

APPENDIX C

Initial Regulatory Flexibility Analysis

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 of Proposed Rulemaking (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 *Notice* provided above in paragraphs 34 - 38. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

I. Need for, and Objectives of, the Proposed Rules

The purpose of the *Notice* is to comply with the Orbit Act requirement that the Commission initiate a notice and comment proceeding to determine whether sufficient opportunity exists for users and service providers to access INTELSAT space segment capacity directly to meet their service or capacity requirements. If commenters believe that the proposals discussed in the *Notice* require additional RFA analysis, they should include a discussion of this in their comments.

II. Legal Basis

The authority for the *Notice* is pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 202, 214 and Title III and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 214, 301 *et seq.* and 403, and sections 102(c), 201(c)(2), and c(11), of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 721(c), 741(c)(12) and (11), section 641 of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000) § 641, the applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, and 5 USC 553 of the Administrative Procedures Act.

III. Description and Estimate of the Number of Small Entities to Which Proposed Rule Will Apply

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. 5 U.S.C. § 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization" and "small business concern" under Section 3 of the Small Business Act. A "small business concern" is one which is (1) independently owned and operated; (2) not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 15 U.S.C. § 632.

The Commission has not developed a definition of small entities applicable to satellite service 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 million or less in annual receipts. 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4899. According to the SBA, the Census Bureau estimates that there are approximately 631 entities providing communications services, not elsewhere

¹ 5 U.S.C. § 603. The RFA, 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").

classified. Of those, between 401-631 reported annual receipts of less than \$9.999 million or less and would qualify as small entities subject to the proposed rules.² More precise data is not available.

The proposed *Notice* requires Comsat Corporation ("Comsat") to provide information concerning existing and future capacity in the INTELSAT system necessary for us to make the determination required by the ORBIT Act. The Commission also may seek information directly from INTELSAT if necessary and appropriate. Comsat's 1999 revenues were in excess of \$11 million. Thus, Comsat does not qualify as a small entity under the SBA's definition. U.S. carriers and users, including any small entities, that may be affected indirectly, would likely benefit from the proposed action.

IV. Description of Projected Reporting, Recordkeeping or Other Compliance Requirements

The proposals in the *Notice* are not expected to result in any additional reporting, recordkeeping and other compliance.

V. Steps Taken to Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

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.

Without prejudgment as to whether it will determine that "sufficient opportunity" exists, the Commission is seeking comment on alternatives for "appropriate action" should it determine that sufficient opportunity does not exist for users and service providers to access INTELSAT directly. The Commission tentatively concludes that the first option for resolving this problem should be commercial solutions between Comsat and users and service providers. It also seeks comment on possible regulatory action should commercial negotiations fail to yield a solution. The intent of any regulatory action would be to permit users and service providers, including small entities, to benefit from the availability of direct access to INTELSAT space segment capacity to meet service or capacity requirements. We do not expect the proposals to cause any economic burden to small entities, and seek comment on any issues pertinent to this.

VI. Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules

None.

List of Subjects in 47 CFR Part 25
Satellites
Federal Communications Commission

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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 D, Employment Size of Firms: 1992, SIC Code 4899 (May 1995).