National Association of NAB BROADCASTERS

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March 26, 2002

Mr. William J. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ET Docket No. 95-18

Dear Mr. Caton:

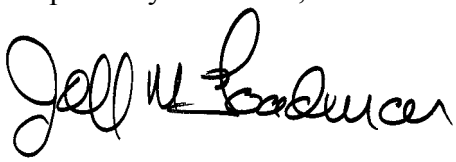
This morning, David Donovan and Victor Tawil, of the Association for Maximum Service Television, and Karen Fullum Kirsch, Kelly Williams, and the undersigned met with Peter Tenhula, Bryan Tramont, and Paul Margie to discuss the partial relocation of Broadcast Auxiliary Service operations out of the spectrum at 2 GHz. A copy of a PowerPoint presentation we used during the meeting is attached.

In addition, we distributed a survey which NAB conducted of stations in the 30 largest television markets – the markets subject to the first phase of relocation – to determine the status of relocation discussions. A copy of that report is attached. It shows that, almost 19 months after the beginning of a two-year mandatory negotiation period, only two stations have even had preliminary discussions with a Mobile Satellite Service licensee, and no stations have reached a relocation agreement.

We stressed the uncertainty that has been created by the Commission's consideration of three separate proceedings dealing with the spectrum to be vacated by broadcasters, and in particular, the difficulty for manufacturers of BAS equipment to be able to predict what type of replacement equipment will be needed, and when. We argued that adoption of any of the proposals before the Commission should lead to adoption of a one-phase transition plan. Finally, we reiterated the need for the Commission to stay the mandatory negotiation period now in effect that puts crucial news-gathering operations at risk, while not requiring any action by Mobile Satellite Service licensees.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,



Jack N. Goodman

Attachments

cc: Peter Tenula
Bryan Tramont
Paul Margie

Broadcasters & the 2 GHz Spectrum

March 26, 2002

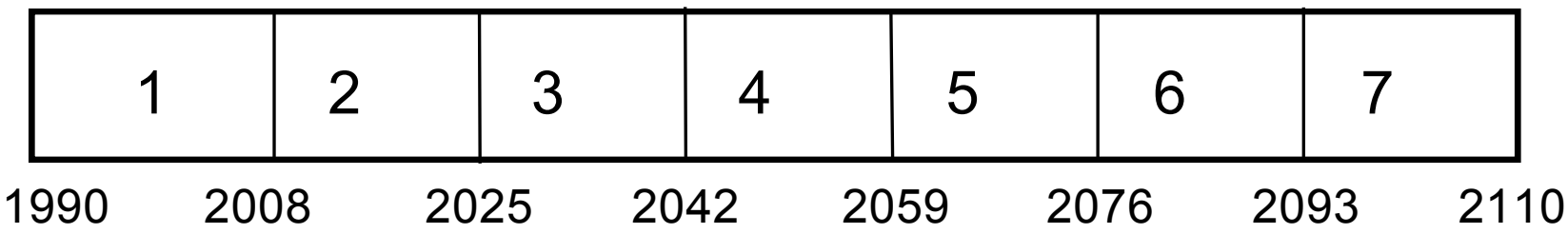
National Association of NAB® BROADCASTERS

MSTV

The Current 2 GHz Band

- 1990-2110 MHz allocated to Broadcast Auxiliary Service (BAS)
- Divided into 7 channels (one 18 MHz & six 17 MHz)

Current 2 GHz band



What is it used for?

- Electronic News Gathering
  - live coverage of news events
  - on-the-scene coverage of news
- Coverage of sports
  - “helmet-cams” etc.
- FCC concluded that“BAS is a critical part of the broadcasting system by which information and entertainment is provided to the American public.”

Why is there a controversy about 2 GHz?

