

**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)	ET Docket No. 95-18
the Mobile-Satellite Service)	
)	
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)	ET Docket No. 00-258
New Advanced Wireless Services, including Third)	
Generation Wireless Systems)	
)	
Flexibility for Delivery of Communications by)	
Mobile Satellite Service Providers in the 2 GHz)	IB Docket No. 01-185
Band, the L-Band, and the 1.6/2.4 GHz Bands)	
)	
To: The Commission)	

**OPPOSITION TO PETITION FOR RECONSIDERATION
AND CLARIFICATION OF THE BOEING COMPANY**

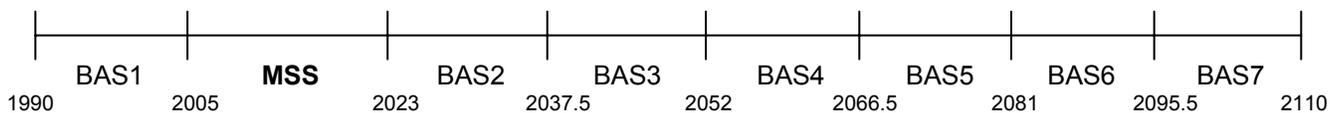
The Association for Maximum Service Television, Inc. (MSTV) and the National Association of Broadcasters (NAB)¹ submit these comments to oppose The Boeing Company's (Boeing's) proposal to reinstate the Commission's original BAS spectrum relocation plan with certain modifications to the Phase I spectrum plan. As presented, the Boeing proposal would complicate and prolong the relocation, exacerbate coordination problems, and ultimately could deprive broadcasters of compensation for the most costly phase of the relocation. Accordingly, the Commission should reject the Boeing proposal and, as proposed in the pending MSTV/NAB petition for reconsideration, adopt a spectrum relocation plan that advances the dual goals of making spectrum available for new services while minimizing the disruption to incumbent services.

¹ MSTV is a non-profit trade association of local broadcast television committed 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.

I. THE BOEING PROPOSAL

Boeing asks the Commission to reinstate its original two-phased spectrum relocation plan with certain changes to the spectrum allocation during Phase I. Specifically, Boeing proposes that instead of clearing BAS Channel 1 (1990-2008 MHz) during Phase I, BAS incumbents should be required to clear the spectrum at 2005-2023 MHz for use by the Mobile Satellite Service (MSS). BAS incumbents would then operate on BAS Channel 1 at 1990-2005 MHz, BAS Channel 2 at 2023-2037.5 MHz and the remaining BAS channels at 14.5 MHz intervals up to 2110 MHz, as shown in the following figure:

Boeing Proposed Phase I Channel Plan:



Apparently (although not explicitly stated), all other aspects of the Commission's original relocation plan would remain – including delayed relocation compensation for markets outside the top 30 and a 10-year sunset deadline for compensating BAS incumbents.

Boeing contends that its proposal offers the benefits of making a substantial amount of MSS spectrum available during Phase I while minimizing MSS entrants' initial relocation costs. Boeing notes that while the Commission's original two-phased relocation plan would have cleared primarily spectrum that has since been reallocated to fixed and mobile services (including advanced wireless services), 15 MHz of the 18 MHz cleared under the Boeing proposal is within the MSS spectrum allocation (2000-2020 MHz). This means that the remaining spectrum to be cleared during Phase II (1990-2005 MHz and 2023-2025 MHz) likely

will not be needed until the new fixed and mobile users are identified and can make a contribution to the more expensive Phase II relocation to 12 MHz digital BAS channels.

Although the Boeing Phase I spectrum plan may have some appeal in isolation, it significantly threatens the viability of valuable incumbent BAS services when combined with other elements of the Commission's initial relocation plan. Specifically, (1) application of the 10-year sunset period to the Boeing proposal likely would deprive BAS incumbents of *any* compensation for the most expensive stage of the relocation and (2) like the Commission's current plan, the modified Phase I spectrum plan would exacerbate the spectrum coordination problems experienced by BAS incumbents outside the top 30 television markets.

II. THE BOEING PROPOSAL WOULD LIKELY DELAY PHASE II COMPENSATION OF BAS INCUMBENTS UNTIL AFTER THE SUNSET DATE, THEREBY ELIMINATING COMPENSATION FOR THE MOST COSTLY STAGE OF THE RELOCATION.

Broadcasters have long argued that maintaining a sunset date for BAS relocation compensation that is tied to the start of Phase I would give MSS entrants an incentive to delay the start of Phase II until after the sunset in order to avoid most of their compensation obligations.² The Commission rejected broadcasters' arguments, perhaps in part on the theory that the construction milestones applicable to MSS licensees would make it difficult for MSS entrants to "game the system" by putting off the launch of service to delay compensation obligations until after the sunset.³ But the Boeing proposal ties Phase II largely to the

² See MSTV/NAB Petition for Partial Reconsideration, ET Docket No. 95-18, at 8 (Sept. 6, 2000) ("MSS licensees would have every incentive to accept a brief delay in seeking Phase II spectrum in order to entirely avoid any relocation obligation to the stations in small markets."); Ex Parte Letter from Jack N. Goodman, NAB, to Magalie R. Salas, FCC, ET Docket No. 95-18, at 1-2 (March 8, 2000).

