

ASSOCIATION FOR **MAXIMUM SERVICE TELEVISION, INC.**



February 19, 2004

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: *Ex Parte* Presentation
ET Docket 95-18

Dear Ms. Dortch:

On February 9, 2004, David L. Donovan, president of MSTV; Larry Walke, counsel for the NAB; Barbara Cochran, president of RTNDA; Kathleen Kirby of Wiley Rein and Fielding, representing RTNDA; and Christopher Imlay of Booth Freret Imlay & Tepper, representing SBE, met with Commissioner Abernathy and her staff concerning our respective petitions for reconsideration in the above referenced proceeding.

We urged the FCC to reconsider its decision in this proceeding due to the adverse impact on local, remote newsgathering by local television stations

In addition to the reconsideration petitions previously filed with the FCC, we presented the commission with the attached trade press articles concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Donovan", is written over a large, stylized flourish that extends to the right.

David L. Donovan
President

BAS Re-allocation Begins

Loopholes loom in spectrum relocation compensation plan

by Mary C. Gruszka

NEW YORK

The transition of 2 GHz broadcast auxiliary services (BAS) licensees to a new band plan has begun.

The FCC's *Third Report and Order*, adopted last November, gives two of the seven channels in the 2 GHz spectrum currently used for BAS to Mobile-Satellite Service (MSS) providers.

The bandwidth of the new BAS channels will be reduced to 12 MHz from the current 17 MHz, which could render a lot of ENG equipment obsolete.

On the surface, the order provides relief for broadcasters in the way of a one-year mandatory negotiation period with MSS operators, to recoup the cost of abandoning the spectrum. However, only 2 GHz BAS users that were licensed *before* the proceeding was published in the "Federal Register" will be reimbursed.

"The Report and Order on the 2 GHz band is a double-edged sword for broadcasters," said Craig Strom, assistant director of engineering, WLS-TV, the ABC O&O in Chicago. "For the top 30 markets, it is not terribly bad, but for the rest [markets 31 and above], they are on their own."

Broadcasters can continue using legacy 17 MHz equipment in markets where all parties involved can fit into the five remaining channels, but that arrangement still presents plenty of problems, Strom said.

"Broadcasters in the 31 and above markets will have to relinquish the bottom two channels to the MSS operators, making do with five channels instead of their current seven," Strom said. "But many of the stations in those markets need and use all seven channels. It amounts to less bandwidth to do the news."

Not only that, many of these markets are within the operating area of a larger market, especially on the East and West coasts. This sets up an environment ripe for interference among BAS operators using two different band plans.

"The old and new plans are not coincident with each other," Strom said. "It will be difficult to predict what the interference will be."

OVERLAP INTERFERENCE

Three new channels fit within three old channels, with the remaining four overlapping two old channels.

"If a station is using the old band plan and doing a story in an area between the two markets, their ENG may not work—they may not get the shot, due to interference," Strom said. "They wouldn't easily be able to identify the source of the interference, as they can do now with analog. And by time the interference went away, the opportunity to get the shot could be lost."

Then again, an analog ENG signal could interfere with a top 30 station's digital signal, he said. There's not enough information to predict what will happen.

David P. Otey, frequency coordination director for the Society of Broadcast Engineers, (SBE) said, "now it will become a much more difficult coordination problem to solve, and the jury is still out if it is even solvable. And members of the public will lose access to information."

To determine what some of the effects might be, Microwave Radio Communications (MRC), in coordination with the SBE, has started to perform lab tests, with the results to be made publicly available.

"We are looking at the frequency coordination issues in adjacent market segments," said Tony Finizio, president of MRC. "We want to quantify if this is feasible [at all], and to see if there are additional equipment requirements."

Dr. John Payne, president of Nucomm Inc., said that many mid-market stations may end up footing the bill themselves to make the change early so they can operate in major market areas. Depending upon their radios, he said it could be possible to set them up for 12 MHz operation instead of 17 MHz, either analog or digital, with a switch for selecting either the old or the new frequency plan, so they could use either depending upon where they were transmitting.

But still, "the mixed frequency plan is going to cause chaos," Payne said.

SHOW ME THE MONEY

Then there's the issue of reimbursement.