- The FCC has been looking at reallocating part of the BAS band since the early 1990's
- 35 MHz allocated to Mobile Satellite Service (MSS)
- There are 8 MSS licensees, but only ICO appears to near operational status
- Demand for MSS has been far less than expected and early entrants have gone bankrupt

Broadcasters' Objectives

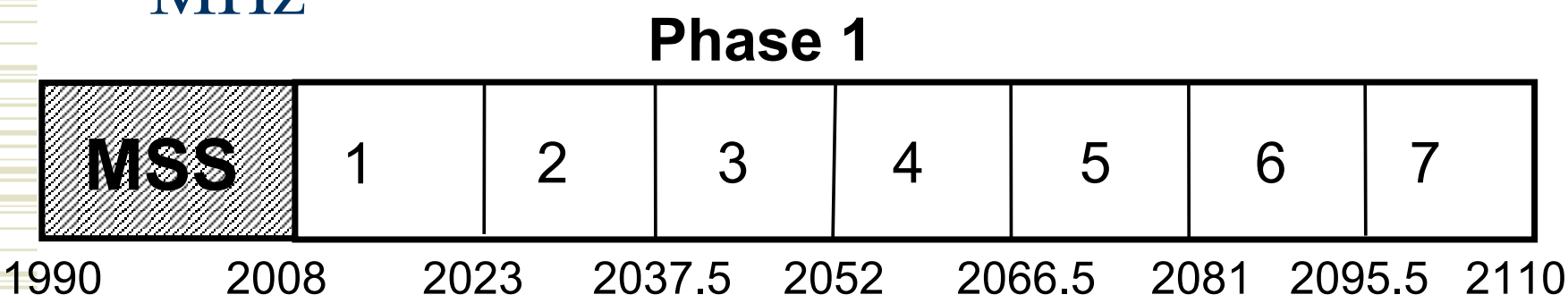
- Broadcasters have not opposed reallocating part of the 2 GHz BAS band
- Broadcasters want a spectrum plan that will allow at least the same level of BAS service
- Broadcasters want to be compensated for the actual cost of relocating to a new spectrum plan

The FCC Relocation Plan

- In 2000, FCC adopted a multi-phase transition to the new band plan
- MSS will be allocated spectrum in 2 phases
- Within each phase, stations will be converted in several steps, depending on market size
- FCC said this will allow MSS licensees to “defer costs where possible”

Phase I

- Phase I will reduce BAS to 102 MHz by clearing channel 1
- Analog equipment can be used in Phase I
- BAS Phase I spectrum will be 2008-2110 MHz



Phase I Schedule

- MSS required to complete relocation of BAS in the top-30 TV markets *before* beginning operations
- Markets 31-100 must be relocated within 3 years of first MSS operations
- FCC Order does not require relocation of 100+ markets during Phase I

Phase I Channels

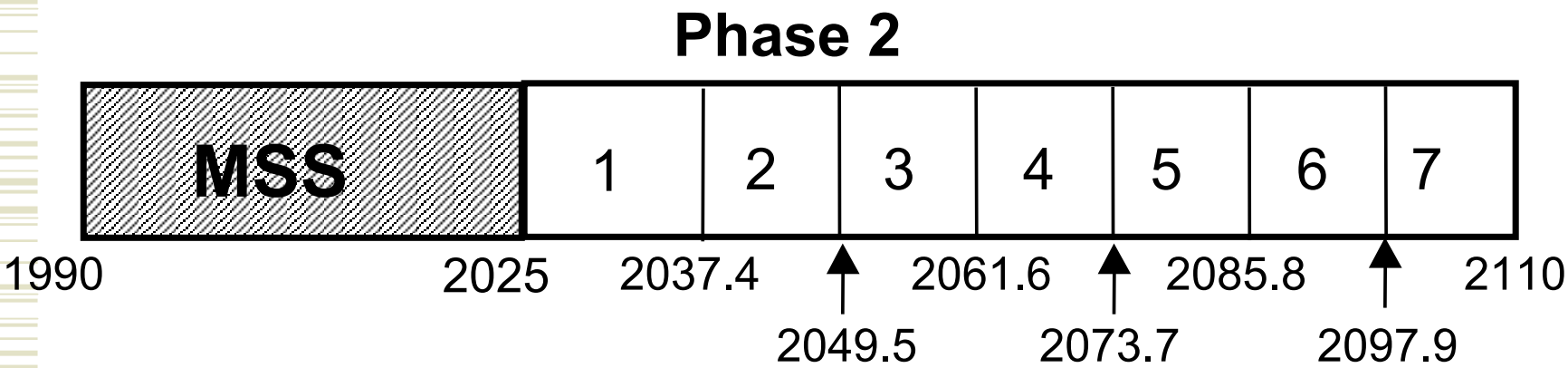
- When MSS begins operation, current BAS channel 1 will no longer be available
- Top-30 markets will have 7 channels using the Phase I channel plan
- Markets 31-100 will be reduced to 6 current channels until they are relocated
- 100+ markets will only have 6 channels throughout Phase I

