

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	CS Docket No. 99-250
Amendment of Eligibility Requirements in)	
Part 78 Regarding 12 GHz Cable)	RM-9257
Television Relay Service)	

To: The Commission

COMMENTS

AOL Time Warner Inc. ("AOL Time Warner"), by its attorneys, hereby submits the following comments responding to the Petition for Reconsideration filed on July 29, 2002 by the Walt Disney Company, ABC, Inc. and the National Association of Broadcasters (collectively the "Petitioners"). The Petitioners request that the Commission reconsider its May 12, 2002 decision amending Part 78 of the Commission's rules to expand the class of entities eligible for licenses in the Cable Television Relay Service ("CARS").¹ The Order permits multichannel video program distributors ("MVPDs") to use fifty megahertz of spectrum (13.20-13.25 GHz) (the "BAS Exclusive Band) currently allocated to the broadcast auxiliary service ("BAS"), as "secondary users" on either a fixed basis, e.g., for point-to-point transmission, or on an ad hoc basis, e.g., for electronic news gathering ("ENG") purposes. For the following reasons, AOL Time Warner generally supports the Petitioners' request to reimpose limitations on MVPD use of these frequencies for fixed purposes, but these limitations should only apply within larger

¹ Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service, Report and Order, CS Docket No. 99-250 (rel. May 21, 2002) ("Order").

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metropolitan areas where interference congestion is highest. MVPDs should remain fully eligible in all television markets for shared use of the BAS Exclusive Band for itinerant ENG purposes, and for fixed use in all but the most congested urban areas.

AOL Time Warner fully agrees with the Petitioners regarding the importance of the BAS Exclusive Band to television-based news gathering organizations (such as local broadcasters and cable news networks) for the effective and timely transmission of video and audio from temporary, remote locations for relay back to the main studio. The BAS Exclusive Band is an essential tool needed by news organizations to effectively cover breaking news and to provide seamless coverage of regional and national political and other events important to the public interest. Most importantly, the availability of the BAS Exclusive Band is critical in emergency situations for news coverage and live reporting requiring prompt dissemination to the public. When such an emergency occurs, most broadcast and cable programmers are able to promptly commence continuous news coverage of the emergency only because they can immediately use the BAS Exclusive Band to easily connect their mobile facilities with the main studio. In order to preserve the high-quality and prompt production of video programming in these situations, the BAS Exclusive Band should be remain exclusively available for TV pickup video production use in those areas where the potential for interference is the greatest.

The Commission's determination in the Order that MVPDs may operate in the BAS Exclusive Band on a "secondary" fixed basis jeopardizes the availability of these frequencies to news organizations, and therefore should be rescinded. This is especially the case in larger, more urban metropolitan areas with the highest demand for use of microwave frequencies. Under the new scheme, fixed "secondary" users of the band will transmit simultaneously with remote news facilities attempting to use the band on a "primary" basis, thereby creating the potential for

debilitating interference. Current technology dictates that remote, mobile use of the BAS Exclusive Band is only possible where channels are not already in use by another licensee. Thus, simultaneous usage of a particular channel in the BAS Exclusive Band is not possible where the paths mutually interfere. Under the new scheme, TV pickup facilities must first search for and utilize only channels either unused on the needed paths, or if in use, not able to cause or receive interference to or from the temporary BAS operation. If neither of these options is available due to fixed use by MVPDs, the TV pickup facility operator must identify and contact the “secondary” fixed user and request that its facility be turned off. If the operator cannot do so, or if the fixed user refuses to immediately turn off its facility, then the BAS Exclusive Band is effectively not available for use by its “primary” users. Therefore, if an MVPD is ever using the BAS Exclusive Band on a fixed basis, it always has the potential to effectively foreclose remote use by itinerant TV pickup operations.

