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November 8, 2001

Magalie Salas Roman, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Salas:

Attached are the timely-filed reply comments of the Society of Broadcast Engineers, Inc. to the ET Docket 00-258 Further Notice of Proposed Rulemaking regarding Third Generation wireless services ("3G").

Sincerely,

/s/ Dane E. Ericksen

Dane E. Ericksen

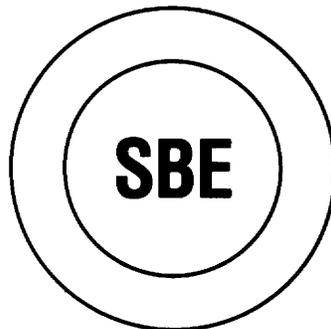
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Enclosure

cc: All SBE FCC Liaison Committee members
All SBE Officers and Directors

**Reply Comments of the
Society of Broadcast Engineers, Inc.**

**ET Docket 00-258
FNPRM
(3G)**



November 8, 2001

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SOCIETY OF BROADCAST ENGINEERS, INC.
Indianapolis, Indiana

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Allocation of 3G Spectrum below 3 GHz)	ET Docket No. 00-258
)	
Mobile Satellite Service)	ET Docket 95-18
)	
Policy & Service Rules for 2 GHz MSS)	IB Docket 99-81
)	

To: The Commission

Reply Comments of the Society of Broadcast Engineers, Inc.

The Society of Broadcast Engineers, Incorporated (SBE), the national association of broadcast engineers and technical communications professionals, with more than 5,000 members world wide, hereby respectfully submits its reply comments in the above-captioned Memorandum Opinion & Order ("MO&O") and Further Notice of Proposed Rulemaking ("FNPRM") relating to below 3-GHz spectrum for third-generation ("3G") wireless services.

**I. A Portion of 2 GHz TV BAS Spectrum Should Continue to be
Reallocated to MSS**

1. SBE disagrees with the comments of Cingular Wireless ("Cingular") that the Commission should entirely dissolve the 70 MHz of spectrum allotted for the Mobile Satellite Service ("MSS"), that is, 35 MHz at 1,990–2,025 MHz and 35 MHz at 2,165–2,200 MHz, and re-allocate that spectrum to the commercial mobile radio service ("CMRS"). SBE believes that there is a need and a market for MSS, but as pointed out in the comments of Telenor Broadband Services ("Telenor") and Inmarsat Ventures ("Inmarsat") to the related IB Docket 01-185 rulemaking, as a "niche" player. Perhaps if MSS had not been delayed for years by international allocation battles SBE would not now find itself in agreement with Telenor and Inmarsat, but the fact is that the extensive coverage now available using terrestrial cellular and PCS means that the window of opportunity for MSS telephones in the tens of millions has most likely been lost. Accordingly, SBE agrees with the comments of Motorola, Inc. ("Motorola") and several CMRS providers that MSS has no need of the now reserved 17 MHz of spectrum at 2,008–2,025 MHz, and that this spectrum would be better utilized if re-assigned for third generation wireless services ("3G") or used as relocation spectrum for other displaced entities.

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2. SBE believes that the two-step compromise solution for vacating broadcasters from the bottom 35 MHz of the 2 GHz TV broadcast auxiliary service (“BAS”) band is proving unworkable, given the adjacent-market problem where electronic news gathering (“ENG”) operations by stations in the top-30 markets dictate that identical band re-farming must simultaneously occur in below-top-30 markets that are close to a nearby top-30 market; the San Francisco-Oakland-San Jose TV market (Nielsen Designated Market Area (“DMA”) Number 5) and the Monterey-Salinas market (DMA Number 112) is a good example, and only one of many. Faced with the realization that the compromise two-step plan adopted by the Commission in the ET Docket 95-18 Second Report & Order (“R&O”) and Second Memorandum Opinion and Order (“MO&O”) won’t work in practice, SBE would rather see the entire 1,990–2,025 MHz portion of the 2 GHz TV BAS spectrum reallocated in a single step, and have only a single conversion rather than two. Although reallocation of 2,008–2,025 MHz to terrestrial 3G systems or other relocated users may introduce terrestrial stations that will need to be coordinated to avoid adjacent-channel and brute force overload (“BFO”) interference, SBE would rather have such a terrestrial neighbor be a financially solvent CMRS/3G rather than a hanging-on-by-its-fingernails MSS. Of course, this same caveat applies to any terrestrial users immediately above 2,110 MHz.

3. Because the upper and lower users to a re-farmed and narrowed 2,025–2,110 MHz TV BAS band are presently “moving targets,” SBE is in the un-enviable position of commenting on how future unknown adjacent-band users may affect 2 GHz TV BAS operations. Based on this NPRM, the Commission may relocate fixed links above or below 2 GHz TV BAS, and the Commission may or may not have mobile 3G or MSS telephones below TV BAS. This puts 2 GHz TV BAS into the same unknown status that ITFS/MMDS licensees are just beginning to emerge from as a result of the radical changes to those services adopted by MM Docket 97-217 (“digital, cellularized, two-way ITFS/MMDS”), but broadcasters additionally have a clock ticking over their heads in the form of the still running mandatory two-year negotiation period that commenced on September 6, 2000.