Phase II

- When will it begin?
- FCC says it will begin when any MSS licensee is assigned spectrum in the 2008-2025 MHz band
- That will begin a new mandatory 2-year negotiation period for the top-30 markets

Phase II

- Phase II will shrink BAS to 85 MHz by clearing current BAS channel 2
- Digital equipment required for Phase II
- BAS Phase II spectrum will be 2025-2110 MHz

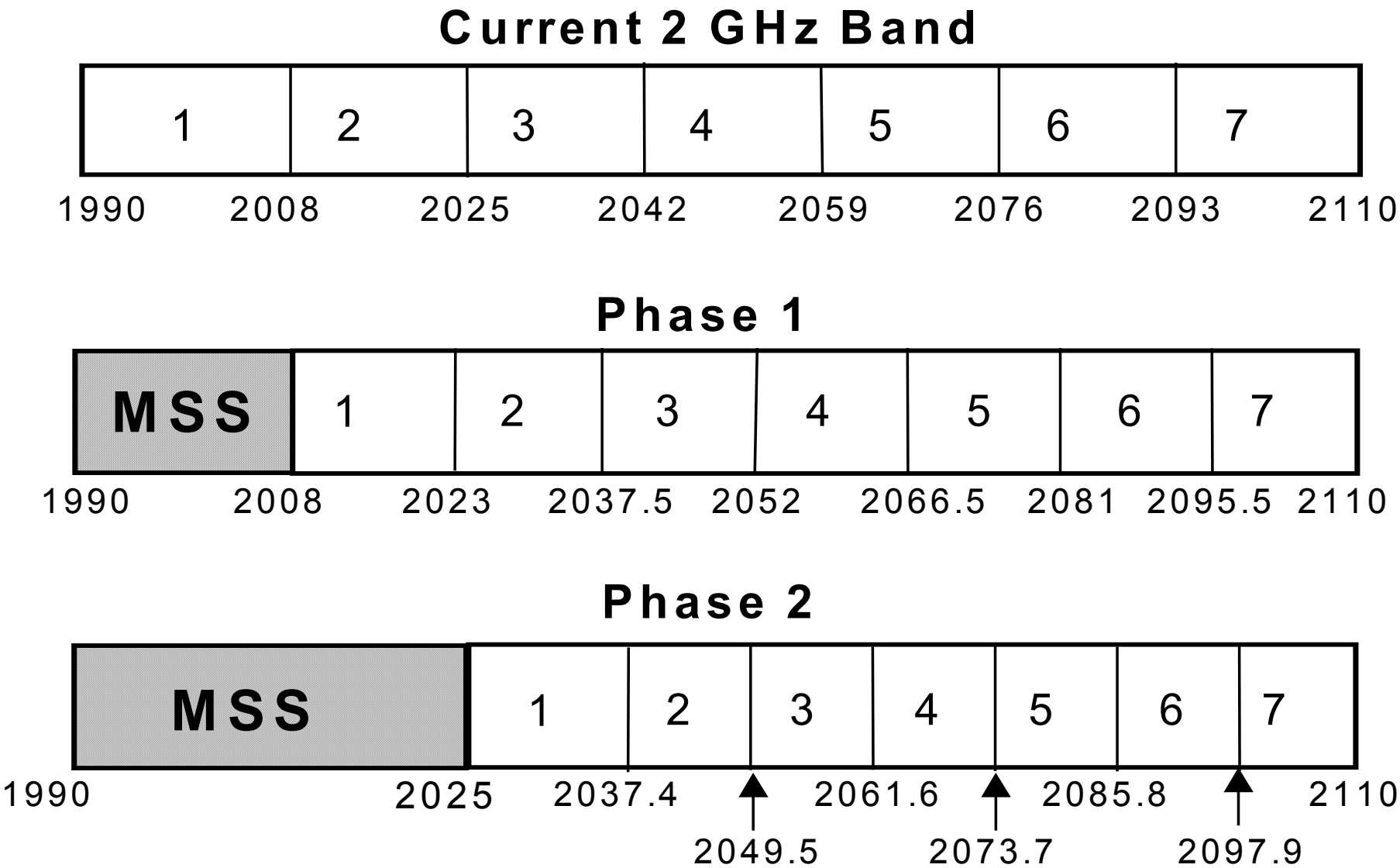


Phase II Schedule

- Top-30 markets must be relocated before MSS operations begin in Phase II spectrum
- Within 3 years after Phase II MSS operations begin, markets 31-100 must be relocated
- Two years later (*i.e.*, 5 years after Phase II operations begin), all remaining markets must be relocated

Phase II Channels

- When MSS Phase II operations begin, current BAS channel 2 will be reallocated
- Top-30 markets will again have 7 channels using the Phase II channel plan
- Markets 31-100 will be reduced to 6 channels until they are relocated
- 100+ markets will shrink to 5 channels until relocation


Current 2 GHz Band
1
2
3
4
5
6
7
1990
2008
2025
2042
2059
2076
2093
2110
Phase 1
MSS
1
2
3
4
5
6
7
1990
2008
2023
2037.5
2052
2066.5
2081
2095.5
2110
Phase 2
MSS
1
2
3
4
5
6
7
1990
2025
2037.4
2061.6
2085.8
2110
2049.5
2073.7
2097.9

Sunset

- *Emerging Technologies* decision included a sunset for relocation obligations
- FCC set sunset for BAS spectrum at 10 years after the initial negotiation period for Phase I (*i.e.*, 2010)
- After the sunset, incumbent BAS users will become secondary and MSS will not be liable for relocation expenses

Negotiations

