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

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
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	
Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands	)	IB Docket No. 01-185
	)	
To: The Commission	)	

PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION AND THE NATIONAL ASSOCIATION OF BROADCASTERS

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SUMMARY

The reallocation of 2 GHz spectrum currently occupied by Broadcast Auxiliary Service (BAS) licensees to new uses has become exceedingly complex, with a number of potential new entrants involved and other unique factors complicating the relocation process. Although the Commission has attempted in its most recent relocation plan to balance the interests of all the parties involved, the resulting plan misses that goal by threatening the effective provision of incumbent services in ways that the Commission did not take adequately into account when it adopted the revised relocation plan. Accordingly, the Association for Maximum Service Television, Inc. and the National Association of Broadcasters submit this petition respectfully requesting the Commission to reconsider and/or clarify certain aspects of the revised relocation plan.

The Commission's decision to adopt a plan that, among other modifications, requires BAS incumbents in Markets 31-210 to vacate <u>two</u> BAS channels without receiving <u>any</u> compensation or adequate assurance of future compensation merits reconsideration because it (1) underestimates the harm that the revised plan will cause to local news operations in markets outside the top 30, (2) underestimates the disruption that the plan will cause to ENG operations across markets operating on different channel plans and (3) fails to comprehend that the new entrants will have little incentive to compensate BAS incumbents that have already vacated the reallocated spectrum. As a result of the Commission's failure to understand and acknowledge the extent of the adverse impact of the revised relocation plan on the provision of incumbent BAS services in markets outside the top 30, the revised relocation plan violates key precepts of administrative law and is inconsistent with the public interest.

To remedy these problems, the petition asks the Commission to adopt a relocation plan that is consistent with established Commission precedent and serves the public interest by fairly balancing the needs and interests of the incumbents, the new entrants and the public they serve. The petition proposes the following alternatives:

- Issue a brief Public Notice seeking expedited comment on alternative relocation plans that will more effectively serve the competing goals of preserving incumbent services while facilitating MSS access to 2 GHz spectrum.

- Develop a relocation plan that minimizes up-front costs to MSS *not* by burdening the incumbents but by spreading relocation costs across *all* the new entrants who will benefit from the BAS relocation. This approach would be fully consistent with the *Emerging Technologies* principles adopted in this proceeding. Although this approach might introduce some further delay into the BAS relocation, that delay would not be the fault of the incumbents, but the inevitable result of the Commission's decision to reallocate a portion of the 2 GHz spectrum in the midst of the relocation process.

- If the Commission determines that at least some BAS incumbents will need to vacate spectrum prior to receiving relocation compensation, revise the rules to ensure that new entrants have proper incentives to compensate the incumbents in a timely manner. The Commission should thus (1) place a condition on each MSS entrant's license or authorization providing that the license or authorization will be revoked automatically in the event that the licensee fails timely to pay its pro rata share of the costs of relocating all BAS incumbents in all markets; and (2) provide that no fixed or mobile service provider shall be entitled to receive a license to use 2 GHz spectrum vacated by BAS unless and until the applicant has provided (or posted a bond to provide) pro rata reimbursement to BAS incumbents for any relocation costs that have not been reimbursed by MSS entrants *or* provided (or posted a bond to provide) pro rata reimbursement to MSS providers that have paid relocation compensation to BAS.

Finally, if the Commission further revises the relocation plan but nevertheless maintains the need for operation of dual channel plans (as opposed to providing for simultaneous relocation of BAS incumbents in all markets), the petition asks the Commission to clarify certain aspects of the relationship between licensees operating on the old and new channel plans.

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PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION AND THE NATIONAL ASSOCIATION OF BROADCASTERS

The Association for Maximum Service Television, Inc. (MSTV) and the National Association of Broadcasters (NAB)[1] respectfully request the Commission to reconsider and to clarify, to the extent necessary after reconsideration, certain aspects of its decision in the *Third Report and Order and Third Memorandum Opinion and Order* (*Third R&O/MO&O*) in the above-referenced proceeding that threaten to undermine the quality and viability of local news services in local television markets outside the top 30. We realize that in reaching the decision the Commission was attempting to accommodate a complex spectrum reallocation scenario and

[1] MSTV is a non-profit trade association of local broadcast television committing to achieving the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations that serves and represents the American broadcasting industry.

to balance competing interests in preserving incumbent services and minimizing the upfront costs of making spectrum available for new services. However, we believe that the Commission failed to understand fully and/or to give adequate consideration to the effect of the revised relocation plan on the ability of broadcasters outside the top 30 markets to provide critical local news and emergency information services to the public. As a result, the decision departs impermissibly from the Commission's governing precedent and undermines the public interest.

As demonstrated below, the relocation plan adopted in the *Third R&O/MO&O*, by requiring Broadcast Auxiliary Service (BAS) incumbents in Markets 31-210 to vacate two BAS channels without receiving any compensation and without adequate assurance of future compensation, will have a materially more adverse impact on BAS incumbents in markets 31-100 than did the initial relocation plan adopted in the *Second Report and Order and Second Memorandum Opinion and Order* (*Second R&O/MO&O*). The plan will also cause more disruption to the provision of local news services across all markets and could lead to an overall reduction in local news services. To remedy these failings, the Commission should develop a new relocation plan that either (1) compensates BAS incumbents *before* requiring them to vacate spectrum (through contributions from MSS and/or other new entrants into the vacated spectrum) or (2) provides, through explicit and enforceable conditions in the authorizations of new entrants, adequate assurance that all BAS incumbents will be compensated for relocating.

I. BACKGROUND

This proceeding has a long history. A number of proposals have been considered for relocating BAS incumbents from the 1990-2025 MHz band to make spectrum available for MSS (and, now, other fixed and mobile services). Throughout the proceeding, the Commission has professed its commitment *both* (1) to enabling the rapid entry of MSS licenses into the 2

GHz spectrum, in part by minimizing the up-front costs of the BAS location for MSS licensees,[2] *and* (2) to "minimiz[ing] the disruption and downtime BAS licensees will undergo during the transition" and "ensur[ing] the continuity of BAS."[3]

A. Initial Relocation Plan (*Second R&O/MO&O*)

In its first attempt to balance the competing interests of MSS entrants and BAS incumbents, the Commission adopted a two-phased, market-based plan for transitioning BAS incumbents to 2025-2110 MHz. This phased relocation plan was to involve the following steps:

	Top 30 Markets	**Markets 31-100**	**Markets 101-210**
Phase I: clear incumbents from BAS Channel 1 (1990-2008 MHz) (primarily by retuning existing equipment)	Move BAS incumbents to 7 channels of ~15 MHz each at 2008-2110 MHz *before* MSS service commences at 1990-2008 MHz	After MSS service begins, incumbents vacate BAS Channel 1 & continue to operate on original BAS Channels 2-7 until relocated to 7 15-MHz channels (within 3 yrs after MSS service commences)	After MSS service begins, incumbents vacate BAS Channel 1 & operate on original BAS Channels 2-7 throughout Phase I
Phase II: clear incumbents from BAS Channel 2 (2008-2025 MHz) (primarily through purchase of new digital equipment)	Begin negotiations when MSS entrants indicate an intention to operate in BAS Channel 2 (2008-2025 MHz); Move incumbents to 7 channels of ~12 MHz each at 2025-2110 MHz *before* MSS service commences at 2008-2025 MHz	After MSS entrants begin Phase II negotiations, incumbents vacate BAS Channel 2 and operate on 6 Phase I channels until relocated to 7 12-MHz channels (within 3 yrs after MSS service commences in 2008-2025 MHz)	After MSS entrants begin Phase II negotiations, incumbents vacate BAS Channel 2 and operate on 5 17-MHz channels (current BAS Channels 3-7) until relocated to 7 12-MHz channels (within 5 yrs after MSS service commences in 2008-2025 MHz)

