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May 3, 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

*Re:* ET Docket No. 95-18

Dear Ms. Dortch:

This morning, Victor Tawil of the Association for Maximum Service Television, and Karen Fullum Kirsch, Kelly Williams, and the undersigned met with Don Abelson, Breck Blaylock, Susan Crawford, Rick Engelman, Bruce Franca, Howard Griboff, Trey Hanbury, Keith Larson, Paul Locke, Geraldine Matise, Chris Murphy, Sankar Persaud, Alan Stillwell, Gary Thayer, Ed Thomas, Thomas Tycz, and John Wong, to discuss the partial relocation of Broadcast Auxiliary Service operations out of spectrum at 2 GHz. A copy of a PowerPoint presentation we made during the meeting is attached.

In addition, we distributed a survey conducted by NAB of stations in the 30 largest television markets – the markets subject to the first phase of relocation – to determine the status of relocation negotiations. A copy of that report is attached. It shows that only two stations had even conducted preliminary discussions with a Mobile Satellite Service licensee, and that no station reported reaching a relocation agreement.

We pointed out that, while the MSS licensees had not been moving forward to clear the first part of the spectrum to be relocated, broadcast incumbents in the band were subject to involuntary relocation once the two-year mandatory negotiation period ends in September. Allowing that to occur would be unfair since broadcasters are not able to determine the pace of negotiations, and would risk valuable news service to the public.

We also 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 a change to a

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one-phase relocation plan. Finally, we reiterated the need for the Commission – as a first step – to stay the mandatory negotiation period now in effect.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack N. Goodman". The signature is written in a cursive, flowing style.

Jack N. Goodman

Attachments

cc: Attendees

# Broadcasters & the 2 GHz Spectrum

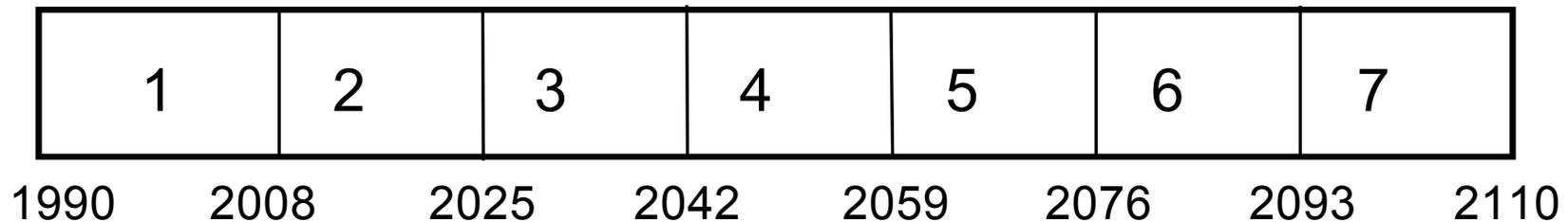
May 3, 2002



# 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

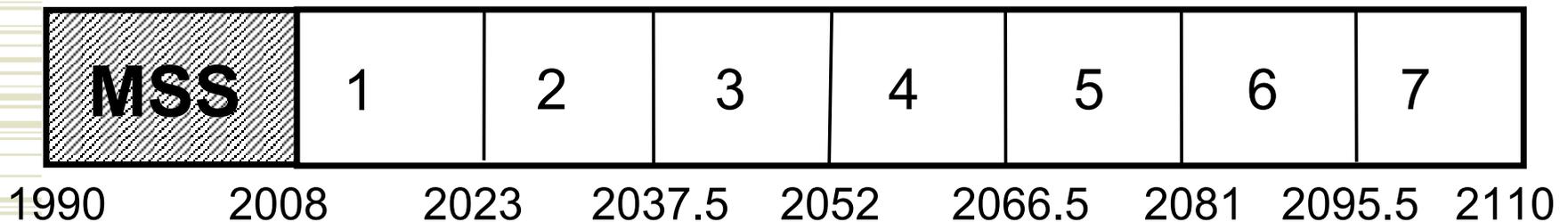


- ◆ In 2000, FCC adopted a multi-phase transition to the new band plan
- ◆ MSS will be allocated spectrum in 2 phases
- ◆ Within each phase, stations will be converted in several steps, depending on market size
- ◆ FCC said this will allow MSS licensees to “defer costs where possible”

# 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 1



# 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 channels until they are relocated
- ◆ 100+ markets will only have 6 channels throughout Phase I

