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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
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Amendment of Section 2.106 of the	)	ET Docket No. 95-18
Commission's Rules to Allocate	)	RM-7927
Spectrum at 2 GHz for Use by the	)	PP-28
Mobile-Satellite Service	)	

To the Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

The Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB") and the Radio-Television News Directors Association ("RTNDA")[1/] hereby oppose the Petition for Reconsideration of the *First Report and Order* (adopted March 13, 1997, released March 14, 1997) (the "Petition") filed by MSS Coalition (the "Coalition").[2/] The *First Report and Order* (the "R&O") paved the way for competitive Mobile Satellite Service ("MSS") offerings while taking into account the valuable public service provided by the electronic news gathering capabilities of Broadcast Auxiliary Services ("BAS").[3/] Having failed to persuade the Commission in the voluminous record of this

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[1/] MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks which serves and represents the American broadcast industry. RTNDA is the world's largest professional organization devoted exclusively to electronic journalism. RTNDA represents local and network news executives, educators, students and others in the radio, television and cable news businesses in over thirty countries.

[2/] Southwestern Bell Wireless, Inc. and Southwestern Bell Mobile System, Inc. also filed a Petition for Reconsideration seeking the reconsideration of the Commission's decision to allocate 70 MHz of spectrum to Mobile-Satellite Service. MSTV, NAB and RTNDA take no position on this petition.

[3/] BAS also includes the Cable Television Relay Service ("CARS") and the Local Television Transmission Service ("LTTS") which are also authorized users of the 1990-2025 MHz band.

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proceeding of its position, the Coalition reasserts that position on reconsideration without bringing any new information to bear. Specifically, the Coalition opposes the R&O's allocation of 105 MHz at 2025-2130 MHz to BAS incumbents as well as the imposition of relocation costs on MSS providers.

Contrary to the Coalition's claims, the record in this proceeding, developed over three years and through two rounds of comments, was complete and adequately set forth the spectrum needs of both MSS and BAS services.[4] After reviewing this record and balancing the competing interests of both services, the Commission determined that its decisions, which steer a course between what each service advocated, would best serve the public interest. Because the Coalition has failed to put forth any new evidence or changed circumstances and because the R&O fairly accommodates both BAS and MSS services, the Coalition's Petition for Reconsideration should be denied.

I. The Commission Should Not Reconsider its Decision to Allocate 105 MHz of Spectrum to BAS.

The First R&O correctly allocated 105 MHz of spectrum to BAS services in the 2025-2130 MHz band. However, the Coalition claims the Commission should reconsider the amount of spectrum it accorded BAS incumbents because the Commission lacked key information regarding actual BAS spectrum needs. Section 1.429(b) of the Commission's rules requires petitions for reconsideration to rely on facts which have not been previously presented to the Commission. The Coalition's Petition must be denied because it fails to present any new facts or arguments to justify reconsideration.

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[4] This proceeding included a round of comments, reply comments and supplemental comments. Over 25 parties submitted pleadings. MSS Coalition members, Celsat, COMSAT, Personal Communications Satellite Corporation, Hughes Space and Communications and ICO Global, separately or jointly filed at least 10 sets of pleadings. The BAS industry, including the undersigned, filed at least five sets.

A. The Commission Considered the Impact of Digital Technology on BAS Spectrum Needs.

The Coalition contends the Commission's allocation of 105 MHz is unnecessary because 85 MHz of spectrum will adequately accommodate BAS incumbents. The Coalition relies on the impact of digital technology on BAS spectrum needs as the primary basis for its claim but fails to raise any new information which would fundamentally change the Commission's previous analysis. Instead, the Petition merely recites well known digital developments and applications in the broadcast/cable industries.[5] In fact, the parties to the Coalition noted the same developments and the arguments regarding their impact on BAS spectrum needs.[6] BAS users also addressed them in the context of the BAS relocation,[7] and they therefore provide no basis for reconsideration.

1. The Relationship Between Digital Technology And BAS Channels.

The Coalition's argument that BAS incumbents are only entitled to 85 MHz of spectrum because digital technology permits the use of narrower spectrum channels is nothing new. The existing record was replete with information regarding the potential of digital

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[5] *See* The Petition at 13-18 (noting digital applications in areas such as satellite news gathering and direct-to-home satellite; stating that the broadcast industry can adopt a more spectrum efficient channelization plan due to the configurability of digital codec and modem equipment).