"If a station invests with their own money to go to the narrow channels, then the smaller markets are subsidizing the new entrant, or they will have fewer channels for backhauling and then the public is subsidizing the new entrants," Otey remarked. "This is a direct strike on the ability of broadcasters to deliver the quality of their local service that their viewers have come to expect."

"The mixed frequency plan is going to cause chaos." - Dr. John Payne, president, Nucomm Inc.

Strom said that the FCC offered no guidelines for the structure of the negotiations, and thinks it most likely that the MSS operators will pay the broadcasters, who will in turn purchase and install the equipment themselves.

"Broadcasters don't need to seek out MSS operators," Otey said. "It's the MSS operators who need to go to the [BAS] licensees and initiate negotiations."

Strom said there were also concerns over what would happen if negotiations failed.

"I think there is an incentive for the MSS people not to negotiate," Strom said.

Kelly Williams, senior director of engineering and technology policy at NAB, said that the Commission will be inundated with arbitration if negotiations fail.

"How do you define 'can't agree?'" Williams asked. "It is hard to understand how this will work practically."

All these concerns are even greater for the smaller stations.

"People who can least afford to make the change, people in markets 100 on up, may never get compensated by timing or the sunset date, or effectively lose spectrum for some period of time, and it's unfair," Williams said.

"The MSS [operators] could refuse to pay or stretch things out beyond the sunset date," Williams added. "[That is why] the sunset date should not be tied to a date of publication in the *Federal Register*, but rather should float with the MSS construction, say ten years after launch of the satellite."

And what if the MSS licensees fail and go bankrupt? Many have already done so. The FCC has nullified authorizations for four companies for not



Microwave Radio Communications (MRC), and the SBE are performing BAS spectrum interference tests.



meeting required milestones. And at least two of the four companies still authorized by the FCC to provide 2 GHz MSS have emerged from bankruptcy within the last four years.

"If no one is left, the higher number market stations will be left holding the bag," Williams said. "There will be no one left to pay them." ■

Planning for the 2 GHz Transition

by Mary C. Gruszka

It's clear from the FCC ruling that the 2 GHz transition will happen, although there are still questions about when. The sheer magnitude of the 2 GHz relocation effort will require extensive planning and coordination among stations in any given market.

So what should stations do now?

"Be prepared when it's time to sit down and negotiate," David Orey, frequency coordination director for the Society of Broadcast Engineers, (SBE) said.

TAKE A COUNT

If they haven't already done so, stations need to inventory their equipment, as each individual station or group, to see what they have and what they need to change," said Kelly Williams, senior director of engineering and technology policy at NAB. "Then assess what they need to do to make the change. Next, get together with stations in their market and figure out what they need to do as a market to change."

Also note the version and age of each product, advised Dan McIntyre, vice president of sales and marketing at MRC.

Payne said that there are two main approaches a station could take for the conversion.

"The first is that the stations buy all new digital equipment, and many stations have done so already, and the new digital equipment can be switched to the new frequency plan."

The other approach is to modify existing analog equipment to be capable of switching to the new frequency plan, and to make necessary adjustments such as the 12 MHz deviation and subcarriers. Once the transmitters are converted, then the receivers need their own sets of adjustments.

"Stations have to dedicate a time period and have equipment switched over and coordinate it with the manufacturers," Payne said. "It will take coordination to do this, but it can be done."

Payne suggested that stations obtain from the manufacturers the cost to upgrade equipment, and get it into the budget first, then coordinate with the manufacturer on how long it will take to switch over, and schedule a time slot.

The time slots would be relative to some start date.

McIntyre suggested that for preliminary budgets, plan the numbers conservatively to protect yourself. Assume that you'll have to convert more rather than less.

Then when the time comes, each piece of equipment can be assessed more closely as to what it will need.

Study antenna changes that might have to be made, including new filters, McIntyre added. "Do an assessment of the cost of labor, for tower work, and the receive side."

Payne said that one suggestion for a transition plan was to have stations convert to the new narrower deviation and install a switch to select between the two frequency plans. Stations would then operate with narrower deviation but under the old frequency plan until everyone switches over in a market on one designated day.

When the change occurs, everyone in a market needs to make the switch at the same time.

COFDM FOR ENG

The 2 GHz Ad Hoc Transition Committee is credited with educating the broadcast industry about the ramifications of the transition.