4. SBE is concerned that if changes are not made, broadcasters are at risk of getting partially through a Phase I reallocation from 17 MHz wide channels to 14.5 MHz wide channels, only to have one or more MSS carriers again declare bankruptcy.¹ In that event

¹ SBE notes with considerable alarm the comments of Mr. David A. Montanaro to the related IB Docket 01-185 rulemaking. In his comments, Mr. Montanaro notes that he is a former officer of Teledesic Corporation, which is linked to New ICO in “several ways.” Mr. Montanaro’s comments include a reference to his web site, www.teledesiclitigation.com, which in turn includes information that makes SBE concerned about the financial integrity of New ICO. Mr. Montanaro lawsuit claims that

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SBE fears TV BAS licensees would be considered as “creditors” and possibly get paid 10 cents on the dollar while still having to move to vacate frequencies. This could conceivably allow a “New New ICO” to buy the spectrum cleared by the TV BAS users partially paid by a bankrupt New ICO; that is, something similar to Iridium Satellite LLC buying a bankrupt \$10 billion Iridium LLC system for \$10 million. An interrupted transition to 2,008–2,110 MHz Phase I 2 GHz TV BAS spectrum would be a disaster for ENG operations. It would be far better to jump immediately to a 2,025–2,110 MHz Phase II spectrum, and convert from analog to digital modulation now.

II. The Commission Must Ensure that Broadcasters Receive Comparably Performing Radios for the Re-Farmed 2 GHz TV BAS Band, or Acceptable Monetary Compensation

5. Whatever action is taken in regard to 2,008–2,025 MHz, the Commission must not waiver from its ET Docket 95-18 decision that broadcasters are entitled to comparably performing equipment in a re-farmed 2 GHz TV BAS band. If 2,008–2,025 MHz is re-allocated from MSS to 3G, the Commission needs to address how the allocation of costs for relocating broadcasters is to be borne between those two industries.

6. The Commission needs to place the present two-year negotiating period between MSS entities and broadcasters that commenced on September 6, 2000, “on hold,” and not re-start mandatory negotiations (with a new two-year period), until:

- (1) the completion of this rulemaking;
- (2) the completion of the related IB Docket 01-185 (“Terrestrial MSS”) rulemaking;

“Teledesic’s resources have been deployed in support of New ICO interests” which included an effectively unsecured \$200 million loan for New ICO’s use, that this loan and other supposedly unauthorized and/or inappropriate actions by Teledesic are the subject of a “derivative action lawsuit” against the Teledesic Board of Directors. According to the web site,

Derivative Action is a lawsuit initiated by a shareholder against the board of directors, management and/or other shareholders of a corporation. In this type of action, the suing shareholder acts on behalf of the corporation. Derivative Actions typically arise when there is fraud, mismanagement, self-dealing and/or dishonesty being ignored by the officers and board of directors of a corporation.

Since New ICO will be a major MSS entity obligated to reimburse broadcasters for vacating the bottom 18 to 35 MHz of the current 1,990–2,110 MHz TV BAS band, any possible financial shenanigans on the part of New ICO, Teledesic, or any other MSS entity is a rightful subject for the Commission, the SBE and broadcasters to inquire about. SBE would hope that the Commission will thoroughly consider the questionable financial viability of the MSS parties in crafting its decision to this rulemaking.

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(3) resolution of the pending SBE petition for partial reconsideration of the ET Docket 95-18 Second R&O and Second MO&O; and

(4) the completion of the pending ET Docket 01-75 rulemaking, which proposes to allow digital modulation for stations in all of the TV BAS bands, and not just the 6.5 and 18 GHz TV BAS bands, so that the mode of operation about to be required for TV BAS by the FCC will also be authorized by the FCC.

In this regard, SBE fully supports the October 22, 2001, *Motion for Stay of Mandatory Negotiation Period* joint petition filed by the National Association of Broadcasters (“NAB”) and the Association for Maximum Service Television, Inc. (“MSTV”), asking that the Commission immediately issue an Order staying the in-progress two-year mandatory negotiation period.²

² SBE notes that Section 74.690(e)(1) of the FCC Rules incorrectly states that the mandatory two-year negotiation period will begin on September 6, 2010; of course this is incorrect: the two-year mandatory negotiation period commenced on September 6, 2000 (*i.e.*, pursuant to Paragraph 53 of the July 3, 2000, Second Report & Order and Second Memorandum Opinion & Order to ET Docket 95-18, thirty days after the publication of that document in the Federal Register, which occurred on August 6, 2000).

III. Summary

7. The Commission should indeed reallocate 2,008–2,025 MHz from MSS to 3G, or use it as relocation spectrum for other displaced entities, with the caveat that whoever is placed above and below the new TV BAS spectrum be required to protect TV BAS receivers from BFO and adjacent channel interference. 3G can make immediate use of that spectrum while also resulting in spectrum auctions that will likely bring hundreds of millions of dollars into the U.S. treasury. The Commission should halt and revise the present two-step 2 GHz TV BAS transition plan to a single-step plan where broadcasters vacate the entire bottom 35 MHz of the 2 GHz TV BAS band in a single step, convert from 1,990–2,110 MHz spectrum to 2,025–2,110 MHz spectrum, and convert from analog to digital modulation. MSS and 3G should be required to fund this conversion up-front before any broadcasters are required to vacate ENG Channels A1 (1,990–2,008 MHz) or A2 (2,008–2,025 MHz), so has to guarantee that broadcasters are not “left holding the bag” halfway through the conversion due to the financial failure of any party.

Respectfully submitted,

Society of Broadcast Engineers, Inc.

/s/ Troy Pennington, CSRE
SBE President

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Its Counsel

November 8, 2001

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