

APPENDIX E: INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Report and Order and Notice of Proposed Rulemaking* provided above in section V. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

1. Need for and Objectives of the Proposed Rules

2. This *Notice* seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands. Given the state of the Big LEO MSS industry including changing traffic patterns, consumer demand and a recent request for additional spectrum by Iridium, one of the Big LEO operators, the *Notice* seeks comment on: (1) the Commission's original spectrum sharing plan, (2) the proposal of Iridium for additional spectrum and (3) other possible uses of the band.

2. Legal Basis

3. This action is taken pursuant to Sections 1, and 4(i) and (j) of the Communications Act, as amended, 47 U.S.C. § § 151, 154 (i), 154(j), and Section 201(c)(11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. § 721(c)(11), and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553.

3. Description and Estimate of the Number of Small Entities to which the Proposed Rules Would Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act.⁵ 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 SBA.⁶

5. The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified.⁷ This definition provides that a

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(3).

⁶ *Id.* § 632.

⁷ 13 C.F.R. § 121.201, NAICS Code 51334.

small entity is one with \$11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the L-band, Big LEO or 2 GHz MSS category. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities. The options proposed in this *Notice* apply only to entities providing Big LEO MSS. Small businesses may not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. At least one of the Big LEO licensees may be considered a small business at this time. We expect, however, that by the time of implementation they will no longer be considered small businesses due to the capital requirements for launching and operating their proposed systems. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by this rulemaking to a great extent.

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

6. The proposed action in this *Notice* would affect those entities applying for Big LEO MSS space station authorizations and those applying to participate in assignment of Big LEO MSS spectrum, including through potential re-allocation. In this *Notice*, we tentatively conclude that a re-balancing of the Big LEO MSS band will serve the public interest. We seek comment on the current use of the Big LEO MSS uplink band (1610-1626.5 MHz) by the current licensees, Iridium and Globalstar, any potential impact on GLONASS, the Russian Global Navigation Satellite System, and radioastronomy, and Big LEO MSS service downlink (2483.5-2500 MHz) spectrum uses. We also seek comment on the possibility of making Big LEO MSS spectrum available in a second Big LEO processing round, re-allocating a portion of the Big LEO spectrum for other uses, including unlicensed devices, site-based or critical infrastructure licensees, or assignment to a terrestrial commercial mobile radio service licensees. We do not propose any other reporting, recordkeeping or compliance requirements in the *Notice*.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

7. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

8. In developing the tentative conclusion and the proposals contained in this *Notice*, we have attempted to allow flexibility for efficient operations in the Big LEO MSS market, regardless of size, consistent with our other objectives. We have also sought comment on other uses of the spectrum that may enhance service to the public. We believe that our tentative conclusion that the Big LEO MSS band should be re-balanced, our request for comment on the current use of the band by the Big LEO licensees, and our request for comment on other uses of the band will not impose a significant economic impact on small entities because: (1) the information sought is reasonable and not overly burdensome; and (2) as mentioned above, we do not expect small entities to be impacted by this *Notice* due to the substantial implementation costs involved to use the spectrum at issue in this *Notice*. Nonetheless, we seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize any such impact.

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

9. None.