

3. The Commission also adopts three new service rules and revises an existing policy. First, a person receiving a new or additional DBS construction permit will be required to complete construction of its first satellite within four years of receiving its permit, and to complete all satellites in its DBS system within six years. Second, new permittees will be required to provide DBS service to Alaska and Hawaii from any orbital location where such service is technically feasible, and existing permittees will be required to provide such service from either or both of their assigned orbital locations in order to retain their channel assignments at western orbital locations. Third, the term for non-broadcast DBS licenses will be lengthened from five years to ten years, to encourage investment and innovation in the service and to better match the useful life of DBS satellites. In addition, the existing policy restricting non-DBS use of DBS resources will be restated in terms of capacity rather than time in order to allow DBS licensees to configure their systems more efficiently. The Commission believes that these rules are well designed to spur swift development of DBS spectrum resources to the benefit of the American public.

II. Proposed Service Rules

A. Performance Objectives

4. The Commission finds 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 Commission adopts, as proposed in the NPRM, 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. At present, Commission policy requires each DBS licensee to begin DBS operations before the end of its first five-year 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. The Commission finds that capacity-based restrictions would allow DBS permittees and

licensees more flexibility in how they configure their satellites as a matter of technical efficiency in complying with the limitations we have imposed. Accordingly, the Order restates existing restrictions on the use of DBS resources as a function of capacity rather than time, but otherwise retains the existing use policy. Thus, the new policy will be that a DBS licensee must begin DBS operations within five years of receipt of its license, but may otherwise make unrestricted use of the spectrum during that time. After that five-year period, such a licensee may continue to provide non-DBS service so long as at least half of its total capacity at a given orbital location is used for DBS service.

6. The NPRM noted 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. *See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, Notice of Proposed Rulemaking, FCC 95-146, para. 38 (released April 25, 1995) ("Transborder/Separate Systems"), 60 FR 24817 (May 10, 1995). The Commission notes that the construction permits available at auction currently authorize only DBS service to the United States, and finds that the potential for international DBS service is no basis for delaying the auction pending resolution of international satellite service issues in the *Transborder/Separate Systems* proceeding.

C. Rules and Policies Designed to Promote Competition

1. Spectrum Aggregation Limitations. 7. The NPRM proposed certain rules intended to prevent strategic use of DBS resources for anticompetitive purposes and also requested comment on whether additional steps were necessary to achieve the desired goal of fostering competition among multichannel video programming distributors ("MVPDs"), such as DBS and cable systems. Two of the rules proposed were structural, in that they placed limits on the number of full-CONUS DBS channels a person could hold or use. The NPRM also proposed rules aimed at preventing specific types of potentially anticompetitive conduct, and requested comment on the degree to which existing rules might address those same concerns.

8. The Commission rejects both of the spectrum caps proposed in the NPRM, and instead adopts a one-time spectrum limitation applicable to the upcoming auction. Under this one-time auction

rule, a party currently holding an attributable interest in full-CONUS channels at one location may bid at auction for channels currently available at the 110° location, but if successful must divest its existing full-CONUS channels at any other location within twelve months. The Commission finds that the rule is necessary given the scarcity of full-CONUS DBS spectrum and the impact that concentration of this spectrum into the hands of any single provider might have on the overall MVPD market. The resulting intra-DBS competition will best serve the public interest by ensuring a level of rivalry between and among DBS firms and other MVPDs that should constrain any potential there might be for strategic anticompetitive conduct. The Commission also finds that twelve months should be sufficient to allow an orderly divestiture, if necessary, and strikes a proper balance between the time necessary for negotiation and the desire to ensure that spectrum not remain idle.

9. For purposes of implementing the spectrum aggregation limitation adopted in the Order, the Commission will only consider three orbital locations—101°, 110°, and 119°—to be capable of full-CONUS service. A fourth orbital location, at 61.5° W.L., should not be deemed to be capable of delivering full-CONUS service at this time since an operator serving customers in the western United States from that location would face interference from tall objects that an operator from the other three locations would not face due to their better look angles, and therefore would be at a qualitative disadvantage in attracting customers.

10. In applying the auction spectrum rule adopted in the Order, interests will be attributed to their holders and deemed cognizable under criteria similar to those used in the context of the broadcast, newspaper and cable television cross ownership rules. The rules adopted in the Order attribute the following interests: (1) any voting interest of five percent or more; (2) any general partnership interest and direct ownership interest; (3) any limited partnership interest, unless the limited partnership agreement provides for insulation of the limited partner's interest and the limited partner in fact is insulated from and has no material involvement, either directly or indirectly, in the management or operation of the DBS activities of the partnership; and (4) officers and directors. As with the broadcast rules, the attribution threshold for institutional investors is ten percent, and a multiplier will be used to