

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-27259 Filed 11-2-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-159; RM-8711]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Rule Communications proposing the allotment of Channel 244A at Laramie, Wyoming, as the community's fifth local commercial FM transmission service. Channel 244A can be allotted to Laramie in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 244A at Laramie are North Latitude 41-18-42 and West Longitude 105-35-06.

DATES: Comments must be filed on or before December 21, 1995 and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20554 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-159, adopted October 16, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-

3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

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[FR Doc. 95-27258 Filed 11-2-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 100

[IB Docket No. 95-168; PP Docket No. 93-253; FCC 95-443]

Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rulemaking that proposes a number of new rules for the Direct Broadcast Satellite ("DBS") service, including the use of competitive bidding to resolve mutually exclusive applications for DBS resources. The Commission seeks comment on all of its tentative conclusions and proposed rules.

As part of its decision in *Advanced Communications Corporation*, FCC 95-428 (released October 18, 1995), the Commission reclaimed for the public 51 channels of DBS spectrum at two orbital locations (27 channels at 110° W.L. and 24 channels at 148° W.L.) that had previously been assigned to Advanced Communications Corporation ("ACC"). The Commission proposes to revise rules and policies in the DBS service in order to update the current "interim" rules and to reassign, by auction or other means, channels at orbital locations previously assigned to ACC.

DATES: Comments must be submitted on or before November 20, 1995; reply comments must be submitted on or

before November 30, 1995. Written comments by the public on the proposed and/or modified information collections are due November 20, 1995. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before January 2, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street NW., Washington, DC 20503 or via the Internet to faint@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bill Wiltshire or Suzanne Hutchings, International Bureau, (202) 418-0420; or Diane Conley, Wireless Telecommunications Bureau, (202) 418-0660. For additional information concerning the information collections, contact Dorothy Conway at (202) 418-0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 95-168; PP Docket No. 93-253; FCC 95-443, adopted October 27, 1995 and released October 30, 1995. The complete text of this Notice of Proposed Rulemaking (*Notice*) is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13. It has been submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Synopsis of the Notice of Proposed Rule Making

I. Introduction

1. Over six years ago, in *Continental Satellite Corporation*, 4 FCC Rcd 6292 (1989), the Commission stated that

existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. The *Notice* tentatively concludes that this reassignment policy, adopted in an era before Congress explicitly authorized the Commission's use of auctions and well before any DBS system actually went into operation, no longer serves the public interest, and therefore should be abandoned.

2. Accordingly, the *Notice* proposes new rules for reassigning DBS resources. In the *Notice*, the Commission tentatively concludes that it has the statutory authority to auction DBS construction permits if the Commission receives mutually exclusive applications, and that the objectives of Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be served by doing so. Specifically, the *Notice* proposes to auction two DBS construction permits: one for all 28 channels now available at the 110° orbital location (27 channels from ACC plus 1 channel that was never assigned), and another for all 24 channels now available at the 148° orbital location. The Commission tentatively concludes that these two permits should be awarded through a sequential, oral outcry auction. The *Notice* seeks comment on both the proposed use of auctions in the DBS service and the proposed auction rules.

3. The *Notice* also proposes new rules for the DBS service. In particular, the proposed rules would: (1) Establish additional performance criteria for new permittees; (2) guard against potential anticompetitive conduct by DBS providers; and (3) ensure timely DBS service to Alaska and Hawaii. The *Notice* also requests comment on existing Commission policy governing the extent to which DBS resources may be put to alternative uses. These rules are proposed in order to foster swift utilization of DBS orbital/channel assignments, and to ensure that the public reaps the full benefit of DBS spectrum resources. The *Notice* seeks comment on these proposed service rules as well.

II. Proposed Service Rules

A. Due Diligence Milestones

4. The *Notice* tentatively concludes that combining existing due diligence requirements with additional milestones for construction and operation of DBS systems by new permittees will prevent unnecessary delays in the commencement of service. Accordingly, the *Notice* proposes rules to add two additional performance criteria for those

receiving DBS construction permits after the effective date of the proposed rule:

(1) Completion of construction of the first satellite in a DBS system within four years of authorization; and (2) launch and operation of all satellites in a DBS system within six years of authorization.

