this band, or in the alternative, that the Commission exempt from the duty cycle limitation CDMA systems operating below a certain power density. We are taking this action because we continue to believe that the power density and duty cycle requirements we adopted are necessary to prevent interference to incumbent government fixed and mobile operations that will share this band with LEO MSS on a co-primary basis.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 739-0598. SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in ET docket No. 91-280, adopted March 14, 1995 and released March 30, 1995. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Public Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this Memorandum Opinion and Order also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington DC 20036, (202) 857-3800.

Summary of Memorandum Opinion and Order

1. STARSYS argued that the Commission has created redundant and excessive interference protection criteria by adopting both maximum power density and duty cycle limitations. It contends that either limitation alone is sufficient to provide protection to existing fixed and mobile government users. STARSYS requested that the Commission exempt LEO MSS systems using CDMA spread spectrum that operate with E.I.R.P. power densities below -16 dBW/4kHz from compliance with the 0.25% per 15 minute transmission duty cycle limitation. Alternatively, STARSYS requests that the Commission modify the 0.25% per 15 minute transmission time limit for CDMA systems to 1.0% per 15 minute period.

2. STARSYS stated that the duty cycle limit of 0.25% per 15 minute interval was intended to accommodate a data transmission rate of 4800 bits per second (bps) that was specified in its 1990 license application to construct and operate a system using CDMA

spread spectrum. However, it now claims that unanticipated interference in the 148–149.9 MHz band may force it to use a lower data transmission rate of 1200 bps, which, with a duty cycle of 0.25% per 15 minute interval, will result in an intolerably low data throughput. It argued that with a duty cycle of 1.0% per 15 minute period, its system would achieve throughput approximately equivalent to the throughput achieved with a data rate of 4800 bps when used with a duty cycle of 0.25% per 15 minute period. Accordingly, STARSYS requested that the duty cycle be increased to 1.0% to accommodate its lowering of the transmission rate to 1200 bps.

3. NTIA, as representative of the government users of the 148–149.9 MHz band, opposed STARSYS' request for relaxation of the duty cycle requirement. NTIA submitted a report to the Commission through the Interdepartment Radio Advisory Committee. The report concludes that in cases in which multiple earth stations exist within range of specific government mobile systems, the duty cycle limitation adopted by the Commission is necessary to protect these government systems.

4. We recognize that the power and duty cycle requirements will impose limitations on satellite operations in the 148-149.9 MHz band. However, we must ensure that adequate protection is afforded to the incumbent government users of the band. The regulations adopted in the Report and Order, ET Docket 92-28, 8 FCC Rcd 812, 58 FR 16360 (March 26, 1993), to provide this protection were developed through lengthy negotiations between the Commission and NTIA and in consultation with potential LEO MSS users. Therefore, to the extent STARSYS is requesting a change of our rules that now impose both the power density and duty cycle limitations, we do not find an adequate basis in the petition or the comments to make such a change. Moreover, to the extent STARSYS is requesting a waiver of these rules, we find that STARSYS has failed to sustain its heavy burden for a waiver. STARSYS has not shown how exempting it from the duty cycle requirement will better serve the public interest, particularly in light of NTIA's report, with which we agree, that the duty cycle limitation is necessary to protect government users in this band.

5. We also deny STARSYS' request to modify the duty cycle limitation for

CDMA systems. As we have stated above, NTIA's report indicates that the duty cycle limitation we adopted is necessary to protect government users in this band. The development and provision of LEO MSS must not result in unacceptable interference to those users. Therefore, we will not modify the duty cycle limitation for CDMA systems.

6. Accordingly, STARSYS' Petition for Reconsideration is DENIED. We are also republishing in the Amendatory Text a copy of the final rules since the original rules were not depicted accurately at the time of the *Report and Order*. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(g) and 303(r).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission. William F. Caton,

Acting Secretary. Amendatory Text

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

a. The entries for 137.0–138.0, 146.0– 149.9, 149.9–150.05, 399.9–400.05, and 400.15–401.0 MHz are removed and new entries for 137–138.0, 146.0–148, 148–149.9, 149.9–150.05, 399.9–400.05, and 400.15–401 MHz are added in numerical order.

b. International Footnotes Nos. 599A, 599B, 608A, 608B, 608C, 609B, 647A, and 647B are added.

c. United States (US) Footnotes US318, US319, US320, US322, US323, US324, US325, and US326 are

The additions, and revisions read as follows:

§2.106 Table of Frequency Allocations.