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[2] *See, e.g.*, Second Report and Order and Second Memorandum Opinion and Order, *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, 15 FCC Rcd 12315, 12325 (2000) (*2 GHz Reallocation Second R&O/MO&O*); Third Report and Order and Third Memorandum Opinion and Order, *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, FCC 03-280, ¶¶ 20-21 (rel. Nov. 10, 2003) (*2 GHz Reallocation Third R&O/MO&O*).

[3] *2 GHz Reallocation Second R&O/MO&O*, 15 FCC Rcd at 12326; *see also 2 GHz Reallocation Third R&O/MO&O* ¶ 20.

This plan, while complicated and problematic in several respects, acknowledged the substantial burden on broadcasters in Markets 31-100 of losing BAS spectrum before being moved to the new spectrum plan. Thus, the initial relocation plan assured BAS incumbents in Markets 31-100 of the right to operate on six BAS channels throughout the transition, with the Commission prohibiting MSS entrants from using 2023-2025 MHz until all BAS licensees were relocated to the final channel plan because Phase I BAS Channel 2 used this spectrum and "it would be excessively onerous to forbid the use of this channel, as well as Phase I Channel 1, during the Phase II transition."[4]

Before the initial relocation plan could be implemented, the Commission (1) expanded the scope of MSS spectrum use by authorizing MSS providers to include an Ancillary Terrestrial Component (ATC) in their systems,[5] and (2) based upon a determination that MSS would not need all of the 2 GHz spectrum originally allocated to it, reallocated portions of the 1990-2025 MHz band (1990-2000 MHz and 2020-2025 MHz) to new fixed and mobile services, including advanced wireless services.[6] These decisions complicated the BAS relocation and called into question the viability of the initial relocation plan. The anticipated increased (and more immediate) use of the entire 1990-2025 MHz band made it likely that Phase II of the initial plan would be triggered simultaneously with or shortly after the start of Phase I,

[4] *2 GHz Reallocation Second R&O/MO&O*, 15 FCC Rcd at 12327.

[5] *See* Report and Order and Notice of Proposed Rulemaking, *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, IB Docket No. 01-185, 18 FCC Rcd 1962 (2003), *appeal pending*, AT&T Wireless Services, Inc. and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 03-1191 (D.C. Cir. filed July 8, 2003).

[6] *See* Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, 18 FCC Rcd 2223 (2003), *petitions for reconsideration pending*.

increasing the complexity and reducing the usefulness of a two-phased relocation.[7] In addition, the authorization of ATC for MSS enhanced the viability of the MSS business plan and made it easier for MSS entrants to access capital to cover the up-front costs of launching their services.[8] In light of these changed circumstances, the Commission adopted a revised relocation plan in the *Third R&O/MO&O*.

B. Revised Relocation Plan (*Third R&O/MO&O*)

Under the revised plan, the Phase I transition to 15-MHz channels is eliminated and BAS incumbents must be relocated in a single phase to seven 12-MHz digital channels. However, the obligations of MSS entrants to compensate BAS incumbents for this relocation continue to be staggered over time depending on the market served by the incumbent. Although MSS entrants must pay to relocate BAS incumbents in the top 30 television markets to the new digital channel band before commencing operations, BAS incumbents in markets outside the top 30 must cease use of *both* BAS Channels 1 and 2 (and be limited to only five BAS analog channels) when an MSS entrant commences operation in the band. MSS entrants are not obligated to pay to relocate BAS incumbents serving markets 31-100 to the new channel plan until three years after MSS operations commence, while incumbents in markets 101-210 will be limited to five analog BAS channels for at least five years after the start of MSS operations.

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[7] *2 GHz Reallocation Third R&O/MO&O* ¶¶ 31-33.

[8] *See, e.g.*, *Ex Parte* Letter from Tom W. Davidson, Counsel to Creditors of Globalstar, L.P., to Marlene Dortch, Secretary, FCC, IB Docket No. 01-185 (May 10, 2002) (*Globalstar Creditor Ex Parte*) ("Grant of ATC authority will enable Globalstar to attract additional capital to fully realize the public interest potential of MSS.").

Despite acknowledging that the revised relocation plan "will create short-term burdens for some BAS licensees,"[9] the Commission otherwise concluded that the revised plan "is not overly burdensome to MSS entrants [and] . . . is still fair to incumbents in the band."[10] This conclusion reflects an inadequate understanding of the current use of BAS spectrum in markets 31-100 and, ultimately, an unfair balancing of the burdens of making spectrum available for new services. In fact, the revised relocation plan will, as described below, significantly harm the ability of broadcasters outside the top 30 markets to provide local news services to the public.

II. THE REVISED RELOCATION PLAN MAKES ARBITRARY DISTINCTIONS AMONG TELEVISION MARKETS AND UNDERESTIMATES THE HARM TO LOCAL NEWS OPERATIONS OUTSIDE THE TOP 30 MARKETS.

The Commission's decision that BAS incumbents in markets outside the top 30 can be required to give up two BAS channels for several years is based on an implicit assumption that broadcasters in those markets provide measurably less news service than do broadcasters in the top 30 markets. Particularly in markets 31-100, that assumption is not supported by the facts. According to the Economists Incorporated study cited with approval by the Commission in the *Biennial Ownership* proceeding, 60 of the 70 television markets from 31-100 have at least four stations offering local news; 32 of those markets (including #91) have at least five, and in some cases as many as seven, broadcast stations offering local news.[11] The 2 GHz BAS Cost Survey submitted in this proceeding in October 2003 similarly shows that the quantity of ENG equipment in each market is virtually the same across markets 21-50 and

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[9] *2 GHz Reallocation Third R&O/MO&O* ¶ 38.

[10] *Id.* ¶ 41.

[11] Comments of Fox, NBC/Telemundo, and Viacom, MM Docket No. 02-277, Economists Incorporated Economic Study A at 8-11 (Jan. 2, 2003).

remains high all the way down to market 100.[12] Figure 11 of the Cost Survey, showing projected total costs for transitioning 2 GHz BAS equipment to the new digital channel plan, shows that transition costs (which correlate directly to the amount of ENG equipment) are *higher* for television markets 31-40 than for markets 21-30 and are only slightly lower for markets 41-50 than for markets 21-30.[13] A few examples further demonstrate that market size alone is not necessarily a reliable indicator of the amount of local news being offered in the market.