Strom, a member of the committee, said that WLS has been using COFDM daily for the past three years, and notes that "the whole operation model changes when you do digital ENG."

"With analog, when people bring in the shot, you can see the interference, you can see what it is and get around it. None of those means exist in digital," he said.

Broadcasters will need a different toolset to help them aim their antennas, Strom said.

"We'll need test equipment we don't currently own," like a spec-

trum analyzer at the receive site, he said.

D-ENG has another characteristic akin to satellite ENG, that is, latency between transmit and receive.

"When you do analog, the talent uses the off-air feed for cues," Strom said. "But when you add COFDM you can't do that because you'll hear yourself about 1.5 seconds late. Now you'll have to employ mix-minus technology that might entail replacing the audio board for half a million dollars."

DOMINO EFFECTS

Another implication of going digital, noted Russell Murphy, eastern sales manager for Broadcast Microwave Services, "is that you may have to relocate or add receive sites."

And possibly change the low noise amplifier, Orey said.

"Some of the LNAs [low noise amplifiers, used for analog] are not going to be linear enough in their characteristics to do a good job of passing the digital signal," he said.

It's not just stations that need to plan for the transition, but the manufacturers as well.

"In a large market, there will be a lot of radios that will have to be changed at one time," MRC's McIntyre said. "It's a major task. We are trying to be prepared. We have no way of knowing when this will take place, but we are planning for when it does to assist broadcasters to get the equipment in a timely fashion."

Nucomm's Payne said, "We're in the process of writing a plan to be put on our

Web site, and contacting people who have our equipment on how to do this."

Strom and Williams stressed the need to get the news directors up to speed on the transition issues.

"This isn't on the average news director's radar screen," Williams said. "Tell the news directors that someday things will get difficult for a while while we figure out how to make the transition work." ■

Smaller Markets Get Raw ENG Deal

Spectrum reclamation delays payback for up to a decade

By Bill McConnell

Broadcasters say the government's latest bid to reclaim electronic-news-gathering (ENG) spectrum gives them a no-win choice: Either spend a fortune in upfront conversion costs another industry was supposed to pay or endure years of nightmares until TV stations' replacements are ready to pick up the tab.

The TV industry is up in arms over last week's FCC order spelling out procedures for taking back spectrum that producers now use to beam news and sports back to their studios.

"This is very harmful to newscasters, especially those in medium and small markets," complained David Donovan, president of the Association for Maximum Service Television, which represents the industry on technical issues.

At issue is a plan to reallocate some of the spectrum now dedicated to broadcasters' ENG and turn the recaptured frequencies, located on the 2 GHz band, over to mobile satellite communications companies.

The upshot is that stations outside the largest 30 markets may be out of luck when it comes to winning compensation from mobile satellite service (MSS) companies, even though government rules entitle broadcasters to reimbursement for their costs.

Under the plan, broadcasters are giving up two of seven ENG channels. Stations in each market will have the choice of continuing to use the five remaining channels as they exist today or reallocating the spectrum into seven smaller digital channels.

In the top 30 markets, broadcasters almost certainly will convert to seven channels because the MSS providers are required to compensate broadcasters before moving into the channels and have a one-year mandatory negotiation period.

MSS users in markets between 31 and 210 were granted up to 10 years to negotiate payments and move into their new allotments. Broadcasters say that means, in markets like Providence, R.I., Grand Rapids, Mich., and Baltimore, Md., stations will have little choice but to buy new equipment out of their own pockets or risk interference when broadcasters in nearby top-30 markets, such as Boston, Detroit or Washington, use updated equipment to cover the same story. The two systems will use the

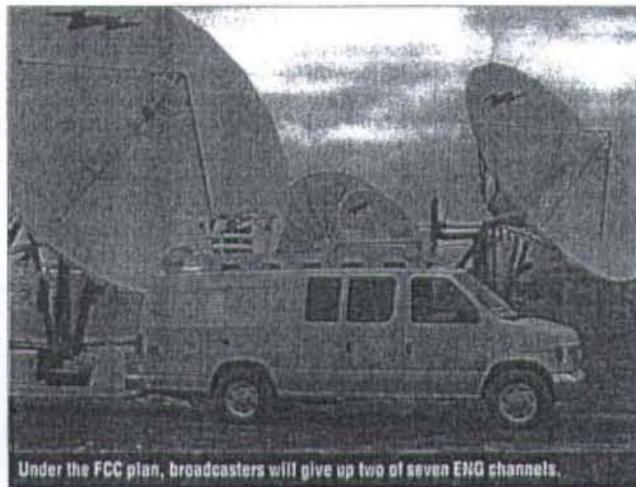
same swath of spectrum but are incompatible.