- FCC adopted a 2-year mandatory negotiation period, which began September 6, 2000
- If no agreement is reached during a mandatory negotiation period, MSS may, at its own expense, modify or replace incumbents' BAS equipment
- We do not want to be forced into involuntary conversion which will inevitably disrupt service to the public

Problems with the Relocation Plan

- Broadcasters will operate for many years with inconsistent band plans from market to market
- Small and medium markets will lose 1 or 2 channels for many years
- While MSS will set pace of transition, fixed sunset date puts burden on broadcasters and encourages MSS delay
- Continued uncertainty makes it difficult to nail down equipment costs

Reconsideration & Appeal

- NAB & MSTV sought reconsideration
  - No decision on reconsideration to date
- ICO appealed relocation plan to the DC Circuit
  - ICO appeal held in abeyance pending reconsideration
  - similar arguments rejected by the court in *Teledesic* decision in December

What's Happening?

- Almost 19 months have elapsed of the 2-year mandatory negotiation period
- NAB surveyed stations in top-30 markets (the first phase of relocation)
- 35.4% of stations responded; at least one response was obtained from a major network affiliate in each market

What's Happening?

- Only 2 stations reported any contact with ICO beyond receipt of information request
- No station reported any substantive discussions with ICO about relocation
- No station has reached a relocation agreement with ICO
- MSS appears to be making no progress towards relocation

Why has there been no progress?

