensees, many of whom may be small entities, must be compensated for the costs of relocation, if they are required to relocate from spectrum being reallocated to MSS.[177]

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[174] *In re Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, *Notice of Proposed Rule Making*, 10 FCC Rcd 3230, 3233 (1995).

[175] Pub. L.No. 104-121, 110 Stat. 847 (1996) (Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996; 5 U.S.C. § 601 *et seq*).

[176] See MSTV Comments at 17; CBT Comments at 7.

[177] *See* API Comments at 12-14; AAR Comments at 2-5; APCO Comments at 2-3; BellSouth Comments at 3-4; UTC Comments at 1-2.

C. Description and Estimate of the Number of Small Entities Subject to Which the Rules Will Apply.

For the purposes of this *Report and Order*, the RFA defines a small business as identical to a small business concern under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[178] Under the Small Business Act, a small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[179] The rules adopted in this *Report and Order* will apply to BAS, LTTS, Cable Television Relay Service (CARS), and FS licensees, and satellite communications companies.

(a) **BAS, LTTS, and Cable Television Relay Service (CARS) Licensees:** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). It also includes Instructional Television Fixed Service stations, which are used to relay programming to the home or office, similar to that provided by the cable television systems. The Commission has not developed a definition of small entities applicable to Broadcast Auxiliary Service, Local Television Transmission Service or Cable Television Relay Service. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. SBA has defined a small business for Standard Industrial Classification (SIC) category 4812 (Radiotelephone Communications) to be small entities when they have fewer than 1500 employees.[180]

(b) **Fixed Service Licensees:** This *Report and Order* pertains to fixed service microwave licensees. The Commission has not developed a definition of small entities applicable to Fixed Service microwave licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Census Bureau data indicates that there are 1,164 radiotelephone companies with fewer than 1500 employees, that might qualify as small entities if they are independently owned and operated. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that would be affected by this action.

(c) **Satellite Communications Services:** The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable

[178] *See* 5 U.S.C. § 601(3).

[179] 15 U.S.C. § 632.

[180] 13 C.F.R. § 121.201 Standard Industrial Classification (SIC) Code 4812.

definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with $11.0 million or less in annual receipts.[181] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[182]

Describing and estimating the number of small entities these rules will impact is made difficult by a number of factors. First of all, information from the Satellite Industry Association and financial analysts who specialize in this market indicate that there are few firms that could be traditionally thought of as small businesses. They point to to the fact that this is a capital intensive industry that requires "significant partner funding and/or contract commitments prior to approaching commercial financing sources."[183]

There are however, a number of firms who identify themselves as small entities including: Columbia Corp., CTA, Mobile Communications Holdings, Inc. (MCHI), Orion, TelQuest Ventures, L.L.C., and possibly others. Several of these companies have submitted comments to the Commission's Section 257 proceeding to identify and eliminate market entry barriers for small businesses.[184]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirement.

The rules adopted in this *Report and Order* do not specify details of the process by which BAS, LTTS, CARS, and FS licensees will be relocated. Therefore, the rules impose no additional reporting, recordkeeping or other compliance requirements.

E. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

As proposed in the *Notice*, MSS licensees in the 2 GHz band will be required to bear the cost of relocating and rechannelizing BAS, LTTS, and CARS licensees in the 2 GHz band. Further, as proposed in the *Notice*, any MSS licensee in the 2 GHz band will be required to bear the cost of relocating any FS licensee with which it cannot share spectrum or which must be

[181] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4899.

[182] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

[183] See "Financing the Final Frontier: Funding Commercial Space Activities" Bear Stearns, Global Space & Satellite Finance Report.

[184] See GN Docket 96-113.

relocated to clear spectrum for BAS. The Commission considered the alternative of requiring BAS, LTTS, CARS, and FS licensees to bear the cost of relocating themselves, but rejected this alternative as unfairly burdensome on BAS, LTTS, CARS, and FS licensees.

F. Report to Congress.

The Commission will send a copy of this FRFA, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act,[185] the Commission has prepared an IRFA of the expected significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rule Making (Further Notice)*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice* provided above in paragraph 83. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Need for and Objectives of the Proposed Rules.

The *Further Notice* proposes rules to govern the relocation of Broadcast Auxiliary Service (BAS), Local Television Transmission Service (LTTS), Cable Television Relay Service (CARS), and Fixed Service (FS) licensees from the 2 GHz spectrum reallocated to the MSS. These rules are designed to ensure an orderly transition of these licensees from the spectrum so that MSS operations may be conducted in the spectrum. At the same time, the rules are designed to ensure that incumbent BAS, LTTS, CARS, and FS licensees suffer no harm from relocation.