B. Use of DBS Capacity

5. The *Notice* requests comment on the Commission's existing policy for non-conforming uses of DBS resources. That policy requires each DBS licensee to begin DBS operations before the end of its first license term, but allows otherwise unrestricted use during that term. After expiration of the first term, a DBS operator may continue to provide non-DBS service only on those transponders on which it also provides DBS service, and only up to half of the use of each transponder each day. As an example of the comments sought, the *Notice* suggests that the existing restrictions on each DBS transponder could be restated in terms of capacity rather than time, so as to accomplish the same goals without unduly restricting decisions as to satellite configuration and operation, and further invites comment on whether and how to formulate a rule to better account for the flexibility of digital transmission and compression.

6. The *Notice* also refers to the possibility that, as a result of a separate proceeding, operators using DBS channels and orbital locations may be permitted to provide both domestic and international service. In light of that possibility, and the discussion of the permissible non-standard uses of DBS channels, the *Notice* requests comment on whether the U.S. has the authority to auction permits which may include the provision of international service.

C. Pro-Competitive Rules and Policies Spectrum Aggregation Limitations

7. In order to promote competition and prevent undue concentration of limited DBS resources, the *Notice* tentatively concludes that it may now be prudent and appropriate to adopt rules designed to further those goals, especially when DBS resources are controlled by the provider of a competing, non-DBS service. The analysis begins by tentatively concluding that the market in which multichannel video programming distributors ("MVPDs") compete—the market for the delivery of multichannel video programming—is an appropriate "product market" in which to determine the competitive effect of having DBS resources under the control of the provider of another type of

multichannel video distribution service. The *Notice* also tentatively concludes that (1) DBS service rules should address competitive issues relating to the use of DBS spectrum to provide the wholesale distribution of DBS services to cable operators and other MVPDs; (2) the effect of DBS competition in the broader MVPD market will principally be felt in essentially local markets; and (3) cross-ownership between DBS operators and other MVPDs may present opportunities for anticompetitive strategic conduct that potentially has adverse effects at the firm or national level.

8. Accordingly, the *Notice* proposes that any DBS licensee or operator affiliated with another MVPD be permitted to control or use DBS channel assignments at only one of the four orbital locations capable of serving the entire contiguous United States ("full-CONUS"), and seeks comment on whether the proposed spectrum limitations should be related to the size of the MVPD involved and whether such limitations should differentiate between cable operators and other MVPDs. The *Notice* also proposes that aggregation of DBS channel assignments by any DBS permittee or licensee be limited to a total of 32 channels at any combination of full-CONUS orbital locations, and further seeks comment on whether the Commission should impose a limitation on an operator owning a significant number of channels at each of multiple full-CONUS orbital locations—*e.g.*, prohibiting a DBS permittee or licensee holding more than 16 channels at one full-CONUS orbital location from holding channels at any other full-CONUS location.

9. The *Notice* proposes that any permittee or licensee that acquires control over channels in excess of the proposed spectrum limitations be given ninety days from the date of Commission approval of such acquisition in which to either surrender to the Commission its excess channels, or file with the Commission a transfer or assignment application in order to divest sufficient channels to bring the applicant into compliance with all applicable spectrum limitations.

10. For purposes of implementing the proposed spectrum aggregation limitations, the *Notice* proposes to consider four orbital locations—61.5° W.L., 101° W.L., 110° W.L., and 119° W.L.—to be capable of full-CONUS service. The *Notice* tentatively concludes that applying the spectrum cap to these four orbital locations will ensure that there is sufficient channel capacity for a minimum of four full-CONUS DBS providers. It also

concludes that channels at the other four DBS orbital locations, which are not capable of full-CONUS service, probably cannot match the economies of scale in domestic service achieved by full-CONUS operators, and thus should be exempt from the proposed spectrum limitations.

