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Before The
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of Section 2 of the) ET Docket No. 95-18
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use by the)
Mobile-Satellite Service)
_____)

REPLY COMMENTS OF GLOBALSTAR, L.P.

Pursuant to Section 1.415 of the Commission's Rules, Globalstar, L.P., hereby responds to the comments filed regarding the proposals in the Third Notice of Proposed Rule Making in the above-referenced docket.¹ In the Third NPRM, the Commission sought comment on proposals for relocation of Broadcast Auxiliary Service ("BAS") and Fixed Microwave Service ("FMS") stations operating in 1990-2025 MHz and 2165-2200 MHz, respectively, the bands that have now been allocated for the Mobile-Satellite Service ("MSS"). The Commission also sought comment on its proposed procedures for imposing on 2 GHz MSS licensees reimbursement obligations for the costs of relocation.

In its initial comments, Globalstar pointed out that the Commission's reliance on the rules adopted for relocation of FMS incumbents by Personal

¹ See Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order, FCC 98-309 (released Nov. 25, 1998) ("Third NPRM").

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Communications Service (“PCS”) licensees is problematic for the circumstances of 2 GHz MSS. Many of the comments confirmed this assessment. Accordingly, Globalstar urges the Commission to recognize the differences between the implementation of MSS and implementation of PCS in the emerging technology bands and to revise accordingly its proposals in the Third NPRM.

I. THE PROCEDURES ADOPTED FOR PCS DO NOT TRANSLATE TO THE CIRCUMSTANCES OF 2 GHZ MSS.

A number of comments noted problems with attempting to apply to MSS the cost reimbursement procedures adopted for PCS.² One major difference between the two emerging technologies is the scope of the obligation that would be imposed on MSS licensees. Nationwide, there are thousands of FMS and BAS stations that may have to be relocated. Yet, there are only nine MSS applicants in the first processing round for 2 GHz MSS. Depending upon how MSS systems are licensed, under the Commission’s proposals, these nine MSS companies may each be obligated to negotiate one-on-one for relocation and cost reimbursement with all FMS and BAS stations.³ This is a significantly more complex and costly environment than that presented by the specific geographic markets for which PCS licensees were responsible. TMI expressed the concern that, if the PCS cost reimbursement principles are applied to MSS, the Commission “will likely create a

² See Boeing Comments, at 4; Iridium Comments, at 6-7; MSTV/NAB Comments, at 6-11; TMI Comments, at 4-5.

³ See Boeing Comments, at 2-3; Iridium Comments, at 6-7.

system of vast complexity and huge expense for MSS licensees, which might render 2 GHz MSS untenable.”⁴ Globalstar concurs in TMI’s assessment; if anything, TMI understates the probable negative impact of the consequences of the proposals in the Third NPRM.

Second, the rules adopted for incumbent station relocation and cost reimbursement will be affected by the rules adopted for licensing MSS. Yet, the 2 GHz MSS licensing rules have not yet been determined. For example, whether MSS systems can share spectrum and how spectrum is assigned to MSS systems that can share will affect the relocation and reimbursement scenarios.⁵ It should also be noted that the technical standard for determining whether an MSS system causes interference to an incumbent FMS station and thereby triggers a relocation obligation has not yet been adopted. See Third NPRM, ¶ 49. Given the interdependence of the relocation and licensing rules, it is premature for the Commission to adopt firm relocation procedures in this proceeding. Accordingly, the Commission should ensure that any rules adopted in this proceeding are sufficiently flexible to interact fairly with the MSS licensing rules to be adopted in a future proceeding.

Third, the rules applied to PCS simply will not work for relocation of BAS. Unlike FMS, it is not feasible to relocate BAS stations at 1990-2025 MHz on a

⁴ TMI Comments, at 4.