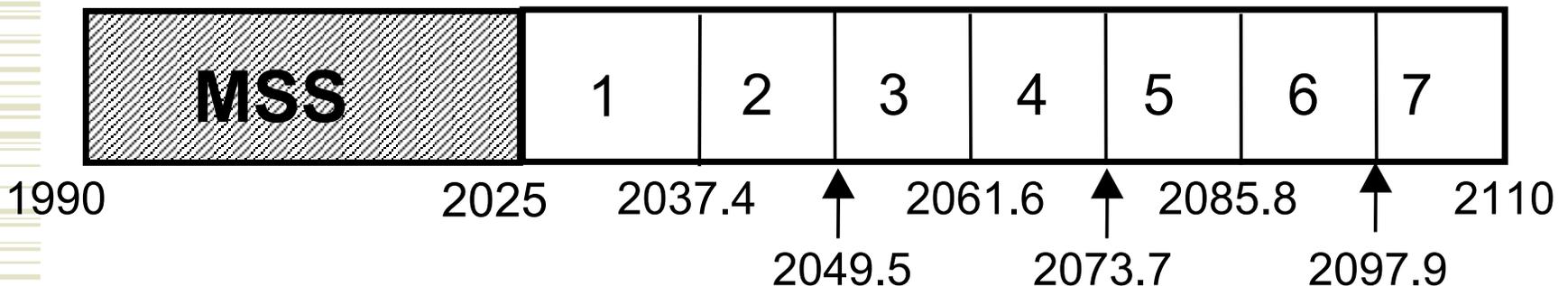
# Phase II

- ◆ 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 2



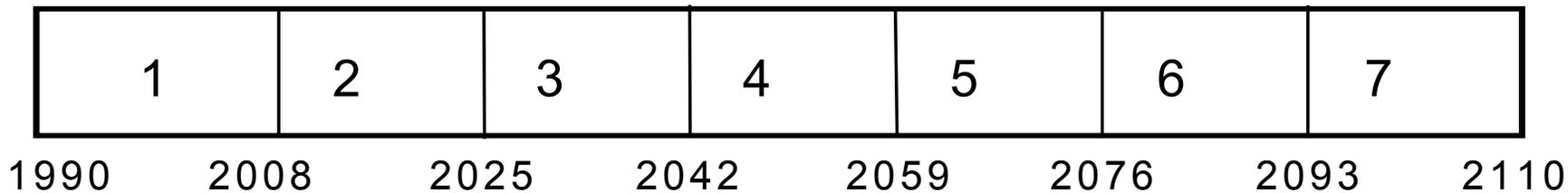
# Phase II Schedule

- ◆ 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

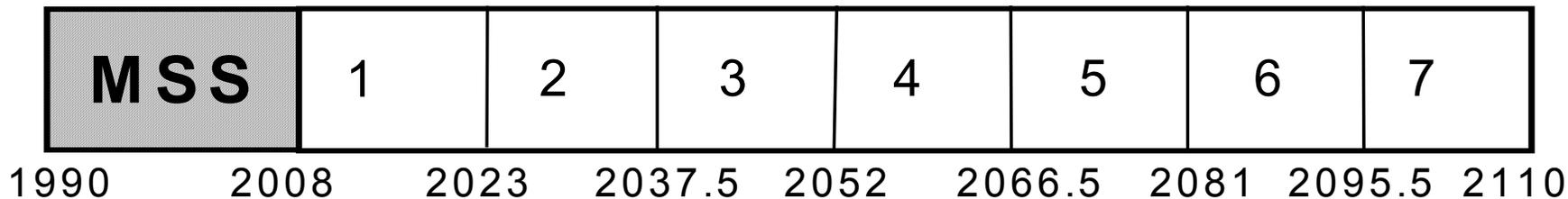
# Phase II Channels

- ◆ 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

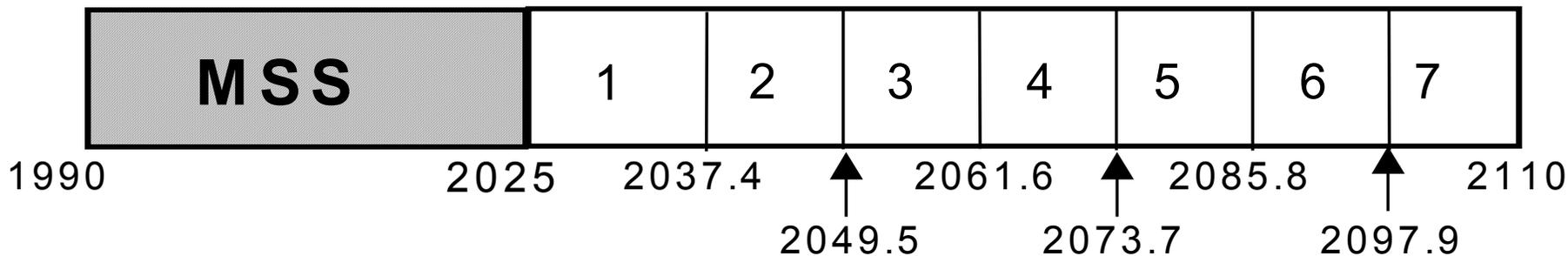
## Current 2 GHz Band



## Phase 1



## Phase 2



# 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
  - similar arguments rejected by the court in *Teledesic* decision in December
  - ICO dismissed its appeal in April 2002

# What's Happening?

- ◆ Almost 20 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
  - Allowing terrestrial service would obviate the need to defer MSS costs
    - Terrestrial operations may also 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.<sup>1</sup> 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.

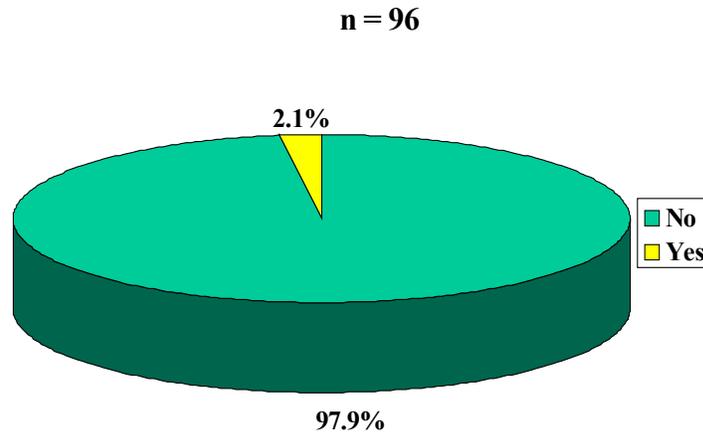
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<sup>1</sup> Satellites of full-power television stations were not included in the survey universe.

### *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<sup>2</sup> reported they had not been contacted on this matter (see chart).

Q. 1: Has ICO (or another MSS licensee) indicated its intent to negotiate for compensation your relocation from the 2 GHz spectrum?



Note: Five survey submissions did not include an answer to this question.

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.

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<sup>2</sup> 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.