11. In order to maintain the integrity of the channel aggregation limitations, the Notice tentatively concludes that it is necessary to count against the spectrum limitations all channels held by DBS operators that share some level of common ownership or control. Because of concerns that entities could engage in anticompetitive conduct not only through control of DBS channels, but also through use of such channels, the Notice concludes that it is appropriate to apply spectrum limits not only to DBS permittees and licensees, but also to DBS operators, defined as any person or group of persons who provide services using DBS channels and directly or through one or more affiliates own an attributable interest in such satellite system; or who otherwise control or are responsible for, through any arrangement, the management and operation of such a satellite system. For purposes of implementing the spectrum aggregation limitations, the Notice proposes to attribute both controlling interests and any interest of five percent or more in a DBS permittee, licensee, or operator. The Notice proposes to rely on existing case law for making control determinations where such issues arise. Specifically, the Notice proposes to adopt rules that attribute to the holder any interest of five percent or more, whether voting or nonvoting, and all partnership interests, whether general or limited. In addition, the Notice proposes to adopt attribution rules that (1) attribute any interest of ten percent or more held by an institutional investor or investment company, rather than a five percent interest; (2) employ a multiplier for determining attribution of interests held through intervening entities; (3) provide for attribution of interests held in trust; (4) attribute the positional interests of officers and directors; (5) attribute limited partner interests based not only upon equity but also upon percentages of distributions of profits and losses; and (6) provide for attribution based upon certain management agreements and joint marketing agreements. For purposes of the spectrum limitations, the Notice also proposes to identify any individual or entity as an affiliate of a licensee, permittee, or operator, or of a person holding an attributable interest in a licensee, permittee, or operator, if such

individual or entity: (i) Directly or indirectly controls or has the power to control the licensee, permittee, or operator; (ii) is directly or indirectly controlled by the licensee, permittee, or operator; or (iii) is directly or indirectly controlled by a third party or parties that also has the power to control the licensee, permittee, or operator. The Notice also seeks comment on whether the definition of an affiliate should also include individuals or entities that have an identity of interest with the licensee, permittee, or operator.

Conduct Rules To Protect Competition

12. In addition to the structural solutions designed to promote competition by preventing the potential for undue concentration of DBS and MVPD resources, the Notice also proposes conduct limitations on the use of DBS channels and orbital locations to encourage, to the maximum extent possible, rivalry among MVPDs. Specifically, the Notice further proposes to (1) extend the conditions placed on Tempo Satellite, an existing DBS permittee that is wholly owned by a cable operator, to all MVPD providers that own DBS resources, such that they cannot offer DBS service primarily as an ancillary service to their own programming distribution services, or provide DBS service to subscribers of their non-DBS systems under different terms than are being offered to non-subscribers; and (2) prevent a DBS operator from selling, leasing, or otherwise providing transponder capacity to any entity that enters into an agreement with an MVPD granting that MVPD the exclusive right to distribute DBS services within, or adjacent to, its service area. The Notice also requests comment on whether existing program access and program carriage rules adequately address vertical integration concerns arising from common ownership among DBS operators, other MVPDs, and program vendors, especially in connection with "headend in the sky" wholesale distribution from DBS satellites.

Other Concerns

13. The Notice observes that in the *Advanced Communications Corporation* proceeding, commenters raised a number of other concerns about potential strategic conduct that could arise from cable-affiliated ownership of full-CONUS DBS spectrum. Those commenters argued that cable-affiliated ownership of full-CONUS DBS spectrum should be prohibited, or in the alternative, that several remedial conditions should be imposed. The Notice seeks comment on the extent to

which those and related concerns are implicated by the proposed auction of DBS construction permits, and if so, whether additional DBS service rules might be appropriate to address those concerns.

East/West Paired Assignments

14. The Notice tentatively concludes that progress in the DBS service since *Continental* was issued has rendered unnecessary the policy, developed in that decision, of assigning DBS channels only in east/west pairs, with eastern half-CONUS service permitted only from the four eastern orbital locations and western half-CONUS service permitted only from the four western orbital locations.

D. Service to Alaska and Hawaii

15. The Notice proposes: (1) To require that all new permittees must provide service to Alaska and Hawaii if such service is technically feasible from their orbital locations; and (2) to condition the retention of channels assigned to current permittees at western orbital locations on provision of such service, from either or both of their assigned orbital locations.