⁵ See Constellation Comments, at 2-3.

market-by-market basis because the reallocation of BAS Channels 1 and 2 to MSS affects all existing BAS stations in the 1990-2110 MHz band.⁶ See Third NPRM, ¶¶ 37-40. Indeed, MSS licensees are being asked to relocate BAS stations at 2025-2110 MHz although MSS systems would not cause actual interference to these BAS stations.⁷ Therefore, the rules adopted for PCS to identify the emerging technology licensee on whom a relocation obligation is imposed do not fit the circumstances of MSS for the 1990-2025 MHz band segment.

These concerns suggest that the Commission must reevaluate its proposals in the Third NPRM. Reevaluation does not necessarily require the Commission to abandon the basic principles underlying its rules governing relocation obligations of emerging technology licensees. Rather, the different factual scenario affecting MSS at 2 GHz requires that the Commission implement those principles using different procedures. Therefore, the Commission should adopt a framework for BAS and FMS relocation that more accurately addresses the circumstances under which MSS licensees will enter into use of the 1990-2025 MHz and 2165-2200 MHz bands. Two elements of this framework are discussed below.

II. THE COMMISSION SHOULD PERMIT INDUSTRYWIDE PROCEDURES FOR RELOCATION OF BAS AND FMS.

Several commenters in this proceeding call for the Commission to adopt industrywide solutions to the issues raised by BAS and FMS relocation. For

⁶ See MSTV/NAB Comments, at 6-8.

⁷ See Inmarsat Comments, at 4-5.

example, the Association for Maximum Service Television, Inc., and National Association of Broadcasters ("MSTV/NAB") recommend that they be authorized to negotiate collectively on behalf of all broadcast stations regarding relocation of BAS stations. They suggest that collective negotiation would facilitate coordination of BAS relocation and will reduce both negotiation time and transaction costs.⁸

Iridium LLC recommends that the Commission require MSS licensees to negotiate with BAS and FMS licensees on an inter-industry basis. As Iridium notes, unlike PCS, MSS licensees will operate nationwide rather than in individual geographic markets, and individual BAS and FMS frequency assignments will likely overlap with the frequency assignments for multiple MSS licenses. Accordingly, Iridium states that the individualized negotiations used for PCS would "present cumbersome and logistical difficulties for MSS operators and incumbents alike that would delay rather than expedite the clearance of incumbents from the band."⁹ Moreover, given the need to expedite relocation of incumbents for MSS systems coming into use in the near term, Globalstar agrees with Iridium's conclusion that the staggered voluntary and mandatory negotiation periods employed for PCS relocation would be "inefficient and unworkable in the MSS context."¹⁰

⁸ MSTV/NAB Comments, at 13-15; see also Comments of Society of Broadcast Engineers, at 6-7.

⁹ Iridium Comments, at 7.

¹⁰ Id. at 6.

Iridium also suggests that the Commission should create a “common relocation fund” from which BAS and FMS licensees would obtain reimbursement for relocation. Iridium suggests that creating such an industry fund, rather than relying on individual negotiations between MSS licensees and incumbents, would facilitate the expeditious relocation of BAS and FMS licensees and availability of the 2 GHz spectrum for use by MSS licensees.¹¹

Globalstar supports the concept of allowing inter-industry negotiations as a reasonable means to address the relocation issues raised in the Third NPRM, particularly in light of the significant differences between MSS and PCS at 2 GHz. Moreover, establishing procedures for a common reimbursement fund would likely facilitate the relocation process. Accordingly, the rules adopted in this proceeding should allow the affected industries to develop an industrywide negotiation process that can be used to relocate incumbents expeditiously from the 1990-2025 MHz and 2165-2200 MHz bands. In the event that inter-industry negotiations fail, the Commission’s rules would still allow individual MSS licensees and incumbents to negotiate relocation agreements, but there are likely to be incentives on both sides to avoid that scenario.

