ALERT

# Permissionless Innovation: The FCC's Conceptual Shift for Space and Earth Station Licensing in the United States

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## TAKEAWAYS

- The FCC unanimously adopted an NPRM proposing a comprehensive restructuring and reform of its long-standing space and earth station licensing rules (Part 25).
- The NPRM proposes to wholly replace its "Part 25 – Satellite Communications" rules with a new "Part 100 – Space and Earth Station Services" rule section.
- Comments are due on **January 20, 2026**, with reply comments due by **February 18, 2026**.

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In an effort to more effectively keep pace with and reduce the burdens on the rapidly evolving and expanding commercial space sector, the Federal Communications Commission (Commission) unanimously adopted a Notice of Proposed Rulemaking (NPRM) proposing a comprehensive restructuring and reform of its long-standing space and earth station licensing rules (Part 25). With its breadth of scope and potential impacts across the space ecosystem, the NPRM also serves to highlight the key role the Commission will play in advancing the Trump administration's broader objective to enhance American greatness in space and facilitate U.S. leadership and innovation.

To achieve these objectives, the Commission's NPRM proposes to wholly replace its long-standing, oft-revised "Part 25 – Satellite Communications" rules with a new "Part 100 – Space and Earth Station Services" rule section. This new rule section, as the name indicates, would more accurately reflect and respond to the wide range of space-enabled activities that come under the Commission's licensing purview and oversight authority. The new Part 100 rules will, among other things, (1) adopt new definitions and license categories to address innovative and novel operations in, on, or traversing space; (2) introduce

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modular licensing for faster and more predictable application review and conditional grants to facilitate and encourage earlier application submission; (3) provide an option for expedited license review for non-controversial applications; (4) establish timelines for Commission review and approval; (5) reform processing round procedures and increase eligibility for non-geostationary orbit (NGSO) systems to qualify for first-come, first-served application processing; (6) update and consolidate operational and technical criteria; and (7) revise the duration of licenses and applicability criteria for surety bond and milestone requirements.

**License Concepts for Non-Traditional Space Activities**

After years of struggling to shoehorn a litany of innovative and novel activities into the existing frameworks of NGSO and geostationary orbit (GSO) satellite licenses and temporary authorizations, the Commission seeks comment on a proposal to adopt one or more new licensing categories to specifically address on orbit and in-space activities that may not follow "predictable" trajectories during their mission lifetime, including, among others, in-space servicing, assembly, manufacturing, orbital transfer, tactical reconnaissance, lunar relay and orbiters, lunar surface vehicles, and deep space mining. While the NPRM initially proposes to lump all of these activities into a single license category—"Variable Trajectory Spacecraft System"—the Commission also seeks feedback on whether or how certain subcategories should be created. The NPRM also includes proposals for the specific information VTSS licensees would need to provide as part of their applications and during their mission lifetimes, reflective of their variable operations.

**Modular Licensing and Conditional Grants of Authority**

Dubbed by the Commission as a new "licensing assembly line," the NPRM proposes methods to standardize, simplify, and accelerate the review of space and earth station applications. To facilitate standardized submission, the NPRM proposes a modular approach to application filing, specifically consolidating certain information into electronic forms that can be completed and attached to the Form 312, as appropriate for the authority being sought. These forms will include the existing Schedule A (assignment and transfer of control), Schedule B (earth station), and new Schedule O (orbital information) and Schedule F (frequency information) for space station applications. Ownership information and orbital debris assessment reports will continue to be attached as exhibits. The NPRM also proposes to allow applicants to reuse the same Form 312 as a base application provided all of the information remains the same. The NPRM also alludes to eliminating the dense legal narratives that currently accompany applications, but does not fully distinguish between a "comprehensive proposal" (current requirement) and a "comprehensive statement" (proposal) to support the application.

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Under the modular licensing regime, the NPRM proposes to formalize the conditional grant process for space station applicants (e.g., for those eligible for expedited processing, for those applying before completing critical design review, or for those operating in bands not subject to coordination) and introduce a nationwide, non-site license for earth station applicants similar to the light licensing regime in the 70/80/90 GHz bands. The NPRM also proposes to sunset the Streamlined Small Satellite and Spacecraft licenses as redundant given the proposed changes.

**Bright-line Evaluation Criteria and Expedited Processing**

The NPRM proposes adopting a standardized decision framework through which the Commission will assess whether grant of an application is in the public interest. By focusing the evaluation framework on outcomes and performance rather than inputs and design parameters, the NPRM identifies a movement towards a regime that can better facilitate "permissionless innovation." An application that conforms to Commission rules, satisfies bright-line performance measures and characteristics, and does not trigger any of the enumerated exceptions in the NPRM would be presumed to be in the public interest and granted as soon as possible—i.e., subject to a shorter public notice period and issued shortly thereafter.

Alternatively, where an application triggers one or more of the enumerated "exceptions," the NPRM proposes that applications be automatically disqualified from expedited processing since they could therefore not receive the presumption of being in the public interest without further review. The NPRM seeks comment on the identified "exceptions," which include negative certification, request for waiver, foreign ownership, processing round, spectral constraint, federal coordination, and market access.

The NPRM proposes additional changes to help expedite application processing, including establishing clearer standards for accepting or dismissing filings, specifying the scope of supplemental inquiries, and shortening public notice periods for certain applications. The NPRM sets out the timing and procedures by which the Commission must notify applicants of any deficiencies in their applications and permit them to cure defects. The NPRM also proposes shorter public notice periods for applications qualifying for expedited processing (seven days), and slightly longer for those that do not (15 days). Applications subject to section 309(b) will continue to receive the full 30-day public notice period. The NPRM also seeks comment on whether the Commission should be permitted to unilaterally shorten or extend comment periods and if the rules should restrict who may be permitted to reply to comments in a proceeding.

