demonstrate an innovation beyond existing communications technology. Many of the technical achievements that ORBCOMM argues are justification for a pioneer's preference are relatively routine design features that most new LEO satellite licensees would be expected to accomplish. For example, planning a frequency coordination scheme and designing technical parameters and system components are actions that would be a necessary component of almost any LEO satellite operation. As to whatever advances in launch technology for which ORBCOMM may be responsible, we agree with STARSYS that ORBCOMM's developments in this field are not within the class of innovations in new communications systems and services for which this Commission will grant a pioneer's preference for a radio license. While we recognize that ORBCOMM was the first to file a petition for rule making and a request for pioneer's preference in this proceeding, the proceeding already was in progress when our pioneer's preference rules went into effect. Therefore, all three requests have been considered as if they were filed concomitantly. Finally, ORBCOMM's consideration of the VHF spectrum for LEO communications was preceded by VITA's consideration of the same spectrum range for the same purpose.

7. For similar reasons we conclude that the information submitted by STARSYS also fails to meet our standard for innovation. Its development of the Argos satellite system does not demonstrate an innovative contribution toward advancing a commercial LEO communications system. We are unable to discern any unique or innovative contribution by STARSYS with respect to the spread spectrum technology it proposes to use. Finally, STARSYS' proposal clearly was preceded by the earlier VITA effort.

8. LEOSAT Corporation (LEOSAT) is a commercial entity that has filed a license application to construct, launch, and operate a LEO satellite system in these VHF/UHF bands. LEOSAT has filed formal oppositions to all three requests for pioneer's preference, arguing that the Commission is foreclosed from implementing a pioneer's preference in this proceeding because of timing considerations. We disagree. The public notice referenced by LEOSAT is a notice of applications that are "cut-off" for public comment and for the filing of mutually exclusive proposals. The public notice in question is not a *de facto* NPRM and has no effect upon either the LEO rule making or this pioneer's preference proceeding. Future action on those applications already is dependent upon completion of this rule making proceeding to allocate spectrum for LEO service and the attendant pioneer's preference determination.

9. This is a restricted proceeding. No *ex parte* presentations are permitted from the time the Commission adopts this Tentative Decision and requests comments until the proceeding has been finalized or until such decision or approval is no longer subject to reconsideration by the Commission or review by any court. In addition, no presentation, *ex parte* or otherwise, is permitted during the Sunshine Agenda period. See generally 47 CFR sections 1.1202, 1.1203, and 1.1208.

10. Pursuant to applicable procedures set forth at 47 CFR sections 1.415 and 1.419, of the Commission's Rules, interested parties may file comments on or before March 30, 1992, and reply comments on or before April 29, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participant must file an original and four copies of all comments and reply comment. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clause

11. According, we tentatively decide that, the pioneer's preference request of VITA is granted and that the pioneer's preference requests of ORBCOMM and STARSYS are denied.

List of Subjects in 47 CFR Part 2

Frequency allocations, General rules and regulations, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 92-4542 Filed 2-26-92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, and 176

[Docket HM-211; Notice No. 92-2]

RIN 2137-AC16

Marine Pollutants; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Extension of time to file comments.

SUMMARY: On January 31, 1992, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register (57 FR 3853; Docket No. HM-211, Notice No. 92-2) which proposed to amend the Hazardous Material Regulations (HMR; 49 CFR Parts 171-180) by adopting requirements for the transportation of marine pollutants in all modes of transportation. The changes were proposed, in part, to implement the provisions of Annex III, an annex of the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78), and in order that the HMR more thoroughly address environmentally hazardous materials. The American Trucking Association and the Hazardous Materials Advisory Council requested that the comment period for this NPRM be extended by 90 and 60 days, respectively, in order to thoroughly evaluate its proposals. RSPA is extending the comment period for an additional 60 days to allow industry time to evaluate the proposal and to ensure that this important safety rulemaking is not unnecessarily delayed.

DATES: The date for filing comments is extended from March 2, 1992 to May 4, 1992.

ADDRESSES: Address comments to Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the Docket number (e.g., HM-211). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Office hours are 8:30 a.m. to 5 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202–366–4488) Office of Hazardous Materials Standards, RSPA, 400 Seventh Street SW., Washington, DC 20590 or Lt. Cmdr. Phillip Olenik (202–267–1577), Office of Marine Safety, Security, and Environmental Protection, (G–MTH–1) U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Issued in Washington, DC on February 24, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92–4535 Filed 2–26–92; 8:45 am]

BILLING CODE 4910–60–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1033 and 1039

[Ex Parte No. 334 (Sub-Nos. 8 and 8A)]

Joint Petition for Rulemaking on Railroad Car Hire Compensation, Joint Petition for Exemption of Arbitration Rule and Motion to Dismiss

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule and proposed approval of arbitration rule.

