



PUBLIC NOTICE

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CLARIFICATION OF EX PARTE STATUS OF 28 GHz KA-BAND APPLICATION PROCEEDINGS

This Public Notice is intended to clarify the *ex parte* status of applications filed in several inter-related Commission proceedings involving the 28 GHz frequency band. As the Commission stated in a Public Notice released on April 20, 1994, *Public Notice*, 9 FCC Rcd 2081 (1994) ("*Public Notice*"), over 450 entities had filed applications requesting authority to operate radio facilities in the 28 GHz band. These applications involved three different services: (1) the local multipoint distribution service ("LMDS"); (2) the fixed-satellite service ("FSS"); and (3) fixed feeder links for the mobile-satellite service ("MSS"). In the *Public Notice*, the Commission announced that these applications were mutually exclusive and that *ex parte* presentations were prohibited with respect to these applications under 47 C.F.R. § 1.1208(a).

Since that time, the Commission has issued a Report and Order adopting a band segmentation plan that designates discrete frequencies for LMDS operations, MSS feeder link operations, and FSS operations. The plan further subdivides the designated FSS spectrum into specific frequencies for geostationary-satellite ("GSO") FSS satellites and for non-geostationary satellite orbit ("NGSO") FSS satellites. *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules*, 11 FCC Rcd 19005 (1996). No petitions for reconsideration were filed with respect to the band segmentation plan. For this reason, if the frequency band designated for a service (LMDS, MSS Feeder Link, GSO-FSS, or NGSO-FSS) for which authorization is sought differs from the band designated for a service of another application, we will no longer treat those applications as mutually exclusive.

Applications *within* the same band or service may, however, still be mutually exclusive. Mutual exclusivity could arise as a consequence of requests for overlapping frequencies made in the same service band or for other reasons. We wish to clarify, for

example, that certain satellite applications that are pending in the 28 GHz band will be treated as mutually exclusive. Specifically, in 1992, the Commission granted Norris Satellite Communications, Inc. a license to construct and operate a GSO-FSS system in the 28 GHz band. See *Norris Satellite Communications, Inc.*, 7 FCC Rcd 4289 (1992). In 1996, the International Bureau revoked Norris's license for failure to implement the system in compliance with the milestone schedule required by its license. See *Norris Satellite Communications*, 11 FCC Rcd 5402 (Int'l Bur. 1996). Norris subsequently filed an Application for Review of the Bureau's Order and its appeal is pending before the Commission. The International Bureau, under delegated authority, has also granted 15 licenses for first-round GSO-FSS applicants in the 28 GHz frequency band, reassigning the orbit location that had been assigned to Norris to a new licensee. *Assignment of Orbital Locations to Space Stations in the Ka-Band*, DA 97-967 (rel., May 9, 1997). On May 23, 1997, Norris filed a request for stay of the Assignment Order.

If the Norris application were to be reinstated on appeal, there may be an insufficient number of orbit locations to accommodate all of the other first-round GSO-FSS licensees. Therefore, the Norris and GSO-FSS applications will be treated as mutually exclusive for *ex parte* purposes. Accordingly, *ex parte* presentations concerning the merits or the outcome of any of these inter-related applications will be prohibited until the application proceedings are no longer subject to administrative reconsideration or review or judicial review. 47 C.F.R. §§ 1.1202 (d)(1), 1.208. An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without advance notice and an opportunity for all parties to be present.

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