Market Number	**Market**	**# Stations Offering Local News**
1	New York	10
9	Atlanta	5
22	St. Louis	4
27	Charlotte	5
30	Nashville	4
31	Kansas City	6
33	Milwaukee	6
37	San Antonio	7
41	Memphis	6
49	Providence-New Bedford	6
55	Fresno-Visalia	7
67	Roanoke-Lynchburg	5
72	Honolulu	6
91	Colorado Springs-Pueblo	5

Moreover, the commitment that stations in the mid-size markets make to their local news operations is as great as that of larger-market stations. The attached summary of station news services expenditures (Exhibit A) shows that stations generally devote between 20 and 25 percent of their expenses to news, regardless of the size of the market they serve.[14]

[12] *See Ex Parte* Letter from Lawrence A. Walke, NAB, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 95-18, Attachment at 8 (Oct. 16, 2003) (*NAB/MSTV Oct. 16 Ex Parte*) (Figs. 7 and 8).

[13] *Id.*, Attachment at 11 (Fig. 11).

[14] Indeed, the highest proportion of news expenses to total station expenses is 26 percent, for stations in markets 31-40; stations in markets 51-60 spend an average of 24.5 percent of total expenses on news.

Moreover, local news services generate a greater share of revenue for stations in markets outside the top 25 than they do for stations in the largest markets.[15]

These statistics show that broadcasters in markets 31-100 make nearly as extensive use of BAS spectrum as do broadcasters in at least markets 21-30. It follows, therefore, that taking away *nearly 30 percent* of the BAS spectrum in those markets will significantly hamper the ability of stations in those markets to sustain their local news services at current levels. Markets with as few as four local news stations fully utilize the seven BAS channels currently available to them. Local newscasts, which usually occur at the same time on all stations, typically include reports via ENG from several locations during each newscast. BAS channels are also used regularly for traffic and other reporting from helicopters and for transmitting video from stationary cameras at major traffic routes and intersections.

Crowding is even more problematic when additional stations from outside a mid-size market seek to cover a newsworthy event taking place within the market. Just the past few months in the Washington, D.C. area have seen heavy out-of-market coverage of smaller-market events such as the Washington area sniper trials in southern Virginia and Hurricane Isabel along the North Carolina and Virginia coasts. On a more recurrent basis, state capitals located in markets outside the top 30 (and the vast majority of them are, including, *e.g.*, Santa Fe (NM), Albany (NY), Harrisburg (PA), Austin (TX), Springfield (IL) and Lansing (MI)) frequently generate news affecting local markets (big and small) throughout their states. These markets

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[15] According to a survey conducted by the Radio and Television News Directors Association (RTNDA), stations in markets 26-150 derive over 40 percent of their revenue from local news, while stations in the largest 25 markets derive only 27.9% of station revenue from local news. *See* RTNDA, 2002 Newsroom Profitability Research, *available at http://www.rtnda.org/research/profit_2002.shtml* (last visited Jan. 6, 2004).

thus regularly experience a significant number of out-of-market broadcasters seeking to use local BAS spectrum to provide ENG services to their viewers (including, for example, to provide live coverage of local campaign and election events). If the smaller markets are limited to only five BAS channels (only three of which overlap the new channels used by larger-market broadcasters and all of which are occupied by analog equipment that, as described more fully below, may cause and receive undue interference to and from narrowband digital equipment), it may become impossible to accommodate all of the stations seeking to provide coverage.

Finally, the congestion problem in mid-size markets reduced to five BAS channels will be further exacerbated by the presence of relatively more fixed 2 GHz BAS links in these markets. The Commission suggests that this problem can be resolved by relocating fixed links to 7 GHz and 13 GHz,[16] but this is an inadequate solution for two reasons. First, fixed links currently operating on BAS Channels 3-7 are not entitled to be relocated outside the 2 GHz spectrum and thus will remain at their current assignments (within the limited spectrum now available for mobile ENG) during the transition.[17] Second, 7 GHz or 13 GHz assignments may not be appropriate for fixed links currently assigned to BAS Channels 1 and 2 because the propagation characteristics at the higher frequencies make it much more expensive (because of the need for many more relay stations) to use those frequencies for fixed links supplying signals (sometimes over long distances) to satellite and translator stations.

[16] *See, e.g.*, *2 GHz Reallocation Third R&O/MO&O* ¶ 39 n.103.

[17] Although the Commission has provided for relocation of fixed links currently operating on Channels 1 and 2 *before* MSS entrants begin operation, it has not made the same accommodation for fixed links on Channels 3-7. *2 GHz Reallocation Third R&O/MO&O* ¶¶ 48-52.

III. THE REVISED RELOCATION PLAN UNDERESTIMATES THE INTER-MARKET COORDINATION AND INTERFERENCE PROBLEMS CAUSED BY DUAL CHANNEL PLAN OPERATIONS.

In devising the revised relocation plan, the Commission never conducted any technical interference analysis of the effects of operating ENG systems on inconsistent band plans. Had it done so, the Commission would have realized that the revised relocation plan will generate substantial inter-market interference and coordination problems, thereby hindering the ability of local television stations to offer ENG coverage of newsworthy events taking place in neighboring markets.

The interference problems associated with coordinating ENG systems employing different channel plans was examined in a study commissioned by the Society of Broadcast Engineers (SBE) and conducted by Microwave Radio Communications (MRC).[18] MRC conducted laboratory tests at its facilities in December 2003 to quantify some of the adjacent/co-channel energy requirements for proper operation of ENG systems employing different ENG band plans (one using COFDM digital facilities and the other using conventional FM analog radios) resulting from the revised relocation plan. MRC found that the interference problems between the two systems are potentially massive. COFDM digital operations would be degraded by analog operations on the old band plan by around 43 dB, and conventional FM video analog operations would be degraded by around 46 dB by COFDM operations using the new band plan. SBE "does not believe that any amount of improved frequency coordination would be able to

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[18] *See* Petition for Reconsideration of the Society of Broadcast Engineers, ET Docket No. 98-15 (Jan. 7, 2004) (citing Microwave Radio Communications, BAS Band Plan Testing 17 MHz and 12 MHz Channel Plans, Jan. 5, 2004).

withstand [the] four to five order of magnitude worsening of the frequency coordination requirement" revealed by this study.[19]

Based on the MRC study findings, SBE concludes that if only BAS incumbents in the top 30 television markets are converted to the new digital channel plan prior to commencement of MSS operations, then broadcasters from the top 30 markets and from adjacent markets 31-100 (which are large enough to have their own ENG operations but still forced to operate on the old channel plan using analog radios) will be *incapable* of providing simultaneous ENG coverage of a major news event occurring in one of the mid-size markets because massive interference will result, causing at least "greatly diminished news coverage, and perhaps even no news coverage."[20] This means that either the top-30 market stations and major news networks (including cable news networks) will have to refrain from covering the news event or the smaller market stations will be unable to cover a major news event taking place in their own market. This is especially the case where the event is an unanticipated breaking news story and coverage must take place without frequency coordination. As the attached chart of adjacent television markets (Exhibit B) shows, this problem is likely to be widespread because many (if not most) markets outside the top 30 are adjacent to top 30 television markets.

