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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 2.106 of the )  
Commission's Rules to Allocate Spectrum )  
at 2 GHz for Use by the Mobile Satellite Service )

ET Docket No. 95-18

To: The Commission

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**Petition for Partial Reconsideration**

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## Summary

The National Association of Broadcasters and the Association for Maximum Service Television, Inc. (“Broadcasters”) ask the Commission to reconsider certain limited aspects of its 2 GHz *Relocation Order*. The Commission understood that, in an effort to minimize the initial financial burden on entrants in the Mobile Satellite Service, it adopted measures that “will work hardships upon incumbents.” Broadcasters believe that the Commission tipped this balance too far, resulting in undue operating and financial hardships for television stations, particularly in smaller markets.

First, the Commission should require MSS licensees to relocate stations in markets 101-210 during Phase I. Under the *Relocation Order*, stations in these smaller markets would not be relocated in Phase I and would lose first one, and then two, of their BAS channels for an extended and indefinite time. Requiring them to be relocated before Phase II begins would minimize the disruption to BAS service, as well as reducing the problems of coordinating news coverage between stations in different sized markets. The Commission should also require a complete relocation in Phase I because of the uncertain demand for MSS and the risk that Phase II may never materialize.

Second, the Commission should either eliminate the sunset date or set it at ten years after the beginning of Phase II relocation negotiations. The sunset date now places the burden of any delays in relocation entirely on broadcasters and the public they serve, while the pace of relocation is determined largely by MSS licensees. The Commission should ensure that relocation obligations cannot be avoided by delaying the roll-out of MSS; indeed, under even the most aggressive schedule, the sunset date will arrive before small market stations are relocated.

The Commission should also provide that MSS licensees must relocate BAS operations which are first licensed in Phase I. Broadcasters request that the Commission commit to issuing a public notice announcing the beginning of each mandatory negotiation period. Finally, the Commission should clarify that renewal or transfer of a station's license during the transition will not affect that station's right to be relocated by MSS.

These changes will help ensure, as contemplated by the Commission's *Emerging Technologies* doctrine, that the burden of relocating BAS incumbents will fall on the new users of that spectrum, while at the same time allowing new MSS licensees to begin offering service without an undue financial burden.

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To: The Commission

**Petition for Partial Reconsideration**

The National Association of Broadcasters (“NAB”)<sup>1</sup> and the Association for Maximum Service Television, Inc. (“MSTV”)<sup>2</sup> [hereinafter collectively “Broadcasters”] submit this request that the Commission reconsider and clarify certain aspects of its decision establishing the rules for relocation of incumbent Broadcast Auxiliary Service (BAS) licensees from the spectrum at 2 GHz which will be allocated for the Mobile Satellite Service (MSS). *Allocation of 2 GHz for MSS (Second Report and Order and Second Memorandum Opinion and Order)*, ET Docket No. 95-18 (rel. July 3, 2000), 65 Fed. Reg. 48,174 (Aug. 7, 2000) [hereinafter the *Relocation Order*].

The *Relocation Order* was the result of the Commission’s balancing of competing objectives. On the one hand, it recognized and reaffirmed that “BAS is a critical part of the broadcasting system by which information and entertainment is provided to the American public.” *Id.* ¶ 28. On the other hand, the Commission adopted measures that it understood “will work

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<sup>1</sup> NAB is a non-profit, incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

<sup>2</sup> MSTV is a national, non-profit association representing nearly 425 of the nation’s television stations in regulatory, legislative, and judicial proceedings.

hardships upon the incumbents in order to minimize relocation costs to MSS licensees.” *Id.* ¶ 111.

While Broadcasters are reluctant to further delay the final resolution of this very extended proceeding, we believe that the Commission tipped the balance too far towards reducing MSS obligations which will result in undue difficulties and financial hardship for television stations, in particular for stations in small markets that are the least able to shoulder these financial burdens. Although the phased plan adopted in the *Relocation Order* will result in substantial hardships for broadcast stations, particularly in coordinating coverage of significant news stories by stations from different sized markets, Broadcasters do not ask the Commission to make fundamental changes in its decision. Rather, we ask for minor changes and clarification that would reduce the risks that smaller market stations will never be compensated for an expensive relocation to narrow channels, and that would reduce the time period during which stations will be expected to operate without a full complement of BAS channels.