[6] *See* COMSAT's Comments at 22 n.14 (explaining that satellite news gathering operations are changing over to digital format; outlining COMSAT's development of an MPEG II compatible digital TV codec and modem combination); TRW's Comments at 11 ("seven separate ENG channels currently used by BAS in the 1990-2110 MHz bands may, through the use of digital technology, be rechannelized from their current 17 MHz widths to 12 MHz widths . . . .").

[7] *See* Comments of Society of Broadcast Engineers ("SBE") at ¶¶ 7,12 (explaining that more spectrum efficient use not technically feasible because analog and digital compression techniques do not reduce bandwidth needs); Joint Reply Comments of MSTV and Other Major Television Broadcasting Entities at 6-10.

compression technology to reduce BAS spectrum use.[8] In fact, the Coalition itself admits that, "numerous commentors" argued that digital compression technology could significantly reduce the amount of spectrum required per channel.[9] Thus, the Coalition has not, as it claims, raised any "changed circumstances" with respect to the relationship between digital technology and the spectrum needs of BAS incumbents.

The Coalition also contends that the Commission's new BAS allocation wrongly assumes the continued use of analog technology by BAS operators.[10] In fact, the Commission was presented with the digital advances raised by the Coalition. After reviewing these advances, the Commission properly decided that it was not in the public interest to mandate BAS incumbents to switch to digital. Nevertheless, the record includes a BAS study exploring possibilities for increased BAS efficiency[11] and the new channelization plan requires increased BAS efficiency. Without it, there is no way that BAS users could function on channels with bandwidths reduced from 17 and 18 MHz to just 15 MHz.[12] Requiring BAS users to make these efficiency gains forced a compromise between BAS users, who

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[8] *See* TRW Comments at 7 (explaining BAS should be able to take advantage of emerging digital technology so as to confine its operations to the 2010-2110 MHz bands); Loral/Qualcomm Partnership, LP at iii, 15; COMSAT Comments at 22-23 (stating the Commission should require BAS/ENG to commence the transition to digital transmission), MSS Coalition Supplemental Comments at 16-17.

[9] *See* The Petition at 6 ("Numerous commentators argued that digital compression technology could reduce significantly the amount of spectrum required per channel compared to that needed for analog FM television transmissions").

[10] *See* The Petition at 7 ("the Commission assumes the continued . . . use of analog FM technology for BAS operations . . . .).

[11] *See* ABC Engineering Statement attached as Exhibit A to Joint Comments of MSTV and Other Major Television Broadcasting Entities filed May 17, 1996.

[12] *Id.*

expressed doubts about whether such a bandwidth reduction would harm the service, and MSS users who advocated a more pronounced bandwidth reduction.

In addition to not being new, the contention that digital technology justifies a further reduction of BAS spectrum is not right. As we argued in our initial joint comments, although digital compression allows more information to be packed into a digital signal, the services that BAS will support (such as HDTV) require a data capacity so high as to more than offset the efficiencies gained through compression. [13] During the transition to digital broadcasting, there will be a marked increase in traffic on BAS frequencies because digital transmissions must coexist with analog BAS operations in order to make the transition.[14] Thus, the rapid conversion to DTV noted by the Coalition will actually place more demands on BAS spectrum, not less.

In an attempt to present "new" facts, the Coalition makes much of the Commission's DTV Order [15] addressing the conversion of television from analog to digital. However, the DTV Order and the rules adopted therein do not constitute new information for purposes of reconsideration of the R&O. At the time the R&O was adopted, the Commission was fully aware of the impending release of the DTV Order and of the digital technology that broadcasters would adopt. However, after considering the relationship between the MSS and the DTV proceedings, the Commission properly made a policy decision that the MSS

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[13] *See* Joint Comments of MSTV and Other Major Television and Broadcasting Entities at 16-17.

[14] In its discussion of broadcast stations' conversion to digital technology, (the Petition at 16-17), the Coalition demonstrates that it has little or no understanding of the pace at which broadcast stations are making technical upgrades or the relationship between studio and transmissions technology. For example, Sinclair Communications, Inc.'s purchase of digital cameras and VCRs has little to do with the challenges of implementing a digital transmission system and the related spectrum policy concerns.