The demand for backhaul broadcast spectrum will only grow, Donovan said, as stations air more high-definition digital programming and begin ENG transmission of bandwidth-eating HDTV live sports.

The costs could plague markets near almost every major city. "You'd be hard-pressed to find any top-30 market that isn't adjacent to a medium-size market," Donovan said.

Neither FCC staff nor executives from ICO Global Communications, the MSS company that has led the fight for lenient treatment for new users, returned calls seeking comment.

The total conversion cost across all markets is estimated by MSTV to be \$397 million, with



Under the FCC plan, broadcasters will give up two of seven ENG channels.

42% of that in top-30 markets expected to be quickly compensated by new users. That leaves just under \$230 million that broadcasters are entitled to receive in reimbursement but may never get if MSTV's warnings are correct.

"These medium and small markets appear to be in the least position to cover these relocation costs, which comes at a time when they are confronting DTV-conversion costs," Donovan said.

Such conflicts will come in play most notably when stations cover regional stories.

Today, stations coordinate on an ad hoc basis which channels each will use when transmitting coverage. But coordination between the two groups using incompatible systems will be "almost impossible, particularly in emergency situations where spectrum planning cannot be done in advance," MSTV and the National Association of Broadcasters warned in a letter.

The FCC dismissed that notion and predicted that stations will be able to use traditional coordination techniques to minimize interference. The downside of creating additional signal conflicts is outweighed by the benefit of new communications services, the agency found. ■



EDITORIALS

BROADCASTING & CABLE COMMITTED TO THE FIRST AMENDMENT

So Much for Localism

The FCC's phased-in scheme for reclaiming some of broadcasters' ENG spectrum for mobile services could prove a nightmare for stations outside the top 30 markets. In a bone to mobile companies with still-shaky business plans, the commission says it will give those companies 10 years to negotiate payments with stations outside the top 30 markets. In the top 30 markets, broadcasters must be paid upfront, and mobile companies have only a year to start using the new spectrum. That disparity will force stations outside the top 30 either to absorb the expense of buying new gear without the guarantee they will ever be able to collect the money they are entitled to or to stick with their old gear and face interference from adjacent larger markets that have made the switch.

The decision to hammer smaller-market stations is hard to square with the FCC's avowed concern for the state of local news and public affairs. Broadcasters have time and again shown themselves willing to drive those ENG trucks into harm's way to report fires, hurricanes, hail, high winds and whatever else threatens their communities. The FCC, and Congress, would certainly have it no other way. This decision could impede that newsgathering effort for the stations least in a position to deal with the additional logistics and/or expense.

The Powell commission's eagerness to open up spectrum to new uses is understandable, but giving mobile services a

decade to dawdle does not advance that goal. Making it harder for broadcast journalists to do their jobs is hardly in the public's interest.

Norton as Art

The awkward grace of Michael Richards' Kramer, the lovable lug-ability of Brad Garrett's Robert Barone, the essence of Barney Rubble. All owe a debt to Art Carney's Ed Norton, TV's first big second banana. Carney's death last week at age 85 reminded us of how little we saw of him on TV after his brilliant turn as the slow-but-sweet sewer worker to Jackie Gleason's loudmouth bus driver in CBS's classic *Honeymooners*. Yet Carney's comic timing, physical expressiveness and skillful character creation combined to create one of a handful of performances that define the Golden Age of TV comedy. Norton was the perfect foil for Gleason's all-bluster and -fluster Ralph Kramden. Gleason may have been The Great One, but, in *The Honeymooners*, he was The Great Half of one of the best comedy teams ever.

TV at its worst is a British show in which contestants try to give themselves various diseases (we're not making this up). When faced with that reality, it is nice to know there are the 39 episodes of the original *Honeymooners* as an antidote and a brief reminder of TV at its best. How sweet it was.