**Increased Certainty in Application Review Timelines**

Acknowledging the historic black box that has followed the close of a public notice period, the NPRM proposes remedies for space and earth stations awaiting grant. For space stations, the Commission would aim to take action within 60 days following the end of the public notice period, or

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else inform the applicant *and the public* of the specific reasons and exceptions as to why it has been prevented from doing so. Earth station applicants that conform to the Commission's rules will be permitted to begin temporary pre-grant operations on a non-interference, unprotected basis once their application is placed on public notice (no special temporary authority required). Earth station applicants requesting waivers will continue to be processed in the same manner as under the current rules.

**Filing Priority and Processing Round Reforms**

In most instances, treatment and processing of applications for purposes of determining an applicant's rights in certain spectrum bands are determined on a first-come, first-served basis (GSO) or within a processing round (NGSO). The NPRM proposes maintaining the first-come, first-served filing priority for GSO systems, but to also extend the practice to certain NGSO systems that are compatible with other systems and that will not constrain future entry. While the proposed rule stems from a common waiver request filed by Earth exploration satellite systems, the NPRM proposes metrics through which fixed-satellite systems could also seek qualification.

For all other NGSOs, the NPRM proposes to revise the general structure of the processing round by having the Commission pre-determine the frequency bands that will be available in a given round, with each round automatically starting at the start of the next calendar year and ending at the close of that same fiscal year (January through October). Priority would be assessed based on date of grant, rather than date of filing. Only NGSO systems comprised of 200 or more satellites would be subject to processing round procedures. However, smaller systems seeking to operate in processing round eligible bands can seek to secure priority and participate in the round by posting a surety bond (see below). The current NPRM does not propose substantial changes to the NGSO FSS sharing criteria.

**Updated Operational and Technical Information**

The Commission proposes to transpose the majority of the technical and operational rules from Part 25 into Part 100, while improving clarity and ease of use, and removing or revising outdated and unnecessary rules (consistent with the Commission's over-arching *In re: Delete, Delete, Delete* initiative). The Commission also seeks to apply the "presumed acceptable" framework to such rules by adopting standards focused on the desired outcomes rather than prescribed designs. The NPRM seeks comment on how to modify the Part 25 rules to follow this presumed acceptable framework without neglecting its statutory duties.

The NPRM proposes a requirement that all space station operators file their ephemeris data via space-track, with the 18 $^{th}$Space Defense Squadron, or with a Commission-approved space situational awareness provider. The NPRM also proposes that the ephemeris be made available, through some to-be-determined method of reporting to other co-frequency systems and that NGSO operators be

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required to file twice annual space safety reports in the ICFS database.

The NPRM does not propose any significant changes to the existing earth station operational rules. The NPRM does however propose minor updates to streamline certain technical provisions to better align with the reorganized structure and maintain consistency across space and earth station operations.

**License Terms, Bonds, Milestones, Renewals, and Replacements**

Finally, the NPRM addresses many of the standard terms included in all space and earth station authorizations: length of grant, surety bonds, and milestones, as well as operators' expectations with respect to their ability to renew those licenses or replace the assets that are the subjects thereof. The NPRM proposes to eliminate the milestone requirements for GSO and newly dubbed-VTSS systems, while aligning the NGSO milestones with international requirements adopted by the International Telecommunication Union. The NPRM also proposes to eliminate surety bonds for all licensees except those operating 200 or more satellites in a single system or who are otherwise seeking to operate an NGSO system in processing round eligible bands. The NPRM further proposes revisions to the formulation calculations based on which one of the two prior circumstances the licensee is in. The NPRM also proposes to extend the default license term for all space and earth stations to 20 years and maintain a presumption of renewal for compliant operators. Additionally, it proposes to permit a degree of replacement right, provided the substitute asset can fall within the limits of the proposed definition.

**TLDR: Why Should I Care About This Dense FCC Proceeding?**

At the outset, the NPRM is a public reminder that through its statutory mandate to regulate the radiofrequency spectrum in the public interest, the Commission's licensing authority over space operations has long extended beyond traditional communication satellites and their associated earth stations. While the Commission has spent years cobbling together authorizations to cover operations that did not fit or exceeded the satellite system archetypes and spectrum sharing regimes expressly contemplated in the then-current rules, this NPRM seeks to formalize definitions and frameworks for each of these activities and operations that are actually licensed under the Commission's spectrum authority.

In many ways, this proceeding is reminiscent of the Federal Aviation Administration's Part 450 reforms, but the outcomes need not be. With a more expansive scope and far broader industry impact, the Part 100 NPRM should solicit deep consideration by the space sector writ large. The outcomes of this proceeding will directly and indirectly affect entities across the space ecosystem, including operators, service providers, and manufacturers, whether they are domestic entities or foreign companies seeking to do business in the United States or with U.S. entities or the U.S. government. Companies are encouraged to be mindful of both the process and substance issues raised in the NPRM, as well as by other commenters in the proceeding.

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For more information about the above NPRM, submitting comments, or space licensing generally, please contact a member of Pillsbury's Communications Practice Group.

*The 200-page NPRM described in this alert is a proposal to overhaul the Federal Communications Commission's entire space and earth station licensing regime. This alert is only intended to provide a high-level summary of select issues of general importance. Readers are encouraged to review the NPRM for themselves to identify specific issues of concern or to contact Pillsbury or their own legal counsel to discuss potential impacts of the NPRM on their companies or operations.*

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