Even if the interference problems could be addressed and resolved, the incompatibility of the old and new channel plans would still complicate the coordination process. Because only three of the new channels fit within the (now five) old BAS channels, smaller-market broadcasters will have little flexibility in coordinating BAS spectrum use with out-of-market broadcasters, particularly if they also need to accommodate fixed links.

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[19] *Id.* ¶ 6.

[20] *Id.* ¶ 7.

Inter-market coordination will be even more difficult when a broadcaster from a market outside the top 30 seeks to cover a newsworthy event within a top 30 market. Indeed, accommodating out-of-market broadcasters operating on the old channel plan in a top 30 market may be nearly impossible because *two* narrowband channels would need to be made available for each out-of-market broadcaster using a single "old" channel. Large markets that heavily utilize all seven available BAS channels are unlikely to be able to spare two of those channels at a time for secondary, out-of-market broadcasters covering the same news event.

IV. THE REVISED RELOCATION PLAN PROVIDES LITTLE INCENTIVE AND NO CONCRETELY ENFORCEABLE OBLIGATION FOR NEW ENTRANTS TO COMPENSATE BAS INCUMBENTS OUTSIDE THE TOP 30 MARKETS.

The revised relocation plan provides inadequate incentives and assurance that BAS incumbents outside the top 30 markets ultimately will be compensated for relocating to the new BAS channel plan. Under the revised relocation plan, BAS incumbents in markets outside the top 30 are required to vacate the entire spectrum allocated for MSS *before* receiving any relocation compensation. Contrary to the Commission's assumptions in the *Third R&O/MO&O*,[21] once those incumbents have vacated the spectrum, MSS entrants will have *no incentive* even to negotiate in good faith to compensate those incumbents for leaving. Because the spectrum will already be vacant, the MSS entrants will have nothing to gain from reaching agreement with BAS incumbents outside the top 30 markets to compensate them for vacating spectrum they have already cleared. The parties accordingly are unlikely to reach voluntary agreement on compensation arrangements. Under the *Emerging Technologies* doctrine, in the

[21] *See, e.g.*, *2 GHz Reallocation Third R&O/MO&O* ¶ 42 (anticipating that "MSS licensees will move quickly to resume the negotiation process to relocate BAS incumbents in the 1990-2025 MHz band" and providing for an additional mandatory negotiation period for BAS markets 31 and above beginning when the first MSS licensee begins operation).

absence of a voluntary agreement the new entrant could "involuntarily" relocate the incumbent by paying all costs to construct a functionally comparable system in the new spectrum. Here, however, the "involuntary" relocation will already have taken place by regulatory order. Accordingly, the "incentive" for the new entrant to pay the costs of relocating the incumbent to a comparable system also must come from regulatory action – in the form of strictly enforceable obligations to pay such compensation in the absence of a voluntary agreement to the contrary.[22] Without such a requirement, the relocation plan is not likely to accomplish its stated goal.

Although the revised relocation plan here calls on the MSS entrants to pay relocation compensation some years after the spectrum has been cleared, the rules do not provide any simple or self-executing remedy or enforcement mechanism to ensure that compensation in fact is paid. Nor does the revised relocation plan include any rules guaranteeing compensation by other new entrants in the vacated spectrum[23] in the (entirely possible) event that the MSS entrants continue to experience financial difficulties that render them incapable of paying compensation to BAS incumbents outside the top 30 markets.[24]

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[22] This is particularly important in this proceeding in which the MSS entrants have repeatedly demonstrated their commitment to avoiding paying *any* compensation to relocate BAS incumbents. *See, e.g.*, Joint Comments of the MSS Coalition, ET Docket No. 95-18 (May 17, 1996) ("[A]t the same time that the Commission adopts the 1990-2025 and 2165-2200 MHz band allocations for MSS, it should reject the proposal that relocation and reimbursement rules are necessary for these bands."); Petition for Partial Reconsideration of the MSS Coalition, ET Docket No. 95-18 (May 20, 1997) (seeking reconsideration of the Commission's decision to require payment of relocation compensation to incumbents on the ground that it was "both premature and unnecessary").

[23] *See Third R&O/MO&O* ¶ 10.

[24] MSS entrants are continuing to experience financial problems, *see, e.g.*, *Globalstar Creditor Ex Parte* (concluding that "[t]he revenue generating capabilities of MSS systems, absent ATC [which is currently being appealed by cellular carriers], are grossly insufficient to justify any further capital expenditures in the MSS sector") (emphasis in original), and are continuing to seek to avoid their regulatory obligations in order to mitigate those problems. Globalstar recently sought (unsuccessfully, pending a petition for Commission review) to modify certain construction milestones for its MSS system partially on the ground that its "business plan relies on the first generation satellite system to generate the bulk of revenues to

(continued…)

This weakness in the revised relocation plan creates a real risk that BAS incumbents outside the top 30 markets ultimately will bear the costs of their own relocation to the new BAS channel plan.[25] This would be a particularly unfair result at a time when advertising revenues are down, television station expenses are dramatically higher because of the conversion to digital television, and smaller market broadcasters are losing money and in no position to incur an additional major expense.[26] Indeed, if reimbursement for relocation of BAS incumbents outside the top 30 markets is long delayed or ultimately not forthcoming, from either MSS or other new entrants, broadcasters in those markets will suffer permanent financial damage and ultimately could drop local news services altogether. The NAB comments cited with

(continued…)
fund the second-generation system and those revenues will not be available in the near future." *See* Memorandum Opinion and Order, *Application of Globalstar, L.P. For Modification of License for a Mobile-Satellite Service System in the 2 GHz Band, For Waiver and Modification of Implementation Milestones for 2 GHz MSS System*, File Nos. 183/184/185/186-SAT-P/LA-97; 182-SAT-P/LA-97(64), DA 03-328, ¶ 7 (rel. Jan. 30, 2003), *application for review pending*.

[25] This could occur where BAS incumbents have relocated themselves during the transition (because the congestion and inter-market coordination problems have made the effective provision of ENG services on the old channel plan (less two channels) impossible, *see* SBE Affidavit) and are unable to obtain reimbursement for those expenditures when due *or* where BAS incumbents await relocation but are unable to obtain compensation when due and ultimately are forced to relocate themselves to the new channel plan. To reduce the possibility of the former contingency, the Commission should clarify that BAS incumbents are entitled to reimbursement for any BAS equipment for the new channel plan. Any such equipment will have been purchased for the benefit of the new spectrum occupants and should be paid for as part of relocation compensation.

