

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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

To: The Commission

REQUEST FOR MANDATORY SUBMISSION OF INFORMATION

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SUMMARY

Petitioners urge the Commission to initiate an inquiry as soon as possible into the necessity of expenditures by MSS operators to relocate licensees of the BAS, CARS, LTTS (together, the "BAS") and FS with operations in the 1990-2025, 2110-2130, 2130-2150 and 2165-2200 MHz bands in connection with planned MSS operations in the 2 GHz bands.

Petitioners remind the Commission that the December 1998 launch date for the first satellite in ICO's global MSS constellation is approaching rapidly; that the record of the Commission's 2 GHz allocation proceeding reflects substantial differences of opinion on the need for expenditures to relocate BAS and FS operations; and that large sums -- according to representatives of the broadcast industry, \$171 million in relocation costs for the BAS alone -- are at stake. Petitioners therefore request that the Commission issue an Order by August 31, 1998 requiring all affected BAS and FS licensees, as well as frequency coordinators with knowledge of affected BAS operations, to provide the specific information requested herein at the earliest possible time and, in any event, no later than November 30, 1998.

ICO and other parties have repeatedly urged the FCC to obtain information on the need for the purchase or upgrade of BAS and FS equipment in connection with the aforementioned 2 GHz relocations. The Commission itself has acknowledged that it lacks critical information that would allow it to decide whether expenditures on the part of MSS operators for that purpose are necessary -- including information on whether sharing among the MSS, FS and BAS may be possible, likely scenarios for BAS conversion to more spectrum-efficient digital technology, and data on whether BAS licensees in some markets may be able to accommodate MSS operations

simply by forgoing use of the first two existing BAS channels. Nevertheless, neither BAS nor FS licensees have provided such information to date.

There is no question but that the Commission has ample authority to require affected BAS and FS licensees and frequency coordinators with knowledge of the relevant BAS operations to submit the information requested herein. Both the Communications Act of 1934, as amended, and the Commission's rules provide, and the Commission's own prior decisions have found, that the Commission may order the submission of such information. To the extent that it may prove necessary, Petitioners hereby offer to assist the Commission in collecting and distilling that information.

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ICO Services Limited, TRW Inc., BT North America Inc., COMSAT Corporation ("COMSAT"), C.S. Communications Co., Ltd., Hughes Space and Communications International ("Hughes") and Telecommunicaciones de Mexico (together, "Petitioners"),¹ through counsel, hereby request that the Commission initiate an inquiry at the earliest possible time in order to determine the necessity of expenditures by the Mobile Satellite Service ("MSS") to relocate certain services currently operating in the 2 GHz frequency bands in connection with MSS operations in those bands.² More specifically, Petitioners urge the Commission to require affected licensees of the Broadcast Auxiliary Service, the Cable Television Relay Service and the Local Television Transmission Service (together, the "BAS") and the Fixed Service ("FS"), as well as frequency coordinators with knowledge of affected BAS operations, to provide the information requested herein regarding the nature and use of the communications equipment associated with

¹ On September 26, 1997, ICO Services Limited filed with the Commission a Letter of Intent indicating its intention to provide Mobile Satellite Service in the U.S. market through one or more service partners and seeking access to spectrum in the 2 GHz frequency band. The other Petitioners listed above are investors in ICO.

² The instant Petition is without prejudice to the pending petitions for reconsideration of the Commission's finding in the above-referenced proceeding that MSS operators must pay for the relocation of the services in question, and does not constitute an acknowledgment that any such payments are necessary

operations in the 1990-2025 MHz band, the 2110-2130 MHz band, the 2130-2150 MHz band and the 2165-2200 MHz band.³

Given the rapid approach of the December 1998 launch date for the first satellite in ICO's global MSS constellation, the substantial differences of opinion reflected in the record to date regarding the need for expenditures to relocate BAS and FS operations and the large sums at issue, it is essential that the Commission develop a detailed record *now* regarding the basis for any claims made by BAS and FS licensees with respect to their 2 GHz relocation costs. Petitioners therefore urge that the Commission issue an Order by August 31, 1998 requiring the submission of the requested information at the earliest possible time and, in any event, no later than November 30, 1998.