[15] *See Advanced Television Systems and Their Impact upon the Existing Broadcast Service*, FCC 97-116 (April 3, 1997), ("DTV Order").

proceeding was not the "appropriate proceeding to determine whether or when BAS should convert to digital format in conjunction with the development of digital television."[16]

2. BAS Use Of The 2 GHz Band.

The Coalition also erroneously asserts that the record did not contain information regarding BAS spectrum use of the 2 GHz band.[17] This assertion is belied by the information MSTV, NAB and other representatives of BAS users submitted in comments about the intense and growing BAS use in the 2 GHz band. In addition, BAS joint commenters submitted a survey of frequency coordinators in the top 25 markets regarding the scope of BAS activity in the 2 GHz band.[18] This survey documented BAS usage and coordination patterns in the band and included a prediction of future usage. Among other things, the survey concluded that the BAS incumbents' high demand for spectrum to serve the public's interest in more and more competitive news and information services resulted in a great deal of congestion in the 2 GHz band -- congestion that bandwidth or channel reductions would severely exacerbate.[19]

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[16] *See* R&O at para. 32.

[17] *See* The Petition at 5 ("it does not appear, however, that the record contains information about . . . the level of current use of the 2 GHz spectrum by BAS operators nationwide . . . .).

[18] *See* Joint Comments of MSTV and Other Major Television Broadcasting Entities at Attachment A.

[19] The Coalition criticizes the fact that the Frequency Coordinator Survey focused only on the top 25 markets. However, in light of the BAS service's necessarily nationwide character, the survey's focus was entirely appropriate. BAS is a nationwide service which cannot function on a market-by-market basis. Thus, it is impossible to engage in market-based spectrum allocations by providing, for example, a BAS operator in one market 5 channels and an operator in another market with 7 channels. Although it is true that spectrum demands in Peoria, Illinois will usually differ greatly from the intense demands in New York City, any BAS spectrum allocation must accommodate the most heavily used markets to ensure interoperability. Similarly, because BAS is an itinerant service, its spectrum use also depends on the occurrence of news and sporting events of national importance. For example, events such as the Kentucky Derby, or the recent floods in Texas generate increased BAS spectrum usage. Thus, any block allocation of BAS spectrum must be sufficient to accommodate broadcast

(continued...)

The Commission properly recognized that any efficiencies gained by the use of digital could not keep pace with the exploding demands for BAS spectrum. Thus, rather than being uninformed about the relationship between digital technology and BAS spectrum needs, the Commission simply did not agree with the MSS community's position, and for good reason. The Commission wisely struck the appropriate balance by allocating BAS 105 MHz of spectrum, which is less than BAS users thought they needed for optimal service but more than MSS users wanted them to have. Because the Coalition has failed to raise any new information bearing on the Commission's new allocation of BAS spectrum, reconsideration of that decision should be denied.

B. The Commission's Comments in the *Further Notice* Do Not Indicate Inadequacies in the 2 GHz Record.

To support its claim that the 2 GHz record was incomplete and therefore inadequate to support the R&O, the Coalition points to requests for comment on BAS operations in the *Further Notice of Proposed Rulemaking* ("*FNPRM*"). First, in discussing the possibility of incorporating flexibility into the new BAS channelization plan, the *FNPRM* requested comment on whether it would be "possible that in some markets not all seven of the BAS channels will be needed."[20] Second, the *FNPRM* requested comment on the "likely scenarios for conversion from analog to digital BAS, and the implications such a conversion may have for BAS spectrum requirements."[21] The Coalition claims these statements show

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[19](...continued)
coverage for events of great public interest. Consequently, the Survey's focus on the top 25 markets was consistent with the BAS service's nationwide scope.

[20] *FNPRM* at ¶ 68.

[21] *Id.*

that the Commission was uninformed of BAS spectrum needs when it rendered the R&O. This reasoning is unfounded.

The Commission's reference to a *possibility* that a *few* markets may not require all seven BAS channels at all times, far from demonstrating ignorance of BAS spectrum needs, recognizes that BAS operators use spectrum dynamically depending upon needs which could change daily from market to market. Such varied needs may warrant flexible use of the newly allocated spectrum. But because BAS is a nationwide service, the variability of needs market by market has little effect on the block allocation that BAS uses. Thus, request for comment on the possibilities of future (possibly distant future) flexibility in no way gainsays the decision on the BAS allocation. The Commission properly allocated sufficient spectrum to accommodate BAS needs in the busiest markets.