### **The Commission’s Relocation Plan**

Under the *Relocation Order*, the ultimate clearing of 35 MHz of BAS spectrum will occur in two phases. In Phase I, a two-year negotiation period will begin this year. Before the first 2 GHz MSS licensee begins operations, it will be required to relocate all BAS users in the top-30 television markets. At that point, stations in the remaining television markets will lose the use of BAS Channel 1, and be reduced to sharing six channels. In the following three years, MSS licensees must relocate the BAS users in markets 31-100, restoring to stations in those markets the ability to use seven BAS channels. The Commission did not provide for any relocation during

Phase I of stations operating in markets 100-210, and those stations will be limited to six BAS channels throughout Phase I.

At the point when the Phase I spectrum allocation proves insufficient to accommodate new MSS services, Phase II relocation proceedings will begin. The *Relocation Order* does not establish any test for determining when the Phase I allocation is insufficient or set a clear trigger for the beginning of Phase II. Rather, it appears that Phase II can be launched by a single MSS applicant's sending a letter to a BAS incumbent indicating that it desires to negotiate for Phase II spectrum. Once again, the Commission has provided for a two-year mandatory negotiation period, and operation by MSS licensees in Phase II can begin only after BAS operations in the top-30 television markets have been relocated. Within three years of the first MSS operations in Phase II spectrum, MSS licensees would be obliged to relocate BAS operations in markets 30-70, and two years after that, BAS users in the remaining television markets must be relocated.

As with Phase I, once MSS operations begin in Phase II spectrum, BAS users in markets below the top-30 will lose channels. Stations in markets 31-70 will lose the use of Phase I BAS Channel 1. Stations in smaller markets, which will then still be operating under the original BAS channel plan, will have to give up two channels, restricting BAS operations in their markets to five channels. These smaller market stations use BAS facilities for news-gathering, as do stations in larger markets, but also often use this spectrum to provide links to satellite stations and translators over their widespread, rural service areas. Thus, a reduction from seven channels to five may significantly impede these stations' ability to provide viewers with their present level of service.

Overhanging this entire structure, the Commission established a sunset date, beyond which MSS would no longer be obligated to pay for the relocation of BAS incumbents. *Relocation Order* ¶¶ 50-54. That obligation will end, under the Commission’s decision, ten years after the first negotiation period for Phase I commences.

The Commission itself understood the problems that this phased relocation plan will cause for broadcasters, particularly where broadcasters in markets in different relocation steps cover the same event, such as election coverage in Missouri where St. Louis and Kansas City stations may need BAS spectrum in Jefferson City, while stations there and in other smaller markets will still be operating under an earlier channel plan. *Id.* ¶¶ 36-37.<sup>3</sup> Some of these problems are inherent in any long-term relocation plan, and Broadcasters do not ask the Commission to make fundamental changes. There are, however, specific changes the Commission should adopt that would not impose unreasonable early costs on MSS, but that would help ensure that broadcasters and the people they serve – especially those in smaller markets – will not bear the brunt of the introduction of MSS service.

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<sup>3</sup> The *Relocation Order* (¶ 37) suggests that these difficulties could be alleviated through the use of BAS Channels 8 and 9, which are in a different part of the spectrum. Although that may be helpful in some situations, it is not likely to be the solution for all stations. Many recently-issued BAS licenses do not authorize operations on Channels 8 and 9. Further, not all ENG trucks are equipped for these channels, and reconfiguring stations’ equipment to use them would impose further unreimbursed costs on broadcasters, contrary to the Commission’s objective of providing spectrum to MSS without burdening incumbent users.

## **The Commission Should Require Relocation of Stations in All Markets in Phase I**

Under the *Relocation Order*, only stations in the 100 largest television markets would be relocated by MSS licensees during Phase I. Broadcasters in smaller markets would lose one channel for however long Phase I continues, and if MSS moves into Phase II, would lose another channel, resulting in operation with six channels for an indefinite period and only five channels, none of which would line up with the channels in use in larger markets, for five years after the commencement of MSS operations in Phase II spectrum.

The Commission should reconsider this decision and require MSS licensees to relocate BAS operations in all markets within five years of beginning Phase I operations, and before any Phase II relocation occurs. Under this plan, BAS operations in all markets would never have fewer than six channels available for use during the transition. Although BAS is more lightly used for Electronic News Gathering (ENG) in smaller markets than in larger ones where there are more news operations, the number of stations offering news in even smaller markets is growing, and with it, the need for BAS channels. Further, as we noted above, many small markets cover very large geographic areas, and use satellite stations and translators to provide over-the-air service to viewers across their markets. Many of these stations use BAS channels to connect their main studios to satellite stations and translators. Eliminating two of the seven now useable BAS channels will cause significant hardships for stations in smaller markets.