I. Background

In its First Report and Order in ET Docket No. 95-18, the Commission held that the BAS would have to be relocated from the 1990-2025 MHz band in order to accommodate MSS operations, and that MSS operators would have to bear the cost of all steps necessary for clearing the band.⁴ The Commission also indicated that, to the extent that the BAS should prove unable to share spectrum with the FS in the 2110-2130 MHz band and/or the MSS should be unable to share spectrum with FS licensees operating in the 2165-2200 MHz band, the MSS would be permitted to relocate those FS licensees to bands above 5 GHz in accordance with the

³ All BAS and FS licensees with operations in the these bands will be considered "affected" licensees.

⁴ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 12 FCC Rcd 7388, 7401-02 (¶¶ 30, 33) (1997) ("First R&O and FNPRM").

Commission's Emerging Technologies policies.⁵ In addition, the Commission inquired -- in its FNPRM in the same docket -- whether the relocation of some or all FS licensees operating in the 2165-2200 MHz band would also require the relocation of FS operations using paired links in the 2130-2150 MHz band.⁶

To date, however, no detailed or reliable information has been assembled by the Commission or provided to the MSS on the need for, or scope of, any expenditures by the MSS to relocate BAS or FS equipment. In the meantime, ICO and several of the Petitioners have contested the Commission's determinations with respect to MSS obligations to fund any necessary relocation of 2 GHz BAS and FS operations.⁷

II. The Commission Should Promptly Grant the Instant Petition for Inquiry.

If the Commission wishes to foster competition among MSS operators in the 2 GHz bands, it is vital that it require affected BAS and FS licensees and spectrum coordinators with knowledge of affected BAS operations to submit the information requested herein on relocating their 2 GHz operations without delay. Petitioners wish to emphasize that ICO's scheduled launch of the first satellite in its MSS constellation is just six months away, and that ICO plans to commence service in the United States in August of the year 2000. It is therefore essential to ICO and its investors -- as well as eight other 2 GHz MSS applicants⁸ planning investment and

⁵ Id. at 7406-07 (¶¶ 42-43).

⁶ Id. at 7421 (¶ 79.)

⁷ See Petition for Clarification and Reconsideration of ICO, ET Docket No. 95-18 (filed May 20, 1997); Petition for Partial Reconsideration of the MSS Coalition, ET Docket No. 95-18 (filed May 20, 1997).

⁸ In this Petition, ICO will use the word "application" and "applicant" to refer both to U.S.-licensed systems' requests for assignment of spectrum and to letters of

(continued...)

business strategies -- to know to what potential business expenses they may or may not be subject.

For this reason, ICO and others⁹ have repeatedly urged the FCC to obtain precise information on the actual need for the purchase or upgrade of new equipment to effectuate the aforementioned 2 GHz relocations, and to determine whether BAS and FS operations can be accommodated without the imposition of relocation obligations on MSS operators. In June 1997, the MSS Coalition urged the FCC to request information regarding options for accommodating the BAS in 85 MHz of spectrum at 2025-2110 MHz.¹⁰ The MSS Coalition also urged the Commission to request information from both BAS licensees and local spectrum coordinators on the current use and projected demand for BAS spectrum in all broadcast markets, and the technical and financial feasibility of BAS adoption and use of digital technology before MSS service is initiated in the largest TV markets.¹¹ In July 1997, the MSS Coalition urged the Commission to request information concerning, *inter alia*, the number of ENG transmitters and receive sites operated by each TV station, the number of stations that have been assigned ENG Channels 1 (1990-2008 MHz) and 2 (2008-2025 MHz) by local frequency coordinators and the

⁸(...continued)

intent for non-U.S. licensed systems seeking access to 2 GHz spectrum in the United States, unless the context indicates otherwise.

⁹ Parties urging Commission action in this regard have included the MSS Coalition, consisting of Celsat America, Inc., COMSAT, Hughes, ICO Global Communications and Personal Communications Satellite Corporation.

¹⁰ Further Comments, ET Docket No. 95-18 (filed June 23, 1997) at 3-5.

¹¹ Id.

level of their use of those channels, and the number and location of ENG receive sites that employ specific technologies.¹²

The Commission itself has acknowledged that it lacks information that would allow it to make an accurate judgment on the need for any expenditures on the part of MSS operators to accomplish the contemplated 2 GHz relocations. For example, in its Further Notice of Proposed Rule Making in ET Docket No. 95-18, the Commission expressed continuing uncertainty on the extent to which band sharing among the MSS, FS and BAS, or any two of those three services, may be possible on a short-term or permanent basis.¹³ The Commission also indicated that it needed information on likely scenarios for BAS conversion from analog to digital technology, and the implications that such conversion may have for BAS spectrum requirements.¹⁴ In addition, while it proposed to re-channelize the BAS into seven channels in the 2025-2130 MHz band, the Commission raised a question as to whether, at least in some markets, not all of the seven BAS channels will be needed -- thus permitting BAS licensees simply to adhere to the existing BAS band plan and forgo the use of the two channels in the 1990-2025 MHz band in order to accommodate MSS operations.¹⁵

