

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$177 filing fee.

\* \* \* \* \*

#### **PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES**

32. The authority citation for Part 588 continues to read as follows:

**Authority:** 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

33. Section 588.4(a) is revised to read as follows:

##### **§ 588.4 Petitions.**

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$177 filing fee.

\* \* \* \* \*

By the Commission.

**Joseph C. Polking,**  
Secretary.

[FR Doc. 98-25219 Filed 9-21-98; 8:45 am]

BILLING CODE 6730-01-P

#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 2**

[ET Docket 97-99; FCC 98-155]

##### **Relocation of the Digital Electronic Message Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** With this Memorandum Opinion and Order, the Commission denies Petitions for reconsideration of the Commission's order relocating the Digital Electronic Message Service (DEMS) from the 18 GHz band to the 24 GHz band. In its decision, the

Commission rejects petitioners arguments that the Commission improperly applied the military and good cause exemptions from notice and comment rulemaking, failed to address the validity of the under DEMS licenses, failed to specify sufficient reason to increase the amount of spectrum allocated for DEMS in the 24 GHz band and failed to consider the potential use of the 24 GHz band for feeder links in conjunction with the Broadcast Satellite Service. The Commission also amends Footnote US341 of the U.S. Table of Allocations to reflect the current status of relevant radionavigation facilities.

**EFFECTIVE DATE:** November 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** James Taylor (202) 418-2113 of the International Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 97-99; FCC 98-155, adopted July 9, 1998 and released July 17, 1998. The complete text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, telephone: 202-857-3800, facsimile: 202-857-3805.

##### **Summary of Memorandum Opinion and Order**

1. This *Memorandum Opinion and Order* denies petitions for reconsideration of the Commission's *Order*, FCC 97-95, 12 FCC Rcd. 4990 (1997), modifying Commission rules without public notice and comment and relocating the Digital Electronic Message Service (DEMS), a terrestrial point-to-multipoint microwave service, from the 18.82-18.92 GHz and 19.16-19.26 GHz bands (18 GHz band) to the 24 GHz band (Relocation Order).

2. In January and March 1997, the National Telecommunications and Information Agency (NTIA), acting on behalf of the Department of Defense, requested that the Commission protect military satellite communications systems operating in the 18 GHz band in the Washington, D.C. and Denver, CO areas from interference. NTIA stated that DEMS licensees could cause interference to the Government systems and that the relocation was essential to fulfill requirements for Government military systems to perform satisfactorily. To facilitate a solution to the interference problem, NTIA made 400 Megahertz of replacement spectrum

available at the 24.25-24.45 GHz and 25.05-25.25 GHz bands, and suggested that the Commission expeditiously relocate DEMS without notice and comment based upon the military and good cause exemptions to the Administrative Procedure Act.

3. Petitioners argue that the Commission improperly applied the military and good cause exemptions from notice and comment rulemaking, failed to address the validity of the underlying DEMS licenses, failed to specify sufficient reason to increase the amount of spectrum allocated for DEMS in the 24 GHz band and failed to consider the potential use of the 24 GHz band for feeder links in conjunction with the Broadcast Satellite Service.

4. The Commission found that the decision to move all of DEMS from the 18 GHz to the 24 GHz band nationwide was within the scope of the military exemption to the notice and comment requirement because NTIA, on the behalf of DOD, specifically requested that the Commission protect government systems and relocate DEMS without notice and comment. The Commission found that the exemption encompasses relocation actions outside of Washington D.C. and Denver, CO, and that addressing the interference problems in those two areas alone would preclude DEMS in those areas because it is unlikely that 24 GHz equipment could be manufactured at economic prices solely for the Washington, D.C. and Denver, CO markets. Additionally, the Commission found that the good cause exemption to the APA's notice and comment requirements provides an independent source for the Commission's actions in the 18 GHz Relocation Order and that the Relocation Order includes a sufficient statement of "good cause."

5. WebCel asserts the Commission failed to address issues raised in Teledesic's withdrawn pleading, initially filed in September, 1996 but withdrawn in March 1997, concerning the status of DEMS licenses now relocated to 24 GHz pursuant to the Relocation Order. The Wireless Telecommunications Bureau, Enforcement Division, investigated the validity of the DEMS licenses issued to DSC and MSI and found no violations of DEMS construction and operating requirements.

6. When the Commission relocated DEMS from the 18 GHz band to the 24 GHz band, it allocated on a per channel basis four times the amount of spectrum at 24 GHz as was allocated at 18 GHz. Petitioners challenged this determination, arguing that the Commission's assumptions regarding

typical cell size, service reliability, transmitter power and other technical parameters were improper. The *Memorandum Opinion and Order* rejects these technical contentions. Using comparable technology, DEMS requires at least four times the amount of spectrum at 24 GHz to provide equivalent service due primarily to less favorable radio propagation characteristics.

