

**ALERT**

# FCC Doubles Down on 'Case-by-Case' Approach to Orbital Debris Mitigation Plan Review

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The Federal Communications Commission (FCC or Commission) remains committed to its new rules for the mitigation of orbital debris. Earlier this month, Commissioners voted unanimously to approve an Order addressing several petitions for reconsideration asking the agency to revisit changes made to its orbital debris requirements in 2020. The Commission declined to modify its new rules, and in so doing underscored its commitment to a “case-by-case” approach for reviewing orbital debris information and showings. While this offers greater flexibility to applicants, it becomes even more important for industry to stay apprised of agency decisions involving similarly situated satellite systems.

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In 2020, the FCC adopted a Report and Order that substantially updated its orbital debris mitigation rules. Subsequently, three petitions for reconsideration were filed asking the agency to reconsider: (1) information disclosure requirements relating to satellite maneuverability, large system disposal reliability, the use of deployment devices, and the use of certain types of persistent liquids; (2) orbital debris mitigation rules as applied to non-U.S.-licensed satellite systems seeking U.S. market access; and (3) the adoption of a new rule addressing issues related to the orbital separation of large NGSO constellations.

The FCC declined to change its rules in response to the petitions and, in doing so, reiterated its intention to continue to evaluate the facts and circumstances presented in each application on a case-by-case

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basis. Its aim is to provide industry with greater flexibility to deploy their systems while also mitigating orbital debris risks.

**Information Disclosure Requirements.** The Commission requires applicants to describe the design and operational strategies that will be used to mitigate orbital debris, including information regarding maneuverability, collision risks, and disposal reliability. Several petitioners encouraged the FCC to provide guidance on minimum performance expectations. Such guidance, petitioners argued, would better inform industry and ensure consistent application of the agency's rules.

While recognizing the potential benefits of identifying specific metric goals, the Commission concluded that its case-by-case review is preferable for an industry that is innovating continuously and where the record may be insufficient to support bright-line rules. The agency sees metric development as "an active and ongoing process" and, in the interim, will "proceed incrementally and make fact-based decisions on individual applications on a case-by-case basis." The Space Bureau will work to provide additional guidance on orbital debris mitigation information disclosure requirements as part of its Transparency Initiative.

**Requirements for Market Access Grantees.** The FCC will continue to allow a foreign-licensed space station applicant to satisfy its orbital debris mitigation showing requirements by demonstrating that its debris mitigation plan is subject to "direct and effective regulatory oversight by the national licensing authority," a process that typically involves the submission of supporting documentation to the FCC and response to written inquiries from the Space Bureau. The Commission cautions that a uniform disclosure obligation for U.S.- and non-U.S. licensees could be "more burdensome than necessary." It observes, for example, that it may be able to tailor information requests for market access applicants going forward as it becomes more familiar with the requirements and review processes of foreign regulators.

**Orbital Separation of Large NGSO Constellations.** The FCC declined to reconsider its decision not to require a minimum orbital separation between large NGSO constellations. It is of the view that orbital separation concerns are best addressed in the first instance through inter-operator coordination, with the Commission intervening "to the extent [the agency] see[s] a breakdown in the coordination process or other space safety issues."

The Commission's Order on Reconsideration signals a clear intention not only to maintain its new rule requirements for orbital debris mitigation but also its case-by-case approach to reviewing applicants' orbital debris mitigation plans. This approach – while providing flexibility for a dynamic and evolving industry – also demands applicants stay informed of agency decisions, which will become increasingly crucial for navigating the regulatory landscape effectively.

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