The lack of information on the potential need for MSS outlays notwithstanding, two prominent broadcasting interests -- the Association for Maximum Service Television and the Society of Broadcast Engineers -- have suggested that the MSS should buy broadcasters as much as \$171 million worth of new or upgraded equipment in connection with the relocations required

¹² Reply Comments, ET Docket No. 95-18 (filed July 21, 1997) at 5-8.

¹³ First R&O and FNPRM, 12 FCC Rcd at 7416 (¶ 69).

¹⁴ Id. at 7415 (¶ 68.)

¹⁵ Id.

by the Commission.¹⁶ Neither BAS nor FS licensees have seen fit to provide the information that the MSS Coalition and the Commission have requested in order to substantiate the need for such expenditures.

It is therefore essential that the Commission promptly require affected BAS and FS licensees, and spectrum coordinators with knowledge of affected BAS operations, to provide the information requested herein. With the launch and implementation dates for ICO's satellite system in mind, Petitioners urge the Commission to issue an Order by August 31, 1998 requiring the submission of that information at the earliest possible time and, in any event, no later than November 30, 1998. Recognizing that the collection and distillation of such information is likely to be time-consuming, Petitioners stand ready to assist the Commission as necessary in accomplishing those tasks.

III. The Commission Has Ample Authority to Institute the Requested Inquiry Immediately.

There can be no serious dispute as to the Commission's authority to require affected BAS and FS licensees and frequency coordinators to submit the information requested herein. Under Sections 4(i), 303(n), 308(b) and 403 of the Communications Act of 1934, as amended, as well as under the general public interest standard to which Commission actions are subject, the Commission is fully empowered to conduct, or delegate to its staff authority to conduct, investigations in areas of Commission jurisdiction.¹⁷ Section 1.17 of the Commission's rules provides that the Commission or its representative may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application

¹⁶ Id. at 7399 (¶ 25).

¹⁷ 47 U.S.C. §§ 154(i), 303, 308, 403.

should be granted or denied, or to a determination as to whether a license should be revoked, or to some other matter within the jurisdiction of the Commission.¹⁸ Moreover, the Commission held long ago that "[i]n the Communications Act . . . full authority and power is given to the Commission . . . to institute an inquiry concerning questions arising under the provisions of the Act or relating to its enforcement. This, we think, includes authority to obtain the information necessary to discharge its proper functions . . ."¹⁹ Plainly, the determination of any need for expenditures to relocate BAS or FS operations to make room for those of the MSS falls within the definition of the Commission's proper functions.

There can also be no valid argument made that the instant Petition should be made subject to further public comment. The FCC specifically requested much of the information that Petitioners seek herein in its FNPRM in ET Docket 95-18, albeit to no avail.²⁰ In addition, the Commission has already requested and obtained public comment on whether it should require affected FS and BAS licensees to provide all necessary information directly to the MSS on relocation costs.²¹ The Commission should therefore issue the request for information sought herein without further comment or delay.

¹⁸ 47 C.F.R. § 1.17 (1997).

¹⁹ Stahlman v. FCC, 126 F.2d 124, 127 (D.C. Cir. 1942).

²⁰ See First R&O and FNPRM, 12 FCC Rcd at 7414-18, 7421 (¶¶ 66, 68, 69, 71, 73, 79).

²¹ In its FNPRM in ET Docket 95-18, the Commission proposed to establish guidelines requiring FS licensees to provide any information that the MSS may need in order to evaluate the cost of relocating incumbents to comparable facilities. First R&O and FNPRM, 12 FCC Rcd at 7419-20 (¶¶ 76-77) (citing Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation (Microwave Cost-Sharing), 11 FCC Rcd 8825 (1996)). The Commission also requested comment on whether it should require the BAS to do the same. First R&O and FNPRM, 12 FCC Rcd at 7416-17 (¶ 70).

IV. Information Requested

In light of the significant differences of opinion as to the need for expenditures by the MSS to relocate affected BAS and FS operations, and the size of the MSS outlays that BAS licensees demand, it is essential that the Commission establish a detailed record of the basis for all assertions made by BAS and FS licensees regarding relocation costs. Petitioners therefore urge the Commission to require affected BAS and FS licensees, as well as frequency coordinators with knowledge of affected BAS operations, to respond fully and accurately to the questions set forth below.