E. License Term

16. The Notice proposes to increase the term of a non-broadcast DBS license from 5 years to 10 years, the maximum allowed under the Communications Act, which better reflects the useful life of a DBS satellite and is consistent with the current proposal for extending the term of satellite licenses in other services.

III. Proposed Auctioning of DBS Permits

A. Authority To Conduct Auctions

17. The Notice tentatively concludes that the Commission has authority under Section 309(j) to use competitive bidding to award construction permits for the DBS spectrum reclaimed from ACC as well as other available DBS spectrum. The Notice tentatively concludes that construction permits available for reclaimed DBS spectrum are "initial" within the meaning of Section 309(j). The Notice also tentatively concludes that it is likely that mutual exclusivity will exist among applications for the DBS channels reclaimed from ACC as well as other DBS channels that may become available in the future. The Notice further tentatively concludes that there are no means of avoiding mutual exclusivity in the DBS service that are consistent with the objectives of Section 309(j). The Notice proposes to consider mutual exclusivity to occur only when the number of DBS channels sought at a given orbital location exceeds the

number available there, and it asks for possible alternative criteria for identifying mutually exclusive applications. The Notice also tentatively concludes that the "principal use" requirement of Section 309(j) is satisfied because DBS is likely to be primarily a subscription-based service, and that using competitive bidding to award DBS authorizations would promote the objectives of Section 309(j).

B. Competitive Bidding Design

18. The Notice explains that the Commission has previously concluded that the objectives of Section 309(j) will generally best be achieved by auctions designed to award authorizations to the parties that value them most highly. Such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

19. The Notice proposes that available channel assignments be auctioned sequentially in two blocks: one block of 28 channels at 110°, including the 27 channels reclaimed from ACC and one channel that has never been assigned; and one block of 24 channels at 148°, which were reclaimed from ACC. The Notice tentatively decides not to divide the available blocks into smaller parcels because it appears from the configuration of current DBS systems that channels are most effectively utilized when they are available in a substantial quantity at a given orbital location. The Notice also tentatively concludes that there would be little to gain by conducting simultaneous auctions of the DBS channels reclaimed from ACC because the channels at 110° and those at 148° are not likely to be close substitutes in the near term and there is no evidence of synergies between the channels at the two orbital locations. If sequential auctioning is used, the Notice proposes to auction the channels at 110° first because all of the information available indicates that the channels at 110° have the highest value of those currently available. The Notice asks whether the channels at 110° and at 148° should be offered in a different configuration, and whether there are foreseeable circumstances in which simultaneous auctions of DBS permits would be more appropriate than sequential auctions. The Notice also seeks comment on any general principles that may be used to determine the sequence of future DBS auctions that may be held if construction permits are auctioned sequentially.

20. The Notice tentatively concludes that multiple round bidding would be

the best method of auctioning the channels reclaimed from ACC, because the value of the construction permits is likely to be very high and at the same time may be somewhat uncertain. Single round sealed bidding would be a simple method of awarding DBS construction permits, but bidders would have to guess about the value that other bidders place on the permits and there is a substantial risk that the party that values a permit most highly may not submit the winning bid. The Notice requests comment on the advantages and disadvantages of both single round, sealed bidding and multiple round bidding as a method of auctioning DBS permits in the future.

21. The Notice also tentatively concludes that oral outcry would be the best method of submitting bids in the case of DBS, and that this method should be used for the channels reclaimed from ACC. An oral outcry auction has the advantage of being simple and rapid, and it avoids the additional complications associated with electronic filing. The Notice seeks comment on whether an oral outcry auction could pose problems for bidders that need time between bidding rounds to arrange for additional financing if bidding goes higher than anticipated. The Notice also seeks comments on whether a combined sealed bid-oral outcry auction may be appropriate for the channels available at 110° and 148° to help reduce the risk of collusion while retaining the benefits of a multiple round auction.

C. Bidding Procedures

22. In the event multiple round auctions are used, imposing a minimum bid increment would speed the progress of the auction and help to ensure that the auction concludes within a reasonable period. If oral outcry is used, the Notice tentatively concludes that the auctioneer should have discretion to establish bid increments—and raise or lower them in the course of an auction—consistent with directions provided by the Commission. The Notice also asks for suggestions as to how bid increments should be determined if bids are submitted electronically. The Notice also proposes to establish a minimum opening bid for the 28 channels available at 110°, both to help ensure that the auction proceeds quickly and to increase the likelihood that the public receives fair market value for the spectrum. The Notice asks interested parties to suggest the appropriate level of a minimum opening bid for the channels at 110°, and it seeks comment on whether and how a minimum bid should be established for

the channels at 148° and other channels that may become available in the future.