[26] As detailed in the NAB comments filed in the *Biennial Ownership* proceeding, "many television stations today in medium and small markets are struggling to achieve profitability. The financial pressures on those stations that are not the ratings leader in their markets are particularly acute, and obviously threaten the long-term financial viability of such stations." Comments of NAB, MB Docket No. 02-277, at 74 (Jan. 2, 2003) (*NAB Biennial Ownership Comments*). Indeed, a study commissioned by NAB showed that low-rated stations in markets 51-175 experienced a decline in pre-tax profitability of 124% or greater from 1993-2001. In 2001, low-rated stations in that market grouping had actual losses. *Id.* at 74, *citing* NAB, The Declining Financial Position of Television Stations in Medium and Small Markets at 5-9 (2002) (*TV Financial Report*). The Commission acknowledged the financial pressures on smaller market stations in its decision. *See* Report and Order and Notice of Proposed Rulemaking, *2002 Biennial Regulatory Review*, MB Docket No. 02-277, 18 FCC Rcd 13620, 13685 (2003).

approval in the Commission's *Biennial Ownership* proceeding specifically detail the increasing costs of maintaining local news operations and the threat that local news operations in medium and smaller markets will be eliminated due to these financial pressures.[27] Requiring (or even creating a substantial threat of requiring) BAS incumbents to bear the costs of their own relocation to the new BAS channel plan could be the final straw that prompts a significant number of local stations to "look to exit the local news business in favor of lower cost propositions" such as syndicated programming.[28]

V. THE REVISED RELOCATION PLAN IS CONTRARY TO PRECEPTS OF ADMINISTRATIVE LAW AND THE PUBLIC INTEREST.

As described above, far from supporting the dual goals of promoting the efficient use of spectrum for new services while preserving and protecting important incumbent uses, the revised relocation plan departs – inexplicably and without justification – from the goal of preserving incumbent uses by significantly jeopardizing BAS incumbent services in markets outside the top 30. In failing to protect adequately BAS incumbent services in *all* markets, the *Third R&O/MO&O* violates three important principles of administrative law:

> <u>*First*</u>, the decision departs from established agency precedent and policy without adequate justification.
>
> <u>*Second*</u>, the decision was made without sufficient notice and opportunity for public comment on the effect of the revised relocation plan.
>
> <u>*Third*</u>, the decision is inconsistent with the public interest.

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[27] *NAB Biennial Ownership Comments* at 75-77. For example, from 1993 to 2001, the average news costs of affiliated stations in DMAs 51-176 increased 71%, 104%, 58%, 56%, and 82%, respectively, in market groupings 51-75, 76-100, 101-125, 126-150 and 151-175. *Id.* at 76, *citing TV Financial Report* at 5-9.

[28] *Id.* at 77 (citing Smith Geiger, *Newsroom Budgets in Midsize (51-100) and Small Markets (101-210)* at 13 (Dec. 2002)).

To remedy these errors, MSTV and NAB ask the Commission to develop a new relocation plan (following a Public Notice if necessary) that either (1) compensates BAS incumbents *before* requiring them to vacate spectrum or (2) provides, through explicit and enforceable conditions in the authorizations of new entrants into the reallocated spectrum, adequate assurance that all BAS incumbents will be compensated for the costs of relocating to the new spectrum band.

A. The Revised Relocation Plan Departs From Established Precedent Without Adequate Explanation or Justification.

The Commission has stated repeatedly in this current proceeding that it will apply the *Emerging Technologies* relocation principles to the relocation of 2 GHz BAS incumbents to make spectrum available for new MSS entrants.[29] These principles require that a plan to relocate incumbents to a new spectrum plan must "fully protect[] the integrity of all existing . . . operations": "A new licensee can require relocation of an incumbent only if it provides the incumbent facilities that are technically equivalent to those being replaced and that fully support the communications requirements of the incumbent. All relocation costs are to be paid by the new licensee."[30] Consistent with these principles, the Commission has declared in this proceeding that "it is essential that we ensure the continuity of BAS during the transition. BAS is a critical part of the broadcasting system by which information and entertainment is provided

[29] *See, e.g.*, Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, *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, 13 FCC Rcd 23,949, 23958 (1998) (*2 GHz Reallocation MO&O/Third NPRM*) ("We find that the goals expressed in the *Emerging Technologies* proceeding of providing for the fair and equitable sharing of 2 GHz spectrum, preventing disruption to incumbent operations and minimizing the economic impact on incumbent licensees are unchanged and apply with equal weight to the present situation facing incumbent BAS licensees. We therefore affirm the decision to apply the cost recovery policies established in the *Emerging Technologies* proceeding to BAS equipment . . . .") (footnote omitted).

[30] Second Memorandum Opinion and Order, *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, 9 FCC Rcd 7797, 7800 (1994) (*Emerging Technologies Second MO&O*).

to the American public. We must minimize the disruption and down time BAS licensees will undergo in the transition, in order to continue day-to-day high quality BAS service."[31]

As a matter of administrative law, the Commission is not free to depart from this established precedent without a thorough and considered explanation. As the D.C. Circuit stressed in *Committee for Community Access v. FCC*, "the agency cannot silently depart from previous policies or ignore precedent. . . . At a minimum, the Commission should have acknowledged [its] change in orientation and should have explained the nexus between the policy and the goals [it] seeks to promote."[32] In this proceeding and the prior *Emerging Technologies* proceeding, the Commission has established a policy of requiring that incumbent occupants of reallocated spectrum be relocated to new spectrum, by and at the expense of the new users of the spectrum, in a manner that preserves the continuity of the incumbent service. The Commission may not depart from that policy at this point in this proceeding without providing a "reasoned explanation" for doing so.

In violation of this principle, the revised relocation plan departs materially from the Commission's established precedent in a number of respects. First, unlike in other relocation situations, the BAS relocation plan requires incumbents to clear spectrum for a new entrant *before* receiving any compensation.[33] This not only departs from established precedent, but, as described above, it removes any incentive for new entrants to ever pay compensation to the incumbent spectrum occupants. The *Emerging Technologies* proceeding recognized that it was

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[31] *2 GHz Reallocation Second R&O/MO&O*, 15 FCC Rcd at 12326.

[32] 737 F.2d 74, 77, 80 (D.C. Cir. 1984) (remanding FCC decision that departed from previous practice in comparative licensing hearings of presuming that diversity of ownership is the litmus test for the diversity of viewpoints factor) (citations omitted).

[33] *See* Ex Parte Letter from Lawrence A. Walke, NAB, to Marlene H. Dortch, FCC, ET Docket No. 95-18, at 2 n.1 (Nov. 7, 2003).

the desire for access to spectrum that would drive new entrants to pay incumbents to vacate the spectrum.[34] Where the incumbents are required by rule to vacate the spectrum prior to receiving compensation, there is no longer any incentive for the new entrants to compensate the incumbents for leaving the spectrum.

In addition, the revised relocation plan will significantly disrupt the ability of many BAS incumbents to provide effective newsgathering services during (and potentially even after) the transition to the new channel plan. As described above, spectrum congestion and inter-market coordination problems will significantly disrupt broadcasters' provision of incumbent ENG services and effectively reduce the amount of ENG services broadcasters within and even outside of markets 31-210 can provide to the public during the transition. The plan could also inflict long-term financial harm that leads to an overall reduction in local news services even after the transition.

Like the decision in *Committee for Community Access*, the *Third R&O/MO&O* fails even to acknowledge its dramatic departure from the established precedent in this and the *Emerging Technologies* proceeding. For example, the decision does not explain why the Commission no longer believes that requiring BAS incumbents in markets 31-100 to operate on only five BAS channels is no longer "excessively onerous," as it was described in the *Second R&O/MO&O*.[35] By ignoring the significantly more adverse effect of the revised relocation plan

[34] *Notice of Proposed Rulemaking,* In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, 7 FCC Rcd 1542, 1546 (1992) ("Therefore, we propose to allow providers of new services assigned spectrum allocated to the new emerging technologies bands to negotiate financial arrangements with existing licensees. This would encourage reaccommodation and underwriting of the costs of transition for the 2 GHz users.").