B. Legal Basis.

The Communications Act of 1934, as amended, gives the Commission authority to "make such regulations as it may deem necessary to prevent interference between stations and to carry out the provisions of [the Communications Act]." 47 U.S.C. § 303(f).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

(a) **BAS, LTTS, and CARS Licensees:** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). It also includes Instructional Television Fixed Service stations, which are used to relay programming to the home or office, similar to that provided by the cable television systems. The Commission has not developed a definition of small entities applicable to Broadcast Auxiliary Service, Local Television Transmission Service or Cable Television Relay Service. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. SBA has defined a small business for

[185] 5 U.S.C. § 603.

Standard Industrial Classification (SIC) category 4812 (Radiotelephone Communications) to be small entities when they have fewer than 1500 employees.[186]

There are currently 2,663 FM translators and boosters, 4, 926 TV translators, and 1,921 Low Power TV stations which will be affected by the new requirements. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). As we indicated earlier, 96% of radio stations and 78% of TV stations are designated as small businesses.

There are currently 2,000 licensed cable television relay stations, which will probably be affected by the new requirement. The Commission receives approximately 1,000 CARS applications on an annual basis. The FCC is not required to collect financial information on these facilities.

(b) **Fixed Service Licensees:** This *Further Notice* pertains to fixed service microwave licensees. The Commission has not developed a definition of small entities applicable to Fixed Service microwave licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Census Bureau data indicates that there are 1,164 radiotelephone companies with fewer than 1500 employees, that might qualify as small entities if they are independently owned and operated. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that would be affected by this action.

(c) **Satellite Communications Services:** The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with $11.0 million or less in annual receipts.[187] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere

[186] 13 C.F.R. § 121.201 Standard Industrial Classification (SIC) Code 4812.

[187] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4899.

Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[188]

Satellite systems authorized by the Commission can be divided into the following categories: Mobile-Satellite Service (MSS) non-geostationary satellite orbit (LEO) (low or medium orbit satellites); MSS geostationary; MSS stations; and Fixed-Satellite Service.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.

The proposed rules would require all BAS, LTTS, CARS, and FS licensees, as well as MSS operators, to negotiate for relocation or rechannelization or both, including negotiating timetables and costs. These negotiations are likely to require the skills of accountants and engineers to evaluate the economic and technical requirements of relocation.

E. Significant Alternatives to Proposed Rules which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

The Commission considered the alternative of requiring current BAS, LTTS, CARS, and FS licensees in the 2 GHz band to relocate or rechannelize or both at their own expense. The Commission rejected this alternative as excessively burdensome on these incumbent licensees, and not in the public interest.

MSS commenters advocate requiring BAS band licensees to finance their own relocation as their equipment depreciates and they purchase new equipment, claiming that the total costs of relocation, added to the high cost of launching satellites, would cripple the nascent MSS industry. This assertion, however, contradicts the position of MSS commenters that there is a huge, underserved demand for MSS. We believe that MSS licensees will build the cost of relocating BAS band licensees into their financial plans, and still will be able to provide service at a profit. We propose to rechannelize the BAS band to seven channels of 15 megahertz width each, as opposed to the current 17- and 18-megahertz channel widths, in order to maintain seven channels in the 2 GHz BAS band, but we also request comment on whether allowing flexibility in channelization would better serve the needs of the BAS, CARS, and LTTS industries. Because the current and new BAS bands overlap, BAS, CARS, and LTTS licensees are likely to interfere with each other if both the current and proposed new channel plans are used simultaneously. To address this problem, we would propose to make the new channel plan primary on January 1, 2000, or after the 2110-2130 MHz band is cleared of incumbent FS licensees, whichever is later. We would also inquire whether a later date would be more appropriate, and whether we may allow switchover on a market-by-market basis, rather than a nationwide basis. We inquire

[188]U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

whether we should allow BAS, CARS, and LTTS licensees to negotiate with MSS individually, or whether we should impose marketwide or nationwide negotiators whose agreements would be binding on all licensees. We propose the same negotiation periods as those established in the Emerging Technologies proceeding: a two-year voluntary negotiation period, followed by a one-year mandatory negotiation period, followed by involuntary relocation. In the case of involuntary relocation, we propose to apply the requirements of our Emerging Technologies policies: (1) payment of all relocation expenses by the MSS operator, (2) full comparability of replacement facilities, and (3) the right of the incumbents to return to their original spectrum at MSS expense, should the replacement facilities prove not to be fully comparable within one year after relocation. Finally, we would propose to require subsequently entering MSS operators to compensate earlier operators for a portion of the expenses incurred in clearing the BAS band.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.

None.