Further, because under the *Relocation Order*, these stations would operate under a different channel plan than larger stations for many years,<sup>4</sup> broadcasters would face difficult coordination problems every time stations from different sized markets cover the same event. Indeed, under the *Relocation Order*, during the initial parts of Phase II, *three different channelization plans* would be in effect at the same time. Were all stations operating under the BAS Phase I channels before Phase II begins, as Broadcasters request, no more than two different channel plans will ever be in place at the same time, and the time when small markets will be operating under different plans than larger markets would be reduced.

Another reason for the Commission to require that MSS relocate all stations during Phase I is the uncertainty as to when and whether Phase II may be reached. The Commission is aware that two of the three early MSS providers (Iridium and ICO) have already gone bankrupt, and press reports indicate that demand for the third early entrant – Globalstar – has been far less than expected.<sup>5</sup> In establishing relocation rules, the Commission should recognize that, if demand for MSS does not materialize or is less than the Commission expected when it allocated 35 MHz for

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<sup>4</sup> Even if Phase II negotiations were to begin as soon as the Phase I relocation of markets 31-100 were completed (three years after MSS operations begin or five years from now), small markets would not be operating under a common channel plan with larger markets until seven years later (two years for negotiations and relocation of markets 1-30, three more years for relocation of markets 31-100, two more years for relocating the remaining markets). Thus, under even the most optimistic assumptions, from the time MSS operations begin, the smallest markets would be forced to operate under an inconsistent channel plan and with reduced channels for at least ten years.

<sup>5</sup> See, e.g., “Another Long Shot at Global Cellular Service.” *The New York Times*, Aug. 27, 2000, Sec. 3 at p. 4 (Globalstar told financial analysts that it “would have 500,000 subscribers and \$500 million in revenue this year. So far, though, it has 13,000 subscribers and, for the first half of the year, only \$2 million in revenue;” Globalstar has recently defaulted on a bank line of credit).

that service, BAS operations may be left in limbo. While the Commission obviously cannot guarantee that MSS operators will remain in business, it can establish an obligation to relocate all BAS operations as part of Phase I, which will ensure that BAS operations will not be harmed if Phase II is delayed or is never reached.

### **The Sunset Date Should be Eliminated or Tied to the Beginning of Phase II**

The *Relocation Order* (¶ 52) provides that, ten years after the beginning of the initial negotiating period for Phase I relocations, all obligations of MSS licensees to relocate BAS operations will cease. Broadcasters believe that this provision at a minimum creates an incentive for MSS applicants to “game” the system to avoid relocation obligations, or results in an almost certainty that small market stations will never be compensated for relocating.

The Commission should reconsider its decision and eliminate the sunset date altogether. While the sunset date establishes an absolute end to MSS obligations to broadcasters, the MSS licensees are left entirely in control of the pace of relocation. Broadcasters cannot decide or even affect the date when – or even if – Phase II relocation will begin.

Moreover, even if a particular television station decides to replace its ENG equipment during Phase I, it may not be able to use equipment that is compatible with the BAS Phase II channel plan. BAS channels are, as the Commission is aware, shared among all BAS licensees in a market. The change from one channel plan to another, as the Commission recognized (*id.* ¶ 45), is one that must be made simultaneously by all stations in a market. Thus, it is only when all stations in a market collectively change to a new channel plan that broadcasters can use equipment set for that channel plan.

Further, since the Commission will allow MSS licensees to involuntarily relocate incumbents (*id.* ¶ 48), broadcasters will not have the ability to cause substantial delay in relocation. Thus, if there is a delay in relocation of BAS licensees, it will be caused by the decisions of MSS licensees. The fixed sunset date established in the *Relocation Order*, however, places the entire risk of a delay in relocation on the incumbents. That burden should be reversed, and instead placed on the parties – the MSS licensees – who will control the pace of relocation.

If the Commission does not eliminate the sunset date, it should revise its decision to tie the beginning of the sunset period to the beginning of Phase II negotiations. Under the *Relocation Order*, it is almost inevitable that broadcasters in small markets will ultimately be forced to relocate without compensation. The Commission provided two years for negotiations for the first Phase I relocations. Even assuming that the initial 30 markets are relocated during the negotiating period (and that result is not required), then MSS would have three years in which to relocate the next 70 markets. If demand for MSS service develops rapidly and at that time a request were made for Phase II spectrum, then another two-year negotiation period would ensue, after which the MSS licensees would have three additional years for the second relocation of markets 31-100. At that point, ten years would have elapsed and there would be no further relocation obligation. Incumbents in markets 101-210, who would then still be operating under the existing BAS channel plan, would be required to relocate without any compensation.