D. Procedural and Payment Issues

23. The Notice proposes to apply its general procedural and payment rules for auctions to the DBS service, along with certain modifications discussed below. In keeping with previous practice, the Notice also proposes that the Commission retain discretion to implement or modify certain procedures that would be announced by Public Notice prior to particular auctions, including rules governing the timing of application and payment requirements and any activity and stopping rules that may be appropriate.

24. Under the procedures proposed in the Notice, applicants for DBS auctions would file a short-term application, FCC Form 175, with the Commission prior to the auction in which they wish to participate. The Notice also tentatively concludes that it would be appropriate to allow only for manual filing of these forms for the proposed auction of spectrum available at 110° and 148°, because a small number of participants is anticipated.

25. The Notice proposes that entities that would exceed proposed spectrum caps as a result of successful bidding in the proposed auctions should be given 90 days following the date of grant of a construction permit won through an auction to either surrender to the Commission their excess channels or file an application that would result in divestiture of the excess channels.

26. The Notice proposes to require an upfront payment in all DBS auctions to help ensure that only serious, qualified bidders participate. The Notice seeks comment on how the size of an upfront payment should be determined and asks whether it would be appropriate to establish an upfront payment of five percent of the spectrum's estimated value. The Notice further asks how the value of spectrum should be estimated. The Notice also asks whether a single upfront payment should qualify parties to bid on both the 110° and 148° channel blocks, and, if not, what the appropriate amount of an upfront payment would be for each of the two channel blocks. The Notice further asks if only the winner of the first permit should be required to submit an additional upfront payment if it wishes to bid on the second permit. With respect to the collection of upfront payments, the Notice proposes that prospective bidders deposit their payments in the Commission's lock-box bank by a date certain that would allow the Commission sufficient time to verify the availability of the funds before the

auction. The Notice tentatively concludes that such a procedure would minimize the risk of defaults that could force the reauctioning of spectrum and asks for comment on alternative collection methods.

27. The Notice also proposes that every DBS auction winner should be required to submit to the Commission an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. By the same deadline, winning bidders would be required to file information in conformance with Part 100 of the Commission's Rules and a signed statement describing their efforts to date and future plans to come into compliance with the proposed spectrum caps. In addition, the Notice proposes that winning bidders be required to submit the balance of their winning bid within five business days of an announcement that the Commission had dismissed or denied any and all petitions to deny. Under this proposal, if a winning bidder failed to submit the balance of the winning bid or the permit was otherwise denied, a default payment would be assessed.

28. If oral outcry auctions are used, the Notice proposes to rely on default payments to deter insincere bidding and provide an incentive for bidders wishing to withdraw their bids to do so before bidding ceases. Under this proposal, a default payment would be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The Notice proposes that the amount of such a default payment should be equal to the difference between the defaulting auction winner's "winning" bid and the amount of the winning bid the next time the license is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner would be required to submit a payment of three percent of the subsequent winning bid or three percent of its own "winning" bid, whichever is less.

29. If single round, sealed bid auctions for DBS used, the item proposes to require no payments for withdrawing a bid (1) before the bids are opened, or (2) after bids are opened but before the high bidder has been notified. However, a payment equal to the difference between the high bid and the next highest bid would be required of any party that defaults after being notified that it has submitted the high bid in a sealed bid DBS auction.

E. Regulatory Safeguards

30. The Notice proposes that any entity that acquires a DBS authorization through competitive bidding, and seeks to transfer that authorization within six years of the initial license grant, would be required to file, together with its application for FCC consent, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its authorization.

31. The Notice tentatively concludes that the performance requirements proposed as part of the DBS service rules are sufficient to achieve the statutory goals of ensuring prompt delivery of service to rural areas, preventing the stockpiling of spectrum, and promoting investment in and rapid deployment of new services, and that it is unnecessary to adopt any further performance rules in connection with the proposed auction procedures.

