



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 24-396
Released: April 26, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON EXPANDED FEDERAL USE OF THE NON-FEDERAL FSS AND MSS BANDS

ET Docket No. 24-121

Comment Date: [30 days after FR publication]
Reply Comment Date: [60 days after FR publication]

By the Chief, Office of Engineering and Technology:

By this Public Notice, the Office of Engineering and Technology opens a new docket and seeks comment on ways to potentially expand Federal access to non-Federal, including commercial, satellite services. In recent years, the commercial satellite industry has undergone tremendous growth and innovation. Federal government agencies have increasingly sought to meet their satellite communications needs by using commercial satellite services. However, most spectrum used by commercial satellite systems is not allocated for Federal fixed satellite service (FSS) or mobile satellite service (MSS). The Commission's rules provide that Federal agencies' earth stations communicating with commercial satellite systems in such spectrum must operate on a non-interference basis and do not receive protection from harmful interference. To address this concern, the National Telecommunications and Information Administration (NTIA) in 2006 requested that the Commission initiate a rulemaking to seek comment on granting NTIA-authorized Federal earth stations that are communicating with non-Federal satellites, primary status in some of the bands that are used for commercial satellite services which do not currently have primary Federal FSS or MSS allocations.¹

In response to the NTIA petition the Commission, in 2013, issued a Notice of Proposed Rulemaking (*2013 NPRM*) seeking comment on two proposals that could potentially provide Federal earth stations with interference-protected access to FSS and MSS bands that lack a Federal FSS or MSS allocation: modifying the Allocation Table in section 2.106 of the Commission's rules to add a Federal allocation for the FSS or MSS bands, along with a footnote restricting Federal use to earth stations communicating with non-Federal space stations; or placing a footnote in the Allocation Table in the FSS or MSS bands that would provide Federal earth stations that communicate with non-Federal FSS and MSS space stations interference protection identical to that afforded to non-Federal earth stations communicating with the same FSS and MSS space stations.² However, in the time between the *2013 NPRM* and the subsequent *2021 First Report and Order* the spectrum landscape changed significantly

¹ *Petition for Rulemaking of the National Telecommunications and Information Administration*, RM-11341, filed Aug. 4, 2006 (NTIA Petition).

² *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 6698, 6722, paras. 4, 36-58 (2013) (*2013 NPRM*).

enough for the Commission to determine the record warranted a refresh and the Commission issued a Further Notice of Proposed Rulemaking (*2021 FNPRM*).³

The *2021 FNPRM* generated many comments addressing expanded Federal use of the non-Federal FSS and MSS bands. However, in the *2023 Second Report and Order* the Commission decided that, rather than addressing this issue in a proceeding largely focused on space launch operations, it would be better to address this issue in a separate proceeding specifically focused on communications between commercial satellites and Federal users.⁴ The *2023 Second Report and Order* directed OET to issue a public notice opening a new docket for comments on this issue and provide additional context for interested parties to provide additional comments.⁵

With this Public Notice, we invite interested parties to supplement the record with additional comments in this new docket, ET Docket No. 24-121, on possible mechanisms to expand Federal use of the bands used by commercial satellite networks that are not currently allocated for Federal FSS and MSS.⁶ Consistent with the Commission's direction to OET in the *2023 Second Report and Order*, the record compiled in response to this Public Notice will be considered in conjunction with the existing record on this issue compiled in ET Docket No. 13-115 and RM-11341, which we incorporate herein by reference. In particular, we invite commenters to supplement the record on possible approaches to providing Federal earth stations with interference protection when those earth stations are communicating with commercial satellites in bands that are not allocated for Federal FSS and MSS. As noted above, the *2013 NPRM* proposed to add a co-primary Federal FSS or MSS allocation to several bands together with an allocation table footnote that limits primary Federal use of the bands to earth stations communicating with non-Federal space stations.⁷ The *2013 NPRM* alternatively proposed to add a footnote to the Allocation Table outlining circumstances under which Federal earth stations operating with non-Federal space stations would be entitled to interference protection.⁸ We seek renewed comment on these proposals. We also seek comment on whether there should be any additional modifications to the Allocation Table in connection with either proposal.

