

APPENDIX D: FINAL REGULATORY FLEXIBILITY CERTIFICATION***Report and Order***

1. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).⁵ The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having \$12.5 million or less in annual revenue.⁶

2. Pursuant to the RFA, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Flexibility Notice*.⁷ We received no comments in response to the IRFA. For the reasons described below, we now certify that the policies and rules adopted in the present *Flexibility Order* will not have a significant economic impact on a substantial number of small entities.

3. The *Flexibility Order* provides additional operational flexibility for MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band, the L-band, and the Big LEO bands. The flexibility consists of permitting the MSS providers to integrate ancillary terrestrial components (ATC) into their networks.⁸ We find that providing this flexibility will have no significant economic impact on small entities because the MSS operators will not be required to make use of the additional capability. We believe that permitting the additional flexibility will enhance the ability of MSS operators to offer American consumers high quality, affordable mobile services on land, in the air, and over the oceans without using spectrum resources beyond the spectrum already allocated and authorized for MSS use in these bands. Operational flexibility will: (1) increase efficient spectrum use through MSS network

¹ The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 605(b).

³ 5 U.S.C. § 601(6).

⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵ 15 U.S.C. § 632.

⁶ 13 C.F.R. § 121.201, NAICS code 517410.

⁷ *Flexibility Notice*, 16 FCC Rcd at 15565-67, ¶¶ 85-93.

⁸ *See generally* § II.A., *supra*.

integration and terrestrial reuse; (2) reduce costs, eliminate inefficiencies, and enhance operational ability in MSS systems; (3) encourage technological innovation and the development of new wireless applications; and (4) strengthen competition in the telecommunications marketplace both in the United States and in other nations. We implement the *Flexibility Order* through the addition of a footnote to the U.S. Table of Frequency Allocations, found in Section 2.106 of our Rules, 47 C.F.R. § 2.106.

4. We also find that our action – which brings additional flexibility to existing MSS licensees -- will not affect a substantial number of small entities. There are currently five 2 GHz MSS licensees, two Big LEO MSS licensees and three L-band MSS licensees authorized to provide service in the United States. Although at least one of the 2 GHz MSS system licensees and one of the Big LEO licensees are small businesses, small businesses often do not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. We expect that, by the time of MSS ATC system implementation, these current small businesses will no longer be considered small due to the capital requirements for launching and operating a proposed system.