

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Allocation of Spectrum Below) ET Docket No. 94-32
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NATIONAL ASSOCIATION OF BROADCASTERS
COMMENTS IN SUPPORT OF
PETITION FOR CLARIFICATION AND RECONSIDERATION

I. INTRODUCTION AND SUMMARY

In these brief comments, the National Association of Broadcasters (“NAB”)¹ supports all aspects of the Petition for Clarification and Reconsideration of the Association for Maximum Service Television, Inc. (“MSTV”).² In particular, NAB agrees with petitioner’s view that the 4660-4685 MHz band should be reallocated to the broadcast auxiliary service (“BAS”) and that the rules adopted in the Commission’s First Report and Order³ and Second Report and Order⁴ in the above-captioned proceeding are in many respects unlawful, let alone contrary to rational communications policy. Electronic news gathering (“ENG”), which allows the live coverage of news and other events by television stations to be retransmitted to a studio or other location for broadcast, uses the BAS spectrum in the 2 GHz band. The need for additional spectrum for these

¹ NAB is a nonprofit, incorporated association of radio and television stations and networks which serves and represents the American broadcast industry.

² See MSTV Petition for Clarification and Reconsideration (“Second MSTV Petition”), filed September 8, 1995. The Commission’s request for public comment on this Second MSTV Petition appeared in the Federal Register on September 29, 1995. As such, these responsive comments are due today.

³ First Report and Order in ET Docket No. 94-32, 10 FCC Rcd 4769 (1995).

⁴ Second Report and Order in ET Docket No. 94-32, 60 Fed Reg 40712 (August 9, 1995).

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ENG purposes has been documented in the instant proceeding and in several related ones.⁵ The government originally held the 4660-4685 MHz spectrum; however, in May 1994, the government asked for initial comments on the reallocation of this band of spectrum as well as two other bands (2390-2400 MHz and 2402-2417 MHz) to the private sector.⁶ The Commission addressed the 4660-4685 MHz band in the First Report and Order. However, instead of allocating this band to BAS, the Commission created a general purpose service -- the "General Wireless Communications Service," where the spectrum would be assigned by auction -- despite the virtual absence of a record to support such an allocation, and with no regard to the statutory restrictions on the Commission's earmarking such spectrum for auction.

For these reasons, among others, MSTV, NAB and several other broadcast parties filed a Petition for Reconsideration.⁷ However, the Commission has failed to respond to this petition directly. Indeed, the FCC built upon the First Report and Order⁸ with the Second Report and Order.⁹ While the Second Report and Order answered some of the questions posed by the "Reconsideration Petition," it did not address all of them.¹⁰ As has petitioner MSTV, NAB urges

⁵ See, e.g., Joint Comments of NAB, et al. in Gen. Docket No. 90-314, filed January 9, 1992; Joint Comments of NAB, et al. in ET Docket No. 92-9, filed June 8, 1992; Joint Comments of MSTV, NAB, et al. in ET Docket No. 95-18, filed May 5, 1995; Joint Comments of MSTV, NAB, et al. in IC Docket No. 94-31, filed March 6, 1995; and Joint Comments of MSTV, NAB, et al. in ET Docket No. 94-32, filed March 21, 1994.

⁶ Notice of Inquiry, ET Docket 94-32, 9 FCC Rcd 2175 (1994). In response to this Notice, NAB, MSTV and several other parties expressed the view that the 4660-4685 MHz band should be reallocated to BAS to help accommodate the transition to digital technology as well as to help handle the overload of 2 GHz spectrum by existing and growing ENG operations.

⁷ Petition for Reconsideration of MSTV, NAB, et al. in ET Docket No. 94-32, filed April 6, 1995.

⁸ First Report and Order, supra note 3.

⁹ Second Report and Order, supra note 4 at 40712.

¹⁰ See, Second MSTV Petition, at 1.

the Commission to address the matters raised in both the First MSTV Petition and the Second MSTV Petition at the earliest practicable time.

II. THE CURRENT 4660-4685 MHz SPECTRUM ALLOCATION IS BOTH UNLAWFUL AND AGAINST PUBLIC POLICY

The First Report and Order and Second Report and Order articulated the reasons supporting the Commission's decision to auction the 4660-4685 MHz band to fixed and mobile services.¹¹ As documented thoroughly in the record of this proceeding, the Commission has developed the auction concept into an allocation tool by allowing such a wide "class" of applicants to bid on the same block of spectrum.¹² The Commission lacks the authority to use auctions in this manner.¹³

The Commission's proposed auctioning of the 4660-4685 MHz band also violates the fundamental concepts of rational communications policy. The Commission has a statutory obligation to allocate spectrum to specific types of services fulfilling particular needs. Instead, the Commission has made a very broad and vague allocation here. Moreover, the Commission has neglected to consider the potential users to determine what the best use of the spectrum would be.

Rather than recite again the policy and legal flaws of the Commission's action in this proceeding, NAB incorporates by reference the arguments set forth in the First MSTV Petition

¹¹ See, First Report and Order, *supra* note 3 at 4788-4796; Second Report and Order, *supra* note 4 at 40712.

¹² See, *e.g.*, Second MSTV Petition at 2.

¹³ *Id.* See, *also*, 47 U.S.C. 309 (j).

and the Second MSTV Petition. Each petition provides the FCC with ample evidence of the need for vast revision of the regulatory course set in its two decisions in this proceeding.

III. BROADCAST AUXILIARY SERVICES ARE IN NEED OF ADDITIONAL SPECTRUM

The need for additional ENG spectrum has been documented in many proceedings previously and currently before the Commission. Several of these proceedings are documented in the two petitions submitted by MSTV (the first of which was joined by NAB and many other broadcast parties) in the instant proceeding. The importance of obtaining a BAS allocation in the 4660-4685 MHz band also is underscored by events in recent months -- ranging from spectrum allocation discussions on Capitol Hill¹⁴ to the opposition of the Mobile Satellite community to the Commission's planned shift of 2 GHz auxiliary spectrum.¹⁵

On the basis of the enormous record evidence compiled in the instant proceeding and several previously referenced and related ones, NAB urgently requests the Commission to grant the reconsideration and clarification sought in the two MSTV petitions. A failure of the Commission to do so unnecessarily would compromise the interests of the viewing public in responsive, local broadcast service -- especially that service provided during the transition to advanced television operations.

¹⁴ See, Second MSTV Petition, at 12, for a discussion on current debate on telecommunications reform and budget legislation.

¹⁵ Here we refer the Commission to the record developed thus far in the Commission's rule making proceeding in ET Docket No. 95-18.

IV. CONCLUSION

For the reasons advanced here and in several related previous filings, NAB supports the position of MSTV's request for reconsideration and clarification of the First Report and Order and Second Report and Order in this proceeding.

We urge the Commission to take such action at the earliest possible time.

Respectfully submitted,

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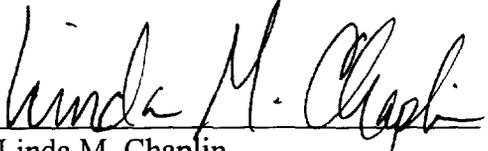
October 16, 1995

CERTIFICATE OF SERVICE

I, Linda M. Chaplin, hereby certify that on this the 16th day of October, 1995, a copy of the foregoing NAB Comments in Support of Petition for Clarification and Reconsideration was mailed first-class, postage prepaid to the following:

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