- ICO conceded in March 2001 that there is no viable business plan for MSS as it is presently configured
- Informal discussions with ICO indicate they believe that BAS equipment could be retuned with a kit from the manufacturer on site
- BAS equipment makers have told them on-site reconfiguration will not work generally
- MSS licensees may also be awaiting outcome of other proceedings

Further FCC Proceedings

- The Commission has begun 3 proceedings that affect the 2 GHz relocation:
  - NPRM on MSS licensees offering terrestrial service (August 9, 2001)
  - NPRM on CTIA petition requesting reallocation of some or all of the band for 3G wireless (August 9, 2001)
  - Nextel petition to exchange 800 MHz spectrum for 2 GHz spectrum to clean up public safety band (March 14, 2002)

Impact of These Proceedings

- Adoption of any of the proposals would require that the relocation plan be changed
  - CTIA and Nextel proposals would move part of the MSS band to other services
  - Clearing that spectrum would require that broadcasters be moved off in one phase
  - Terrestrial operations may include separate licensing, delaying band clearing

NAB/MSTV Request for a Stay

- Asked the FCC last October to stay the mandatory negotiation period, citing:
  - ICO admission that it lacks a viable business plan
  - uncertainty created by alternative spectrum proposals
  - almost complete absence of MSS negotiations

What Should the FCC Do?

- Broadcasters support an alternative allocation for the 1990-2025 MHz band that would
  - allow the spectrum to be used for services for which demand exists, and
  - permit a one-step relocation to the final BAS band plan

What Should the FCC Do?

- First step: stay the present mandatory negotiation period pending "resolution of issues concerning the allocation of spectrum at 2 GHz and the relocation plan for BAS incumbents in that band, and if the Commission reallocates a portion of that band, until the licensing of new entrants."

Questions?

2 GHz Spectrum Relocation Negotiations Survey

David Gunzerath, Ph.D.
Vice President, Research and Planning
National Association of Broadcasters
February 21, 2002

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National Association of Broadcasters
Washington, D.C.

NAB Survey on 2 GHz Spectrum Relocation Negotiations

Executive Summary

Surveys were distributed via fax to all full-power commercial television stations with usable fax numbers in the Top 30 Nielsen DMAs in November and December, 2001. Highlights of the findings of this survey include the following:

- A total of 101 stations participated in the survey, for an overall response rate among stations surveyed of 35.4 percent.

- Market participation (*i.e.*, a response was received from at least one ABC, CBS, Fox, or NBC affiliated station in each of the 30 markets surveyed) was 100 percent.

- Of the 101 stations that responded to this survey, only two reported that ICO or another MSS licensee had indicated any intent (beyond an initial information request) to negotiate for compensation the stations' relocation from the 2 GHz spectrum.

- No station responding to this survey reported having had any substantive discussions with ICO or another MSS licensee on spectrum relocation.

    - Consequently, no station reported having reached an agreement with ICO or another MSS licensee for spectrum relocation.

NAB Survey on 2 GHz Spectrum Relocation Negotiations

Methodology

A fax survey was sent to the attention of Chief Engineers of all full-power commercial television stations in Nielsen's Top 30 Designated Market Areas in November 2001, with a second request sent to non-responding stations in early December 2001.[1] The survey asked three questions:

1. Whether ICO or another MSS licensee had indicated its intent, beyond an initial information request, to negotiate for compensation the station's relocation from the 2 GHz spectrum;
2. Whether the station had entered into any substantive discussions with ICO or another MSS licensee on this subject;
3. Whether the station had reached an agreement for relocation with ICO or any other MSS licensee.