The Satellite Industry Association (SIA) suggested an alternative to the *2013 NPRM*'s two proposals for providing Federal earth stations with interference protected access to spectrum bands that lack a Federal FSS and MSS allocation. SIA proposed that FSS and MSS allocations be added to the

³ For example, the Spectrum Frontiers, 3.7 GHz Service, and 6 GHz proceedings altered the underlying assumptions about current and expected future uses of many of the frequency bands proposed for possible Federal access to non-Federal satellites in the *2013 NPRM*. See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016); *Expanding Flexible Use of the 3.7 and 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020); *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020). Noting that some of the bands under consideration in the *2013 NPRM* might no longer be appropriate candidates for expanded Federal FSS or MSS use, and that other bands might support greater Federal use, the *2021 FNPRM* sought to refresh the comment record. See *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 7764 paras. 146-151 (2021) (*2021 R&O and FNPRM*).

⁴ *Allocation of Spectrum for Non-Federal Space Launch Operations*, ET Docket No. 13-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 23-76, 57, para. 153 (adopted Sept. 21, 2023) (*Second R&O and Second FNPRM*).

⁵ *Id.* at 57, para. 153.

⁶ We hereby incorporate by reference the record compiled in ET Docket No. 13-115 and RM-11341 on the issue of expanding Federal use of non-Federal, including commercial, satellites into the record of this proceeding. *Second R&O and Second FNPRM* at para. 153.

⁷ *2013 NPRM*, 28 FCC Rcd at 6712-17, paras. 36-46.

⁸ *2013 NPRM*, 28 FCC Rcd at 6717-20, paras. 47-58.

Federal portion of the Allocation Table for these bands along with an indication that the Federal allocation is limited to earth stations only.⁹ In addition, SIA proposed adding a footnote to the Allocation Table for these bands indicating that the Commission has exclusive regulatory jurisdiction over the co-primary allocations and that NTIA is responsible for assignments for Federal earth stations authorized to operate in the bands pursuant to the Commission's Part 25 rules. We invite commenters to address SIA's proposal as well as any alternative approaches that could be used to provide Federal earth stations with interference-protected access to commercial satellite services. Finally, we seek comment on whether implementing any of these proposals might inhibit future repurposing of these bands or expansion of non-Federal operations and, if so, any approaches that might avoid such inhibition.

As the 2021 *FNPRM* recognized, the spectral landscape in non-Federal FSS and MSS allocations has significantly changed since the 2013 *NPRM*.¹⁰ As a result, we seek to refresh the record on which FSS and MSS frequency bands that are not allocated for Federal FSS and MSS might meet the needs of Federal agencies for communications with non-Federal satellites. As the Commission first noted in 2013, providing Federal earth stations with interference protection may require that new non-Federal stations, whether satellite earth stations or terrestrial stations, be coordinated with existing Federal earth stations in the FSS and MSS frequency bands to which any new rules would apply. This coordination may require additional effort by non-Federal station applicants and could restrict the locations and operating parameters of new non-Federal stations. Does any future impact on non-Federal operations outweigh the benefits of expanding Federal users' access to these bands? The 2013 *NPRM* proposed to implement agreed-upon procedures that would be followed by the Commission and NTIA to ensure parity between Federal and non-Federal earth stations that are similar to the procedures currently used by the Commission to coordinate new non-Federal earth stations.¹¹ Would the procedures discussed in the 2013 *NPRM* be appropriate for coordination between Federal earth stations and non-Federal stations?

Comment Period and Filing Procedures. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments should be filed in ET Docket No. 24-121.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery

⁹ SIA Comments, ET Docket No. 13-115, 6, Attachment (filed Aug. 30, 2013). In subsequent comments responding to the 2021 *FNPRM*, SIA proposed different footnote language for an Allocation Table footnote for these bands. SIA Comments, ET Docket No. 13-115, Attachment (filed Aug. 11, 2021).

¹⁰ 2021 *R&O and FNPRM*, 36 FCC Rcd at 6699, para. 1.

¹¹ 2013 *NPRM*, 28 FCC Rcd at 6712-14, 6718, paras. 37-39, 49.

Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Initial Regulatory Flexibility Act Analysis. The 2013 NPRM and 2021 FNPRM included Initial Regulatory Flexibility Analyses (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission's proposals.¹² We invite parties to file comments on the IRFAs in light of this request for supplemental comments.

Ex Parte Rules. The Commission has treated this proceeding as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Further Information. Questions regarding this Public Notice may be directed to Nicholas Oros, Office of Engineering and Technology, at (202) 418-0636 or Nicholas.Oros@fcc.gov.

-FCC-

¹² 2013 NPRM, 28 FCC Rcd 6698, Appendix B; 2021 FNPRM, 36 FCC Rcd 7764, Appendix E.

¹³ 47 CFR § 1.1200 *et seq.*