Similarly, the *FNPRM*'s question about the implications of digital conversion recognizes the technical evolution to which BAS is subject. It is entirely appropriate at this stage for the Commission to collect information about future BAS spectrum needs as digital technology develops just as it was appropriate to render a decision in the R&O on the basis of scenarios likely when MSS rolls out. In rendering the R&O, the Commission recognized that although digital innovations may permit even greater BAS efficiencies in the future,[22] sound spectrum management policy cannot rest on such technological speculation. Technology is always evolving but decisions must be made. The Commission's decision in the R&O was justly based on the current state of the art in digital technology. In going forward, it is reasonable for the *FNPRM* to seek additional information to stay abreast of new digital developments as the newly-adopted channelization plan is refined.

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[22] *See* Joint Reply Comments of MSTV and Other Major Television Broadcasting Entities at 10.

II. The Commission Should Not Reconsider Its Decision to Impose Relocation Costs on MSS Licensees.

The R&O requires MSS providers to pay relocation costs for both BAS and Fixed Service incumbents. The Coalition puts forth three reasons to support reconsideration of this decision. First, it claims the ruling is premature because BAS operations can be accommodated in 85 MHz of spectrum. Second, the Coalition argues relocation costs are prohibitively expensive. Finally, the Coalition claims the imposition of relocation costs on U.S. MSS providers is unfair given that under WARC-95, the Commission must resolve issues of harmful interference from BAS operations to non-U.S. MSS systems irrespective of whether MSS service commences in the United States.[23] Again, these are arguments and issues that were fully ventilated in this proceeding and resolved correctly. The Coalition again fails to point to any changed circumstances or new facts to justify reconsideration.

In response to the 2 GHz *Notice of Proposed Rulemaking*, many commenters complained that the costs of relocating BAS incumbents would be prohibitive for MSS providers and would jeopardize the growth of the MSS industry.[24] In fact, some complained that relocation costs would ruin the MSS industry.[25] The Commission considered and rejected these arguments. Because the arguments raised by the Coalition were

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[23] *See* The Petition at 26-27. WARC-95 refers to the 1995 World Administrative Radio Conference.

[24] *See* COMSAT Supplemental Comments at 12-14 (citing relocation costs at $3 billion and claiming an imposition of such costs on MSS licensees would jeopardize the delivery of MSS service to the public); Motorola Comments at 21-22 (citing relocation costs at $90 million); COMSAT Comments at 14 (claiming cost of relocating BAS would make global MSS financially infeasible); Personal Communications Satellite Corporation Comments at 6-11 (arguing estimated relocation costs of $2.5 billion are prohibitive).

[25] *See* Personal Communications Satellite Corp. Comments at 9 (stating "combined cost of relocation and construction would significantly impede the development of MSS in the United States"); Motorola Comments at 21-22; COMSAT Comments at 11-14.

fully considered in the initial proceeding, there is no need for the Commission to revisit its decision.

Similarly, the argument that it is unfair to impose relocation costs on MSS licensees due to the possibility that BAS operations could cause harmful interference to non-U.S. MSS systems does not justify reconsideration.[26] The Commission was well aware that the U.S. must use international coordination processes to address instances of harmful interference to non-U.S. MSS systems when the R&O was adopted. Thus, the Coalition's Petition reveals nothing new. Moreover, the fact that some BAS operations may require relocation due to interference to non-U.S. MSS systems does not mean that U.S. MSS licensees seeking to profit from the use of the 2 GHz band should be relieved from paying BAS relocation costs.

* * *

After carefully considering the record and balancing competing concerns, the Commission correctly determined that BAS spectrum needs necessitated the allocation of 105 MHz of spectrum and that MSS providers should be responsible for BAS relocation costs. Because the Coalition has failed to meet its burden under Section 1.429(b) of raising new

[26] The results of the WARC-95 were inserted in the record by COMSAT's Supplemental Comments, filed March 14, 1996, at the conclusion of the conference.

facts, its Petition for Reconsideration should be summarily denied and the Commission should move ahead in establishing relocation rules so that MSS service can begin.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Covington & Burling, and that on this 19th day of June 1997, I caused to be mailed by first class United States mail, postage prepaid, a copy of the foregoing "Opposition to Petition for Reconsideration" to the following:

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