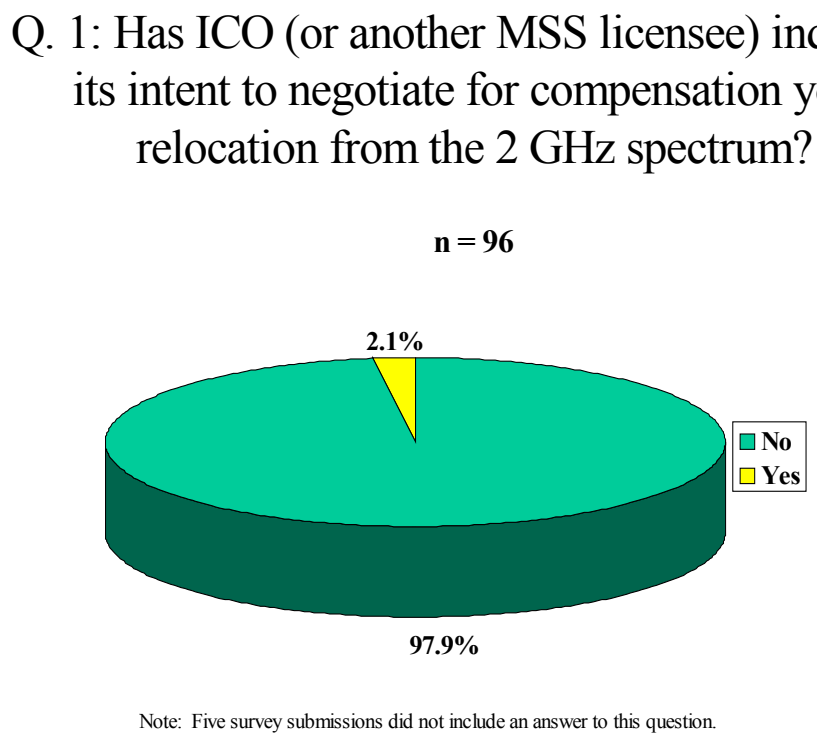
Respondents were also provided with an opportunity to add additional explanatory comments. A copy of the survey instrument is included as Appendix 1. NAB's Research and Planning Department tabulated the data and performed the analyses contained in this report.

The overall response rate to this survey was 35.4 percent, with 101 stations responding out of a total universe of 285 stations. At least one response was received from an ABC, CBS, Fox, or NBC affiliate in each of the 30 markets included in the survey universe. This 100 percent representation of at least one major affiliate from each Top 30 market provides assurance that responses were received from a station with a news program for every market involved in the first phase of the 2 GHz relocation.

[1] Satellites of full-power television stations were not included in the survey universe.

Survey Results

When asked if ICO or another MSS licensee had indicated its intent to negotiate for compensation their stations' relocation from the 2 GHz spectrum, 94 of 96 respondents[2] reported they had not been contacted on this matter (see chart).



In addition, neither of the two respondents who replied affirmatively to this question reported that they had entered substantive negotiations on this topic. Likewise, no station responding to this survey indicated that it had reached an agreement for its relocation from the 2 GHz spectrum.

[2] Five surveys among the total of 101 that were returned did not include an answer to this question.

Conclusion

The results of this survey of Top 30 market stations strongly indicates that no substantive discussions have taken place between ICO (or any other MSS licensee) and television stations in the Top 30 Nielsen DMAs on the subject of station relocation from the 2 GHz spectrum. Only two stations contacted reported having received any indication of an intent to negotiate by ICO or another MSS licensee, and both of these stations said that they had not engaged in any substantive negotiations on this subject.

CHIEF ENGINEERS: WE NEED YOUR HELP!

Survey on 2 GHz Spectrum Relocation Negotiations

NAB is conducting this brief survey to gather information on the current status of negotiations between broadcasters and New ICO Global Communications (or any other MSS licensee) concerning broadcasters' relocation from the 2 GHz Broadcast Auxiliary Services spectrum. This information will be used as background for NAB's comments to the FCC on this issue, which will be filed later this month. If you have any questions regarding this survey, please contact David Gunzerath of NAB Research & Planning at (202) 429-5381. Thank you!

Name: _____ **Email:** _____

Station: _____ **Phone:** _____

1. Has ICO (or another MSS licensee) indicated its intent, beyond an initial request for information, to negotiate for compensation your relocation from the 2 GHz spectrum?
❑ Yes ❑ No

(If "No" to Question 1, please proceed to Question 4)

If "Yes" to Question 1:

2. Have you had any substantive discussions with ICO (or another MSS licensee) on this subject? ❑ Yes ❑ No

3. Have you reached an agreement with ICO (or another MSS licensee) for your relocation from the 2 GHz spectrum? ❑ Yes ❑ No

4. Please add any additional notes or explanatory comments below: _____

_____

_____

_____

_____

_____

_____

_____

Please Fax Your Completed Response to (202) 721-8799 or (202) 775-2980 no later than Monday, November 26, 2001.

Thank You!