[35] *See 2 GHz Reallocation Second R&O/MO&O*, 15 FCC Rcd at 12327 (prohibiting MSS entrants under the initial relocation plan from using 2023-2025 MHz during Phase II until all BAS licensees were relocated to the final channel plan because Phase I BAS Channel 2 used this spectrum and "it would be

(continued…)

on the continued provision of incumbent ENG services in markets outside the top 30, the Commission further avoided offering any "reasoned explanation" for its departure from the basic principle of protecting essential incumbent BAS services in *all* markets during the transition.

B. The Commission Failed To Develop An Adequate Record Of The Effect Of The Revised Relocation Plan On BAS Incumbents In The Markets Most Affected By The Change.

The Commission's failure to acknowledge the full adverse effect of its decision apparently resulted from its failure to seek public comment on the revised plan, including from the incumbents most affected by it. As described in the *Third R&O/MO&O*, the Commission sought comment on possible modifications to the relocation plan in the context of the AWS reallocation proceeding and the proceeding authorizing ancillary terrestrial use of the MSS spectrum.[36] Commenters in those proceedings generally advocated either maintaining the existing relocation plan or modifying the plan to provide for nationwide relocation of BAS incumbents in a single step.[37] No commenter proposed a single-phase relocation plan combined with a market-staggered compensation plan like the plan the Commission ultimately adopted.[38]

(continued…)
excessively onerous to forbid the use of this channel, as well as Phase I Channel 1, during the Phase II transition").

[36] *2 GHz Reallocation Third R&O/MO&O* ¶ 22.

[37] *See id.* ¶¶ 24-28.

[38] Although a few *ex parte* filings made shortly before the decision was issued indicate that the proposed relocation plan may have been mentioned in some *ex parte* meetings, *see, e.g.*, *Ex Parte* Letter from Lawrence A. Walke, NAB, to Marlene H. Dortch, FCC, ET Docket No. 95-18 (Sept. 3, 2003) (*NAB/MSTV Sept. 3 Ex Parte*), these few hints did not provide adequate notice to BAS incumbents or the public in the affected markets to trigger the type of input necessary for the Commission to evaluate fully the viability of the proposed revised relocation plan.

The Administrative Procedure Act prohibits the Commission from adopting substantive rules without notice and an opportunity for public comment.[39] Although the Commission need not state precisely the content of a proposed rule, it must provide notice sufficient to allow the public to provide relevant comments.[40] This notice need not take the form of a full-fledged Further Notice of Proposed Rulemaking. In other contexts in which the Commission has entertained a proposal that departs materially from the proposals in the Notice of Proposed Rulemaking or initial comments in a pending proceeding, the Commission has issued a brief Public Notice setting forth the new proposal and seeking (sometimes expedited) input from the public.[41]

The Commission should have sought such additional input in this proceeding. As noted above, the revised relocation plan ultimately adopted by the Commission differed materially from the modifications proposed by commenters on the issue, particularly in its impact on BAS incumbents in Markets 31-100. In failing to seek comment from those BAS incumbents and the public they serve, the Commission simply did not have the information necessary to determine whether the revised relocation plan was consistent with (or instead violated) its commitment to make spectrum available for MSS *without* unduly disrupting the provision of all incumbent services.

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[39] 5 U.S.C. § 553; *Sprint Corp. v. FCC*, 315 F.3d 369, 371 (D.C. Cir. 2003).

[40] *See, e.g.*, *Shell Oil Standard v. EPA*, 950 F.2d 741 (D.C. Cir. 1992) ("The relationship between the proposed regulation and the final rule determines the adequacy of notice. A difference between the two will not invalidate the notice so long as the final rule is a 'logical outgrowth' of the one proposed."); *AFL/CIO v. Donovan*, 757 F.2d 330 (D.C. Cir. 1985) ("It is of course elementary that a final rule need not be identical to the original proposed rule [but] if the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal.") (citations omitted); *Nat'l Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (D.C. Cir. 1986).

[41] *See, e.g.*, Public Notice, Technical Standards for Digital Television: The Commission Seeks Comment on Digital TV Standards Agreement, MM Docket No. 87-268, 11 FCC Rcd 16736 (1996).

Moreover, the additional step need not have inordinately delayed the Commission's decision on the revised relocation plan. As noted above, the Commission could have issued a brief Public Notice requesting expedited comment on the proposed modifications to the relocation plan. In the absence of such a notice and the resulting input, the Commission ended up issuing a decision suffering from both procedural and substantive failings.

C. The Revised Relocation Plan Is Inconsistent With Localism And Could Endanger Public Safety And Homeland Security.

The Commission always has an obligation to serve the public interest. The Commission violated that obligation in the *Third R&O/MO&O* by adopting a revised relocation plan that will harm broadcasters' ability to provide critical news and information services at a time when such services are especially important to protecting public safety and homeland security. At a recent meeting of the Media Security and Reliability Council, the Working Groups proposed best practices for television stations that call on broadcasters to use ENG facilities as backup to replace damaged or destroyed studios and other transmission facilities used to keep the public informed during a disaster or emergency. Thus, the recommendations contemplate that in the early stages of a disaster or other emergency, a station's ENG truck could serve as its studio. But the revised relocation plan will *weaken* stations' ability to rely on their ENG facilities and serve their local communities. A relocation plan that threatens broadcasters' ability to provide these services simply does not square with the public interest.

Indeed, rather than serving the public interest by ensuring the continued availability of critical, highly-valued public services, the revised relocation plan instead requires smaller-market BAS incumbents and the public they serve to shoulder the full burden of minimizing up-front costs for MSS entrants that offer few, if any, benefits to consumers in those markets. The Commission has not offered any justification for why these BAS incumbents, who are facing financial challenges of their own, or their viewers should be responsible for subsidizing the introduction of a service that some suspect is destined for failure.

VI. THE COMMISSION MUST CLARIFY CERTAIN ASPECTS OF ITS DECISION TO AVOID CAUSING EVEN MORE COORDINATION PROBLEMS BOTH WITHIN AND BETWEEN MARKETS.

In the event that the Commission's final relocation plan maintains the need for operation of dual channel plans (as opposed to providing for simultaneous relocation of all BAS incumbents), the Commission must clarify the relationship between BAS licensees operating on the different channel plans. For example, although out-of-market broadcasters traditionally operate on a secondary basis to local market broadcasters, the *Third R&O/MO&O* provides that BAS incumbents operating on the old channel plan are secondary to licensees operating on the new channel plan and may be subject to interference "caused by a BAS licensee operating on the Phase II channels that enters the market to cover a sporting event or breaking news story."[42] It is unclear whether this applies to all broadcasters operating on the old channel plan (including during the transition) or only in markets that elect to remain on the old channel plan even after they are entitled to relocation compensation.