7. The Relocation Order allocated 5 channel pairs of 40 Megahertz (400 Megahertz total) for DEMS at 24 GHz. MWCA asserts the incumbent DEMS licensees would have a de facto monopoly because the DEMS licensees have, or are requesting, virtually all of the available channel pairs in each SMSA. The *Memorandum Opinion and Order* rejects this claim, noting that the relocations did not alter the competitive status quo but simply changed the frequency bands at which DEMS operates. Further, additional channels remain to be licensed in many areas

8. Several petitioners question whether Section 309(j) of the Communications Act requires the Commission to conduct competitive bidding for the 24 GHz band. The Commission found that auctions are not required, nor in the public interest, with respect to the licenses affected by the 18 GHz Relocation Order. The DEMS licensees are previously licensed service providers forced to relocate from 18 GHz to 24 GHz. Consequently, the Commission did not grant the DEMS licensees initial licenses but instead modified existing licenses. The Commission expects to address separately, through a future notice of proposed rulemaking, the disposition by auction of unassigned DEMS spectrum at 24 GHz.

9. Finally, at the time of the Relocation Order, the only operations in the 24 GHz band in the United States were two radionavigation radar facilities operated by the Federal Aviation Administration. The facilities, located near Washington, D.C. and Newark, New Jersey, were scheduled to be decommissioned January 1, 1998 and January 1, 2000, respectively. The

Relocation Order added U.S. Footnote US341 to the U.S. Table of Allocations to protect the FAA operation in these two areas until decommissioning. Consistent with this schedule, the facility in Washington, D.C. has been decommissioned and the decommissioning date for the Newark, New Jersey station has been advanced. In order to accurately reflect the current status we amend US341 to state:

Non-Government operations in the 24.25–24.45 GHz band must provide protection to the FAA radionavigation radar facility at the Newark International Airport, New Jersey, until the facility is decommissioned. The Newark radar facility is scheduled to be decommissioned by January 1, 1998. Protection will be afforded in accordance with criteria developed by the NTIA and FCC.

#### Ordering Clauses

10. Accordingly, *It is ordered* that the Petitions for Reconsideration of WebCel Communications, Inc., DirecTV Enterprises, Inc. and BellSouth Corporation of the March 14, 1997 Relocation Order are denied.

11. *It is further ordered* that the Petition for Partial Reconsideration filed by the Millimeter Wave Carrier Association, Inc. is denied.

12. *It is further ordered* that the Petitions for Reconsideration of DirecTV Enterprises, Inc. and Bellsouth Corporation of the June 24, 1997 Modification Order are denied.

13. *It is further ordered* that the Applications for Review of WebCel Communications, Inc., and Millimeter Wave Carrier Association, Inc., of the June 24, 1997 Modification Order are denied.

14. *It is further ordered* that the Joint Motion for Leave to File Surreply of Digital Services Corporation, Microwave Services Inc. and Teligent, L.L.C., ET Docket No. 97–99, *is granted* and that WebCel Communications, Inc., Opposition to Joint Motion for Leave to File Surreply, ET Docket No. 97–99, *is denied*.

15. *It is further ordered* that the Motion of WinStar Communications, Inc. to withdraw its Petition for Clarification and its Reply *is granted*.

16. *It is further ordered* that Teledesic Corporation's request to withdraw its Petition to Deny and Determine Status of Licenses, File No. 9607682 et. al., *is granted*.

17. *It is further ordered* that the Motions for Expedited Resolution filed by Millimeter Wave Carrier Association, Inc. and WebCel Communications, Inc., ET Docket No. 97–99, *are dismissed*.

#### List of Subjects in 47 CFR Part 2

Communications equipment, Fixed service, Satellite.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

#### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

#### § 2.106 [Amended]

2. Amend § 2.106 by revising the footnote following the table in US341 to read as follows:

\* \* \* \* \*

US341 Non-Government operations in the 24.25–24.45 GHz band must provide protection to the FAA radionavigation radar facility at the Newark International Airport, New Jersey, until the facility is decommissioned. The Newark radar facility is scheduled to be decommissioned by January 1, 1998. Protection will be afforded in accordance with criteria developed by the NTIA and FCC.

\* \* \* \* \*

[FR Doc. 98–25271 Filed 9–21–98; 8:45 am]

BILLING CODE 6712–01–P