Under the new scheme, attempts to timely resolve interference issues between the remote “primary” users and fixed “secondary” users, especially in a time of emergency, will result in chaos. In time sensitive situations, it would be cause undue delays to identify and contact the particular offending fixed user. Such a situation would be further complicated by the fact that MVPDs’ fixed facilities are commonly unmanned, making timely resolution all the more difficult. If the “primary” service licensees are forced to identify and communicate with the “secondary” licensees each time a “primary” licensee wants to use the spectrum, and then wait for the fixed user to actually resolve the offending interference, the primary/secondary distinction is effectively rendered meaningless and unworkable. Again, this level of complication will only be exacerbated in emergency and other time sensitive situations. For

these reasons, the decision to allow use of the BAS Exclusive Band on a fixed, albeit “secondary,” basis jeopardizes TV pickup operations and should be reconsidered.

On the other hand, MVPDs should not be foreclosed completely from using the BAS Exclusive Band. MVPDs have demonstrated a legitimate need for additional CARS spectrum that should be balanced against the probability of harmful interference problems. The problems raised by the Petitioners and highlighted above are likely to arise mainly in urban areas where high demand for use of radio spectrum frequencies presents the worst congestion and highest potential for coordination problems.² Thus, MVPDs should be restricted from using the BAS Exclusive Band for fixed purposes only in the larger metropolitan areas (e.g., within 35 miles of the reference point for the principal community in each of the top-30 DMAs).³ By limiting MVPD eligibility for fixed use in the expanded band to areas with reduced potential for interference (e.g., outside the most congested urban environments), the Commission would be balancing the needs of video producers for reliable availability of spectrum on an ad hoc basis (e.g., for ENG purposes) with MVPDs’ need for additional fixed microwave spectrum.

MVPDs in all areas should remain eligible to use the BAS Exclusive Band for itinerant ENG purposes. Prior to the rule change, the band was exclusively available to news organizations of television broadcasters and cable networks with more than 5 million subscribers

² For over twenty years, the Commission has been aware of the congestion in the CARS bands in the larger, more urban markets. See, e.g., Definition of Congested Areas in the Broadcast Auxiliary Services and the Cable Television Relay Service, Report and Order, 6 FCC Rcd 5658 (1991); Digital Termination Systems, Second Report and Order, 54 RR2d 1091, ¶ 37 (1983).

³ See 47 C.F.R. §§ 76.51, 76.53. The top-30 distinction tracks the deliniation adopted by the Commission in the digital television context for identifying television stations in the “largest television markets” that the Commission felt should lead the transition to digital transmissions. AOL Time Warner’s experience indicates that the frequency congestion problems highlighted above are likely to arise most commonly in these same 30 metropolitan areas. See Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809, ¶¶ 76-78 (1997).

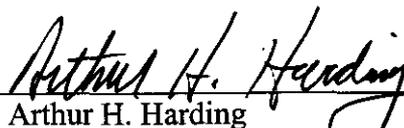
Today, these channels very successfully operate as full time local news services, and are equally important as broadcast news outlets in disseminating news and essential information, and especially in times of emergency or crisis.⁴ These local cable news channels therefore have an equal, if not more compelling need to access the BAS Exclusive Band and should be accommodated.

WHEREFORE, Petitioners' reconsideration request should be granted, with the following modifications: MVPDs should remain fully eligible in all areas for shared use of the BAS Exclusive Band for itinerant ENG purposes, and for fixed use in all but the most congested urban areas.

Respectfully submitted,

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Dated: August 12, 2002

⁴ For example, during the 9/11 tragedy, while several local broadcasters were temporarily forced off the air, New York One provide continuous coverage of events using feeds from several remote locations and was able to relay important emergency information to the public.

CERTIFICATE OF SERVICE

I, Barbara J. Chatman, hereby certify that copies of the foregoing Comments have been served this 12th of August, 2002, by first class United States Mail, postage prepaid, on the following:

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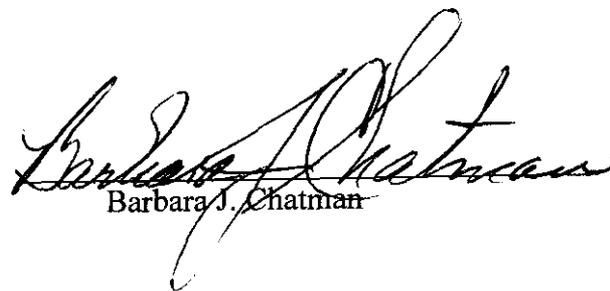
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