It is similarly unclear whether the primary status afforded to BAS licensees operating on the new channel plan would allow a single broadcaster in a medium or small market essentially to compel other broadcasters in the market to convert to the new channel plan before receiving compensation by self-relocating during the transition period. The Commission must clarify these issues if BAS incumbents are to have any hope of making dual operations work.

[42] *2 GHz Reallocation Third R&O/MO&O* ¶ 58.

CONCLUSION

As demonstrated above, the revised relocation plan undermines the continued provision of incumbent BAS services (thereby violating established Commission precedent and the public interest) by requiring BAS incumbents outside the top 30 markets to vacate nearly 30 percent of current BAS spectrum prior to receiving compensation and by failing to provide adequate assurances that such compensation ultimately will be provided. There are a number of approaches the Commission could take to remedy these problems. These include:

- Issue a brief Public Notice seeking expedited comment on alternative relocation plans that will more effectively serve the competing goals of preserving incumbent services while facilitating MSS access to 2 GHz spectrum.

- Develop a relocation plan that minimizes up-front costs to MSS *not* by burdening the incumbents but by spreading relocation costs across *all* the new entrants who will benefit from the BAS relocation. This approach would be fully consistent with the *Emerging Technologies* principles adopted in this proceeding. Although this might introduce some further delay into the BAS relocation, that delay would not be the fault of the incumbents, but the inevitable result of the Commission's decision to reallocate a portion of the 2 GHz spectrum in the midst of the relocation process.

- In addition, if the Commission determines that at least some BAS incumbents will need to vacate spectrum prior to receiving relocation compensation, revise the rules to ensure that new entrants have proper incentives to compensate the incumbents in a timely manner. The Commission should thus (1) place a condition on each MSS entrant's license or authorization providing that the license or authorization will be revoked automatically in the event that the licensee fails timely to pay its pro rata share of the costs of relocating all BAS incumbents in all markets; and (2) provide that no fixed or mobile service provider shall be entitled to receive a license to use 2 GHz spectrum vacated by BAS unless and until the applicant has provided (or posted a bond to provide) pro rata reimbursement to BAS incumbents for any relocation costs that have not been reimbursed by MSS entrants *or* provided (or posted a bond to provide) pro rata reimbursement to MSS providers that have paid relocation compensation to BAS incumbents.

For the reasons set forth herein, MSTV and NAB ask the Commission to adopt a relocation and compensation plan that is consistent with established Commission precedent and serves the public interest by fairly balancing the needs and interests of the incumbents, the new entrants and the public they serve. To the extent that the ultimate relocation plan maintains any dual channel plan operation during the transition, the Commission also must clarify the relationship between licensees operating on the two plans.

Respectfully submitted,

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EXHIBIT A

EXHIBIT A
SUMMARY OF BROADCAST TELEVISION NEWS EXPENSES BY MARKET

	NEWS EXPENSES			ECONOMIC STATUS			
				Average Station		Median Station	
Stations By Market Grouping	News Expenses (millions)	News Expenses as % of Total Station Expenses	News Expenses as a % of Station Net Revenue	Pre-Tax Profit	Cash Flow	Pre-Tax Profit	Cash Flow
1-10	$6.9	22.5%	12.4% of $55.5	$18.7	$24.8	$7.9	$11.7
11-20	$4.3	23.6%	44.4% of $30.0	$8.9	$11.6	$4.5	$10.2
21-30	$3.5	25.1%	15.9% of $25.1	$6.5	$9.2	$4.6	$6.7
31-40	$3.2	26.0%	17.0% of $19.2	$4.1	$6.7	$2.2	$6.5
41-50	$1.9	22.4%	15.2% of $12.6	$2.2	$4.1	$0.7	$2.0
51-60	$2.2	24.5%	14.4% of $15.4	$4.4	$6.3	$4.1	$6.2
61-70	$1.5	23.5%	15.4% of $ 9.6	$1.6	$3.3	$1.3	$2.8
71-80	$1.6	23.7%	16.6% of $ 9.4	$0.4	$2.8	$0.4	$1.7
81-90	$1.6	23.1%	14.7% of $10.8	$1.9	$3.9	$1.7	$3.6
91-100	$1.2	20.3%	13.3% of $ .7	$1.5	$3.2	$1.6	$2.9
101-110	$1.0	21.6%	13.9% of $ .8	$1.4	$2.7	$0.8	$2.0
111-120	$1.1	22.5%	14.5% of $ 7.9	$1.6	$2.8	$0.6	$2.4
121-130	$1.0	20.4%	14.8% of $ 6.4	$0.3	$1.8	$0.2	$1.1
131-150	$0.8	20.4%	14.0% of $ 5.4	$0.4	$1.7	$0.2	$1.5
151-175	$0.8	23.7%	16.4% of $ 5.0	$0.8	$1.5	$0.3	$0.8
176+	$0.4	15.3%	11.0% of $ 3.4	$0.3	$1.0	$0.2	$0.6

Source: NAB/BCFM Television Financial Report - 2003 Edition

EXHIBIT B

EXHIBIT B

SUMMARY OF MARKETS ADJACENT TO TOP 30 TELEVISION MARKETS

Market		Adjacent Markets		Total Broadcast Stations w/News
1	New York, NY (10 w/News)	55	Albany-Schenectady-Troy, NY	5
		154	Binghamton, NY	5
		53	Wilkes Barre-Scranton, PA	5
		4	Philadelphia, PA	7
		27	Hartford & New Haven, CT	7
2	Los Angeles, CA (12 w/News)	57	Fresno-Visalia, CA	7
		130	Bakersfield, CA	5
		119	Santa Barbara-Santa Maria-San Luis Obispo, CA	5
		26	San Diego, CA	7
		161	Palm Springs, CA	5
		172	Yuma, AZ-El Centro, CA	3
		16	Phoenix, AZ	8
		52	Las Vegas, NV	6
		114	Reno, NV	4
3	Chicago, IL (8 w/News)	135	Rockford, IL	3
		92	Davenport, IA-Rock Island-Moline, IL	4
		117	Peoria-Bloomington, IL	4
		82	Champaign & Springfield-Decatur, IL	3
		25	Indianapolis, IN	7
		87	South Bend-Elkhart, IN	4
		86	Madison, WI	4
		31	Milwaukee, WI	6
4	Philadelphia, PA (7 w/News)	53	Wilkes Barre-Scranton, PA	5
		47	Harrisburg-Lancaster-York, PA	5
		24	Baltimore, MD	5
		151	Salisbury, MD	2
		1	New York, NY	10
5	San Francisco-Oakland-San Jose, CA (9 w/News)	190	Eureka, CA	4
		132	Chico-Redding, CA	4
		19	Sacramento-Stockton-Modesto, CA	7
		57	Fresno-Visalia, CA	7
		120	Monterey-Salinas, CA	4
6	Boston, MA-Manchester, NH (8 w/News)	106	Springfield-Holyoke, MA	2
		55	Albany-Schenectady-Troy, NY	5
		91	Burlington, VT-Plattsburgh, NY	3
		76	Portland-Auburn, ME	5
		47	Providence, RI-New Bedford, MA	6