SUMMARY: The Commission proposes to add new car hire rules 49 CFR part 1033 and part 1039 to accomplish a 10-year, phased deprescription of the rates that rail carriers charge each other for the use of cars. The Commission also proposes to approve an arbitration rule under 49 U.S.C. 10706 that will enable participating railroads to negotiate their car hire rates bilaterally and, if unsuccessful, seek either private arbitration or Commission adjudication of disagreements: The Commission requests comments on both proposals.

DATES: Comments are due March 27, 1992.

ADDRESSES: An original and 20 copies of all comments must be sent to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 334 (Sub-No. 8) and Ex Parte No. 334 (Sub-No. 8A), Interstate Commerce Commission, Washington, DC 20423.

One copy of all comments also must be served on all formal parties of record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: We propose to adopt a market-oriented approach to setting car hire rates. In Ex Parte No. 334 (Sub-No. 8), Joint Petition for Rulemaking on Railroad Car Hire Compensation, we are proposing rules to be codified at 49 CFR part 1033 and part 1039 to deprescribe the existing car hire rate formula. In Ex Parte No. 334 (Sub-No. 8A), Joint Petition For Exemption Of Arbitration Rule From Application of 49 U.S.C. 10706 And Motion To Dismiss, we are proposing to approve an Arbitration Rule under 49 U.S.C. 10706 to enable participating railroads to negotiate their car hire rates bilaterally and, if unsuccessful, seek either private arbitration or Commission adjudication of their disagreement. The Commission is also discontinuing Ex Parte No. 334 (Sub-No. 6), Review of Car Hire Regulation.

The formula for the rates that rail carriers charge each other for the use of their cars was prescribed in Car Service Compensation—Basic Per Diem Charges, 358 I.C.C. 714, 718 (1977). By petition filed October 19, 1990, a significant number of major Class I and regional rail carriers, short line rail carriers, and rail leasing companies have asked us to institute a rulemaking to consider new car service rules resulting in a gradual elimination of the car hire prescription. They also asked us to exempt under 49 U.S.C. 10505 their proposed rate agreement from the requirements of section 10706, by which they would amend the Association of American Railroads' Code of Car Hire Rules to permit negotiation and arbitration.

In a notice served and published January 16, 1991, (56 FR 1981, 1–17–91) we instituted the rulemaking proceeding and published the proposals as requested, expressing no view on their merits. This decision and notice is based on the comments received in these proceedings and also on the pending record in Ex Parte No. 334 (Sub-No. 6), Review of Car Hire Regulation.

Our proposal is summarized as follows:

Existing railroad cars—10-year phased deprescription. The proposed rules largely reflect the petitioners' proposal to deprescribe charges for existing railroad cars over a 10-year period. As charges for these cars are deprescribed, railroads may negotiate car hire rates bilaterally. The proposed rules would permit the railroads during the 10-year transition period to deprescribe up to 10 percent of their fleets each year. Car hire charges set pursuant to the current formula would be frozen on cars not deprescribed during the 10-year period. This freeze would eliminate downward adjustments for depreciation and increases for improvement and rebuilding of cars. At the end of the 10-year period, the existing prescription would be abolished and car hire charges for all cars would be set by agreement, arbitration, or Commission adjudication except for existing Class III boxcars. The car hire rates on existing boxcars of Class III carriers would remain frozen for the lifetime of the cars, even after the end of the 10-year phase out period.

New railroad cars—immediate deprescription. The proposed rules provide that they will become effective prospectively, rather than retroactively as the petitioners had proposed. Under the petitioners' proposal, new cars would be defined as those either ordered after July 1, 1990, or those built after January 1, 1991. Our proposed rules define new cars as those ordered on or after 30 days from the effective date of our final decision adopting the rules and those built on or after 90 days from that effective date.

Arbitration rule. We have modified the petitioners' proposed arbitration rule. Under the Association of American Railroads' (AAR) Code of Car Hire Rules, the proposed arbitration rule would establish procedures under which railroads would negotiate car hire rates bilaterally for deprescribed cars. If negotiations were not successful, the parties may seek either arbitration or Commission adjudication of the rates.

By contrast, the petitioners had proposed arbitration only, without alternative recourse to this Commission. Under that proposal, only a party not belonging to the Code of Car Hire Rules could seek Commission prescription.

The proposed arbitration rule provides for "baseball style" arbitration, by which the arbitrator would select between the best final offers of the parties the offer that most closely approximates a market rate. This rate would be based on evidence relating to other, comparable transactions between railroads, shippers, or other parties.

Regulatory Flexibility Analysis

The purpose of these proposed rules is to provide rail carriers and car leasing companies more opportunity to reach market-oriented car hire agreements. In the January 16, 1991, notice, the Commission preliminarily concluded that the proposed action would not have a significant economic impact on a substantial number of small entities. No parties have disagreed, and we propose to affirm our preliminary conclusion. Parties may comment on this issue.