A. Questions for Affected BAS Licensees

1. What Nielsen Designated Market Area does your station serve?
2. What is the approximate area/region encompassed by that market?
3. Please provide the manufacturer, model number, age, acquisition cost, present value, depreciation schedule, serial number and description of any 2 GHz Electronic News Gathering (“ENG”) transmitters (exclusive of antennas, power supplies and other common support equipment such as vehicles) that are owned or operated by your TV station or in partnership with others. Please indicate whether the transmitters are permanently installed in ENG vehicles, are portable units or are installed in fixed locations.
4. Please provide the manufacturer, model number, age, acquisition cost, present value, depreciation schedule, serial number and description of any 2 GHz ENG receivers (exclusive of antennas, power supplies and other common support equipment such as vehicles) that are owned or operated by your TV station, or in partnership with others. Please indicate whether the receivers are portable units or are installed in fixed locations.
5. Please identify any 2 GHz ENG equipment owned and/or operated by your TV station that can be externally tuned to new carrier frequencies and/or bandwidth.
6. Please identify all transmit and/or receive vehicles/locations that your station has that can only operate in the 1990-2110 MHz band.

7. Please identify all transmit and/or receive vehicles/locations that your station has that can operate in the 1990-2110 MHz band as well as in the 2450-2483.5 MHz band, the 6875-7125 MHz band and/or any other ENG bands, as well as those with any other ENG or Satellite News Gathering capability.
8. Please state your station's schedule for conversion to digital ENG equipment, including dates of anticipated acquisition of such equipment and of conversion to its use.

B. Questions for Frequency Coordinators with Knowledge of Affected BAS Operations

1. Please identify all TV stations for whose ENG operations you are responsible.
2. Identify any stations whose 2 GHz ENG equipment uses ENG Channel 1 (1990-2008 MHz), Channel 2 (2008-2025 MHz), or both, and whether that use is designated as either a primary or secondary frequency assignment.
3. Please provide the number of ENG receive sites and receivers at each site in the area that you serve. Identify their geographic coordinates and provide any pertinent details about their configuration and use (including choice of polarization for receive sites).
4. Please provide the number of fixed and mobile ENG transmit sites in the area that you serve, their geographic coordinates (if applicable), and any pertinent details about their configuration and use.
5. Please provide the number of simultaneous ENG TV transmissions per channel supported by sites in the area that you serve.
6. Please identify all TV stations using frequency offset (i.e., carrier frequency not in the center of the channel) in the area that you serve and describe with specificity the nature of each such offset.
7. Do any operators in the area that you serve avoid ENG Channel 1 (1990-2008 MHz) or make any other allowances for PCS interference? If the latter is true, what allowances do they make?
8. Please provide the typical hours of operation of ENG systems during the day and night in the area that you serve, and the average duration of ENG transmissions.

9. Please identify all sites that you serve in which fewer than seven new BAS channels proposed by the FCC (i.e., channels with frequencies of 2025-2040 MHz, 2040-2055 MHz, 2055-2070 MHz, 2070-2085 MHz, 2085-2100 MHz, 2100-2115 MHz and 2115-2130 MHz) are required to be simultaneously available in any given calendar day, such that BAS licensees could forgo use of channels 1 (1990-2008 MHz) and/or 2 (2008-2025 MHz) rather than re-channelizing.
10. Identify all records or logs concerning the foregoing information, and state where they are maintained (provide address and phone number) and in what format or storage medium.

C. Questions for Affected FS Licensees

1. Please provide the manufacturer, model number, age, acquisition cost, present value, depreciation schedule, serial number and description of any FS transmitters or receivers (including antennas) licensed to your company.
2. Identify the typical link margins for links operated under your company's FS license.
3. To what extent do your company's FS operations in the 2165-2200 MHz band (if any) also involve operations in the 2110-2150 MHz band such that relocation of the operations in the former band would require relocation of those in the latter?
4. Please indicate which microwave links, if any, use space diversity either to improve performance or prevent outage.

CONCLUSION

For the foregoing reasons, Petitioners request that the Commission issue an Order by August 31, 1998, requiring affected BAS and FS licensees and frequency coordinators with knowledge of affected BAS operations to provide the information requested herein at the earliest possible time and, in any event, no later than November 30, 1998. Petitioners hereby offer to assist the Commission as necessary in collecting and distilling that information.

Respectfully submitted,

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