7	Dallas-Fort Worth, TX	160	Sherman, TX-Ada, OK	2
	(8 w/News)	142	Wichita Falls, TX & Lawton, OK	3
		163	Abilene-Sweetwater, TX	3
		92	Waco-Temple-Bryan, TX	4
		109	Tyler-Longview, TX	2
		81	Shreveport, LA	4
8	Washington, DC	24	Baltimore, MD	5
	(6 w/News)	47	Harrisburg-Lancaster-Lebanon-York, PA	5
		96	Johnstown-Altoona, PA	4
		21	Pittsburgh, PA	5
		166	Clarksburg-Weston, WV	3
		178	Harrisonburg, VA	1
		59	Richmond-Petersburg, VA	4
9	Atlanta, GA	85	Chattanooga, TN	4
	(5 w/News)	40	Birmingham, AL	5
		116	Montgomery, AL	3
		126	Columbus, GA	2
		148	Albany, GA	3
		98	Savannah, GA	4
		115	Augusta, GA	4
		35	Greenville-Spartanburg-Anderson, SC-Asheville, NC	6
10	Detroit, MI	64	Flint-Saginaw-Bay City, MI	3
	(5 w/News)	111	Lansing, MI	4
		68	Toledo, OH	4
11	Houston, TX	137	Beaumont-Port Arthur, TX	3
	(7 w/News)	109	Tyler-Longview, TX	2
		93	Waco-Temple-Bryan, TX	4
		54	Austin, TX	4
		37	San Antonio, TX	7
		204	Victoria, TX	1
12	Seattle-Tacoma, WA	79	Spokane, WA	6
	(6 w/News)	127	Yakima-Pasco-Richland-Kennewick, WA	3
		23	Portland, OR	6
13	Tampa-St. Petersburg	162	Gainesville, FL	2
	(Sarasota), FL	20	Orlando-Daytona Beach-Melbourne, FL	8
	(7 w/News)	39	West Palm Beach-Fort Pierce, FL	5
		70	Fort Myers-Naples, FL	4

14	Minneapolis-St. Paul, MN (7 w/News)	136	Duluth, MN-Superior, WI	4
		123	La Crosse-Eau Claire, WI	3
		152	Rochester, MN-Mason City, IA-Austin, MN	2
		199	Mankato, MN	1
		112	Sioux Falls, SD	3
		118	Fargo-Valley City, ND	4
15	Cleveland-Akron, OH (6 w/News)	143	Erie, PA	4
		100	Youngstown, OH	4
		150	Wheeling, WV-Steubenville, OH	2
		34	Columbus, OH	4
		68	Toledo, OH	4
16	Phoenix, AZ (8 w/News)	36	Salt Lake City, UT	5
		49	Albuquerque-Santa Fe, NM	6
		74	Tucson, AZ	5
		2	Los Angeles	12
		52	Las Vegas, NV	6
17	Miami-Fort Lauderdale, FL (10 w/News)	39	West Palm Beach-Fort Pierce, FL	5
		70	Fort Myers-Naples, FL	4
18	Denver, CO (7 w/News)	36	Salt Lake City, UT	5
		200	Casper-Riverton, WY	2
		175	Rapid City, SD	4
		197	Cheyenne, WY-Scottsbluff, NE	2
		209	North Platte, NE	3
		102	Lincoln & Hastings-Kearney, NE	4
		66	Wichita-Hutchinson, KS	3
		93	Colorado Springs-Pueblo, CO	5
		49	Albuquerque-Santa Fe, NM	6
		184	Grand Junction-Montrose, CO	4
19	Sacramento-Stockton Modesto, CA (7 w/News)	114	Reno, NV	4
		57	Fresno-Visalia, CA	7
		5	San Francisco-Oakland-San Jose, CA	9
		132	Chico-Redding, CA	4
20	Orlando-Dayton Beach-Melbourne, FL (8 w/News)	51	Jacksonville, FL	5
		39	West Palm Beach-Fort Pierce, FL	5
		13	Tampa-St. Petersburg, FL	7
		162	Gainesville, FL	2

21	Pittsburgh, PA (5 w/News)	143	Erie, PA	4
		96	Johnstown-Altoona, PA	4
		8	Washington, DC	6
		166	Clarksburg-Weston, WV	3
		150	Wheeling, WV-Steubenville, OH	2
		100	Youngstown, OH	4
22	St. Louis, MO (4 w/News)	164	Quincy, IL-Hannibal, MO-Keokuk, IA	2
		82	Champaign & Springfield-Decatur, IL	3
		146	Terre Haute, IN	3
		99	Evansville, IN	3
		75	Paducah, KY-Cape Girardeau-Harrisburg, MO	3
		73	Springfield, MO	4
		139	Columbia-Jefferson City, MO	4
23	Portland, OR (6 w/News)	127	Yakima-Pasco-Richland-Kennewick, WA	3
		124	Boise, ID	4
		114	Reno, NV	4
		141	Medford-Klamath Falls, OR	3
		200	Bend, OR	2
		121	Eugene, OR	3
		12	Seattle-Tacoma, WA	6
24	Baltimore, MD (5 w/News)	4	Philadelphia, PA	7
		151	Salisbury, MD	2
		8	Washington, DC	6
		47	Harrisburg-Lancaster-Lebanon-York, PA	5
25	Indianapolis, IN (7 w/News)	87	South Bend-Elkhart, IN	4
		104	Fort Wayne, IN	3
		57	Dayton, OH	4
		32	Cincinnati, OH	5
		50	Louisville, KY	4
		146	Terre Haute, IN	3
		82	Champaign & Springfield-Decatur, IL	3
		189	Lafayette, IN	1
		3	Chicago, IL	8
26	San Diego, CA (7 w/News)	172	Yuma, AZ-El Centro, CA	3
		161	Palm Springs, CA	5
		2	Los Angeles, CA	12
27	Hartford & New Haven, CT (7 w/News)	106	Springfield-Holyoke, MA	2
		6	Boston, MA-Manchester, NH	8
		48	Providence, RI-New Bedford, MA	6
		1	New York, NY	10
		55	Albany-Schenectady-Troy, NY	5

28	Charlotte, NC (5 w/News)	46	Greensboro-High Point-Winston Salem, NC	4
		29	Raleigh-Durham, NC	6
		109	Florence-Myrtle Beach, SC	2
		84	Columbus, SC	4
		35	Greenville-Spartanburg-Anderson, SC-Asheville, NC	6
		90	Tri-Cities	4
29	Raleigh-Durham, NC (6 w/News)	41	Norfolk-Portsmouth-Newport News, VA	5
		103	Greenville-New Bern-Washington, NC	4
		144	Wilmington, NC	4
		110	Florence-Myrtle Beach, SC	2
		28	Charlotte, NC	5
		46	Greensboro-High Point-Winston Salem, NC	4
		67	Roanoake-Lynchburg, VA	5
		58	Richmond-Petersburg, VA	4
30	Nashville, TN (4 w/News)	63	Knoxville, TN	4
		85	Chattanooga, TN	4
		82	Huntsville-Decatur, AL	3
		183	Jackson, TN	1
		75	Paducah, KY-Cape Girardeau-Harrisburg, MO	3
		99	Evansville, IN	3
		180	Bowling Green, KY	3
		65	Lexington, KY	5