

FCC Adopts MSS Order

April 7, 2011

Yesterday, the Federal Communications Commission (FCC or Commission) released a Report and Order acting on two proposals contained in its July 15, 2010 Mobile Satellite Service (MSS) Notice of Proposed Rulemaking. *First*, the FCC added co-primary Fixed and Mobile allocations to the MSS 2 GHz band (2000-2020 MHz and 2180-2200 MHz), consistent with the International Table of Allocations. *Second*, the Commission extended its existing secondary market "spectrum manager" spectrum leasing policies, procedures and rules that currently apply to wireless terrestrial services to the use of MSS spectrum for Ancillary Terrestrial Component (ATC) services. The Commission further noted that it anticipates issuing a notice of proposed rulemaking on its July 15, 2010 MSS Notice of Inquiry that may include service rule changes that could increase investment and utilization of the band in a manner that further serves the public interest.

Co-primary Allocation of the MSS 2 GHz Band for Terrestrial and Fixed Services. In adding co-primary Fixed and Mobile allocations to the existing Mobile Satellite allocation in the 2 GHz band, the Commission noted that both MSS licensees in the band would continue to operate under the terms of their existing licenses and must comply with all of the FCC's satellite and ATC rules. The Commission also modified three footnotes in the U.S. Allocation Table to make it consistent with this allocation.^[1]

Applying Terrestrial Secondary Market Spectrum Leasing Policies to MSS/ATC Spectrum Leasing Arrangements. The FCC extended its general secondary market spectrum leasing policies, procedures and rules to MSS/ATC spectrum leasing arrangements. These rules require MSS licensees to maintain an active role in ensuring compliance with the Commission's ATC gating criteria. MSS licensees and potential

Authors

Peter D. Shields
Managing Partner
202.719.3249
pshields@wiley.law
Jennifer D. Hindin
Partner
202.719.4975
jhindin@wiley.law

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spectrum lessees seeking to enter into spectrum manager leasing arrangements will be required to comply with the same notification procedures that currently apply to the Wireless Radio Services. Specifically, leasing parties will be required to submit specified information and certifications to the FCC in advance of any operations. And like Wireless Radio Service leasing arrangements, MSS/ATC leasing arrangements will be subject to additional review to the extent that an arrangement raises public interest concerns (*i.e.*, potential competitive harm or foreign ownership concerns). For example, the Commission noted that spectrum leasing arrangements involving MSS/ATC spectrum for the provision of high-speed data services could potentially raise competitive concerns. In such cases, potential competitive harm would be evaluated according to the FCC's existing competitive analysis framework for mobile telephony/broadband services. Additionally, the Commission concluded that existing MSS licensees and MSS/ATC spectrum lessees must conform any existing spectrum lease arrangements to the new rules within 30 days of the effective date of the order.

[1] First, the FCC amended US380 to remove its application to the 2GHz band. US380, which permits MSS operators to operate ATC in conjunction with MSS networks without a Fixed and Mobile allocation, remains in place for the MSS Big LEO and L bands. Second, the FCC removed NG156 from the U.S. Table because the relocation of broadcast auxiliary service incumbents out of the 2000-2020 MHz band has already been completed. And third, the Commission amended footnote NG168 to clarify that existing Fixed and Mobile operations in the 2180-2200 MHz band (*i.e.*, the pre-existing Fixed Service licensees) shall become secondary after the band sunset date of December 9, 2013.