32. Consistent with the Commission's general practice, the Notice proposes that bidders be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders also would be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

33. The Notice further proposes to require winning bidders to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. After short-form applications are filed, and prior to the time the winning bidder has submitted its lump-sum payment of the balance of its bid, all applicants would be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other applicants for licenses serving the same or overlapping geographical areas, unless such bidders were members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. Applicants would nonetheless be

allowed to (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses for channels that may be used to cover the same or overlapping geographical areas; and (2) make agreements to bid jointly for licenses after the filing of short-form applications, provided that the parties to the agreement have not applied for licenses that may be used to serve the same or overlapping geographical areas. Under the proposal, the holder of a non-controlling attributable interest in an entity submitting a short-form application would be allowed to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses that may be used to serve the same or overlapping geographical areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses that may be used to serve the same or overlapping geographical areas, and (2) the arrangements do not result in any change in control of an applicant.

F. Designated Entities

34. Because of the extremely high implementation costs associated with satellite-based services, the Notice tentatively concludes that no special provisions should be made for designated entities for the channels currently available at 110° and 148°. The Notice seeks comment on whether special provisions should be made for designated entities in future DBS auctions, and requests comment on whether future auctions of smaller blocks of DBS spectrum or technological advances in the delivery of DBS service might reduce capital requirement barriers for designated entities.

Paperwork Reduction Act

This Notice contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to

comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

47 CFR Part 100

OMB Approval Number: None.

Title: Direct Broadcast Satellite Service.

Form No.: None.

Type of Review: Approval of existing collection.

Respondents: Businesses or other for profit.

Number of Respondents: 8.

Estimated Time Per Response: 400 hours.

Total Annual Burden: 3200 hours.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting DBS authorizations, and in determining the technical, legal, and financial qualifications of a satellite applicant, permittee or licensee. Existing information collection requirements are set forth in Part 100 of the Commission's Rules and in Commission orders. See *e.g., Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, 90 FCC 2d 676 (1982), *recon. denied*, 53 RR 2d 1637 (1983); *CBS, Inc.*, 98 FCC 2d 1056 (1983); *Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986), *United States Satellite Broadcasting Co.*, 3 FCC Rcd 6858, 6861-62 (1988).

Under the existing information collection requirements in the Commission's Rules, an entity awarded a DBS Authorization would be required to submit the information required pursuant to 47 CFR 100.13, 100.19, 100.21, 100.51. The Commission proposed to require that DBS auction winners submit: (1) Ownership information to determine compliance

with Parts 1 and 100 of the Commission's Rules; (2) a statement describing their efforts to comply with the proposed spectrum aggregation limitations; (3) an explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership, or other agreement or arrangement they enter into relating to the competitive bidding process prior to the close of bidding; and (4) any agreements or contracts pertaining to the transfer of the DBS authorization acquired through auction during the six years following grant of the authorization.

Ordering Clauses

Accordingly, *It is Ordered* that, pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, and 309(j), *Notice is Hereby Given* of the proposed amendments to Part 100 of the Commission's Rules, 47 CFR Part 100, in accordance with the proposals in this Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals.

It is Further Ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See *generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 20, 1995 and reply comments on or before November 30, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M

Street, NW, Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202)739-0733.

Initial Regulatory Flexibility Act Statement

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the Notice and is not published in the Federal Register. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 100

Radio, Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-27346 Filed 11-2-95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

48 CFR Parts 1213, 1237 and 1252

[Docket OST-95-775; Notice 95-13]

RIN 2105-AC-30

Revision of Department of Transportation Acquisition Regulation

AGENCY: Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The proposed rule implements a Department of Transportation Office of the Inspector General recommendation resulting from a review on the acquisition of commercial training services. The Department is proposing to amend the Transportation Acquisition Regulation (TAR) to: Require all offerors to certify that the data provided concerning company qualifications, background, etc. is current, accurate and complete; and prohibit contractors from soliciting or advertising private, non-Government training while under contract to the Department.

DATES: Comments must be received on or before December 4, 1995, to be considered in the formulation of a final rule.