Even if it were possible for relocations to proceed faster, MSS licensees would have every incentive to accept a brief delay in seeking Phase II spectrum in order to entirely avoid any relocation obligation to the stations in small markets. This is particularly so since the Phase II channel plan will likely require conversion to digital equipment and be more costly than the Phase

I relocation, which often can be achieved by retuning existing equipment. *See id.* ¶¶ 21, 35, 67. Thus, under the *Relocation Order*, the heaviest burden of relocation will fall on stations in small markets, which have the smallest revenues, and which at the same time will be facing the heaviest burdens in converting their television transmission operations to digital.

Further, because the sunset date is fixed, even if MSS never uses Phase II and that spectrum is eventually allocated to a different service, the licensees in that service would doubtless argue that they had no relocation obligation to BAS incumbents because of the sunset date. As the Commission recognized, its *Emerging Technologies* doctrine<sup>6</sup> establishes “a requirement that the new technology licensees take upon themselves the burden of all actions necessary to provide incumbents with comparable facilities.” *Relocation Order* ¶ 112. The sunset date established in the *Relocation Order*, however, has the opposite effect and would ensure that the burden of providing incumbent BAS operators – especially those in small markets – would fall on those incumbents themselves.

The sunset date, if it is retained at all, should be set at ten years following the commencement of negotiations for Phase II spectrum, whenever that occurs. If MSS demand grows quickly and Phase II spectrum is needed at an early date, changing the sunset provision would not have any effect on MSS licensees. If demand grows slowly or does not materialize, changing the sunset date will ensure that incumbents will not be forced to bear the burden on a relocation expense tied to events beyond their control.

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<sup>6</sup> *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, 7 FCC Rcd. 6886 (1992).

## **Phase II Relocation Expenses of New BAS Licensees**

Paragraph 59 of the *Relocation Order* provides that any grant of a new BAS license will be conditioned on the licensee's operating only in the Phase I band. It further provides that such new licensees will, when Phase II arrives, be required to relocate their operations to the Phase II channel plan without compensation. Broadcasters request that the Commission reconsider this decision and provide for compensation for Phase II relocation of such new BAS operations.

As we discussed above, BAS licensees do not operate in a vacuum, but instead must use the same channel plan as other BAS users in their markets. So, if a station starts offering news after the *Relocation Order* and seeks a BAS license, it must use BAS equipment that operates in the same channel plan as the incumbent stations in its market. Particularly if, as the Commission anticipates (*id.* ¶ 21), Phase II BAS equipment will be digital, licensees who must operate initially using the Phase I channel plan would be forced to make a high initial investment in digital equipment and then face continuing coordination difficulties until their market is relocated to the Phase II channel plan.

The phased relocation plan was intended to benefit MSS licensees by reducing their up-front costs. It should not have the unintended result of increasing the costs for stations to begin news operations during the transition. The Commission should reconsider its decision and provide that BAS operators which are licensed during Phase I must be relocated to the Phase II channel plan by MSS licensees.

## **Other Issues**

Broadcasters ask that the Commission make one other change in the relocation procedures and clarify one aspect of the *Relocation Order*. First, we ask that each time that a mandatory

negotiation period begins, the Commission issue a public notice to that effect, including contact information for the responsible MSS licensees. Since the MSS licensees may not be aware of all BAS incumbents operating in each relocation cycle, issuing a public notice would put all parties on notice and provide a means by which incumbents who were not contacted by the MSS licensees can be included in negotiations.

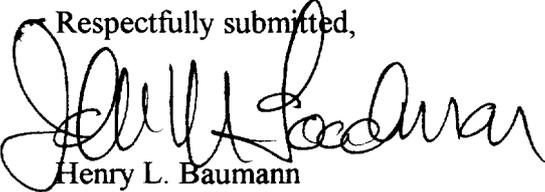
Second, the Commission should clarify that if a station license is renewed or transferred during the relocation period, that station's status as an operator of incumbent BAS facilities will not be affected. This is meant to ensure that a licensee which acquires a station with existing BAS equipment will not be viewed as a new BAS licensee, and will be entitled to be relocated by MSS licensees.

## **Conclusion**

For the foregoing reasons, the Commission should reconsider portions of the *Relocation Order*. It should require that all BAS incumbents be relocated to the Phase I channel plan before any Phase II relocation commences. It should eliminate the sunset date or, at a minimum, set it at

ten years after the initial Phase II negotiations begin. The Commission should also require MSS licensees to relocate new BAS licensees to the Phase II channel plan.

Respectfully submitted,



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