III. THE COMMISSION MUST ESTABLISH AN EARLY SUNSET DATE FOR THE REIMBURSEMENT OBLIGATION.

The MSS parties commenting on the Third NPRM generally recommend that the Commission should set an early sunset date for the primary BAS and FMS

¹¹ Id. at 4-5, 8.

allocations in the 1990-2025 MHz and 2165-2200 MHz bands, respectively, and for any obligation to reimburse the relocation costs of BAS and FMS stations.¹² There are several reasons for setting a sunset period shorter than the ten-year sunset period proposed in the Third NPRM (§§ 44-45, 49).¹³

First, the terrestrial incumbents have been on notice since 1995 that the Commission intended to relocate BAS and FMS stations from the bands,¹⁴ and as the Commission has previously recognized, it should generally not take more than six months for any station to complete the actual relocation process.¹⁵ Furthermore, if the relocation process is negotiated on an industrywide basis, there is no reason to account within the negotiation procedures for differences in time of entry of various MSS licensees. The Commission should be able to provide several years for the negotiation process and still set an effective sunset date earlier than the ten-year period used for PCS. Therefore, ten years is not necessary to give incumbents

¹² See Constellation Comments, at 5 (January 31, 2005, but no later than 10 years after July 22, 1997); ICO Comments, at 3 (January 1, 2005); Comments of ICO USA Service Group, at 10 (January 1, 2005); Iridium Comments, at 4 (three years from anniversary date on which MSS licenses are issued).

¹³ Consistent with an early sunset date, the Commission should place a freeze on applications for terrestrial uses of these bands and not grant any renewal or major modification applications except on a secondary basis. See Inmarsat Comments, at 3-4; Comments of ICO USA Service Group, at 26-30; TMI Comments, at 5-6.

¹⁴ See Amendment of Section 2.106 the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 10 FCC Rcd 3230, 3232 (1995).

¹⁵ See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, 11 FCC Rcd 8825, 8860 (1996) (observing that six months is a reasonable time for most incumbents to relocate facilities).

sufficient time to plan for relocation and the industries sufficient time to negotiate relocation agreements.¹⁶

Second, an early sunset date would encourage BAS and FMS incumbents to relocate expeditiously. As the Commission is aware, it is likely that MSS systems will enter the 2 GHz MSS spectrum seriatim over a period of several years, and the operation of early MSS entrants may not cause interference to many incumbent stations. An early sunset date would give incumbents the incentive to “relocate to other bands when it comes time to change or replace their equipment.”¹⁷

Third, the global allocation for MSS will take effect on January 1, 2000, and most of the MSS systems licensed at 2 GHz will operate internationally and/or globally. Setting an early sunset date would facilitate the use of the 2 GHz MSS spectrum in the United States within the same time frame that the service becomes available in other countries. Failure to set an early sunset date may place U.S. MSS licensees at a disadvantage in the global marketplace because the relocation process could drag on for years. The Commission should, therefore, heed the recommendations of the MSS applicants, and set an early sunset date for the

¹⁶ See id. at 8859. The suggestions of the Association of American Railroads (Comments, at 8-9) and American Petroleum Institute (Comments, at 11-12) that there should be no sunset date at all or a sunset period extended beyond ten years must be rejected. These comments are inconsistent with the Commission’s finding that a sunset date “serves the public interest, because it provides certainty to the process and prevents the emerging technology licensee from being required to pay for relocation expenses indefinitely.” 11 FCC Rcd at 8859.

¹⁷ Id.

primary allocations of BAS and FMS in these bands and the obligation to reimburse incumbent licensees for relocation costs.

IV. CONCLUSION

The Commission should adopt rules for relocation of BAS and FMS at 1990-2025 MHz and 2165-2200 MHz consistent with the guidelines set forth in Globalstar's initial comments and above.

Respectfully submitted,

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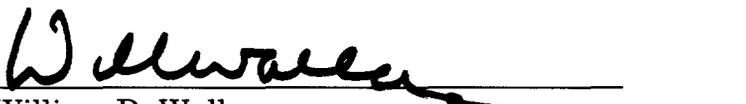
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