³ 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* (continued...)

construction plans of the new fixed and mobile users, which are not subject to the milestones applicable to MSS and very well could be delayed until after the 10-year sunset. If the Phase II relocation were delayed until after the 10-year sunset, BAS incumbents would receive *no* compensation for their major relocation costs. This result would be entirely inconsistent with the principles that have governed the Commission's relocation decisions.

As noted above, Phase I of the Boeing proposal would clear 15 MHz (at 2005-2020 MHz) of the 20 MHz of spectrum now allocated to MSS (2000-2020 MHz). Given the well-recognized financial and business challenges facing the MSS industry, this 15 MHz of spectrum should meet the demands of the MSS entrants for quite some time.⁴ Accordingly, MSS spectrum needs are not likely to trigger a demand for Phase II relocation.

Instead, Phase II likely will not begin until the new fixed and mobile services allocated spectrum at 1990-2000 MHz and 2020-2025 MHz are ready to use the spectrum. This will not happen until the users of the spectrum have been identified, the spectrum has been auctioned and the auction winners have constructed their systems and are prepared to launch service. As of now, however, the new users have not been identified and there are no requirements or guarantees that they will be ready to launch service well before expiration of the

(continued...)

Service, ET Docket No. 95-18, FCC 03-280, ¶¶ 45-47 (rel. Nov. 10, 2003) (*2 GHz Reallocation Third R&O/MO&O*).

⁴ For example, four of the eight original 2 GHz MSS licensees have had their licenses nullified by the International Bureau for failure to meet construction milestones. *See* Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited, et al., *Memorandum Opinion and Order*, 18 FCC Rcd 1094 (Int'l Bur. 2003), *joint app. for review pending*; Globalstar, L.P., *Memorandum Opinion and Order*, 18 FCC Rcd 1249 (Int'l Bur. 2003), *request for stay and emergency app. for review pending*; TMI Communications and Company, L.P., *Memorandum Opinion and Order*, 18 FCC Rcd 1725 (Int'l Bur. 2003), *request for stay and app. for review pending*.

10-year sunset for BAS relocation compensation. Accordingly, it is entirely possible that Phase II of the relocation plan would not begin until after expiration of the 10-year sunset period on December 8, 2013. Even if the new users were to begin service before 2013, BAS incumbents in markets outside the top 30 could still be ineligible for compensation before the sunset. For example, BAS incumbents in markets 101-210 would be shut out of *any* relocation compensation if the new users began service after December 2008, and incumbents in markets 31-100 would be denied compensation for relocation to the 12-MHz digital channel plan unless the new users began providing service before December 2010.

Thus, adopting the Boeing spectrum proposal without modifying the sunset provisions currently included in the Commission's BAS relocation plan would likely leave most, if not all, BAS incumbents without compensation for the most costly stage of the relocation they are being asked to undertake for the benefit of new entrants.

III. THE BOEING PROPOSAL SHARES THE SAME SERIOUS SPECTRUM COORDINATION PROBLEMS FOUND IN THE COMMISSION'S RELOCATION PLAN.

Boeing claims that its proposal calls for only a "modest adjustment" to the Phase I spectrum plan. But the change is not "modest" from the perspective of BAS incumbents in markets outside the top 30. The spectrum that Boeing would clear for MSS during Phase I spans *two* BAS channels rather than the one BAS channel that would have been vacated during Phase I of the Commission's original plan. Boeing notes that its modified Phase I plan, like the Commission's original plan, would leave BAS incumbents who are relocated during Phase I with seven channels of 14.5 MHz each, with only BAS Channel 1 in a different location than it would have been under the Commission's Phase I plan. But for BAS incumbents who will not be

relocated immediately during Phase I, the Boeing proposal would take away (for what could be a prolonged period of time) two of the seven BAS channels they currently use.

The MSTV/NAB petition for reconsideration of the Commission's latest BAS relocation plan explains in detail the spectrum coordination and other problems that will result if broadcasters in markets outside the top 30 are immediately deprived of two BAS channels at the start of the BAS relocation.⁵ We incorporate that material herein by reference. As we noted in the petition for reconsideration, these problems could be so severe that they would prompt some broadcasters in smaller markets to incur their own relocation costs pending compensation from the new entrants. Under the Boeing proposal (as compared to the Commission's), those broadcasters would have to bear two sets of relocation costs, one for each stage of the relocation.⁶ In this regard, the Boeing petition makes no effort to acknowledge or address the *additional* costs associated with a two-step relocation process to both local television stations and new 2 GHz licensees paying relocation compensation. Such a two-step process would result in both more disruption and higher costs for relocation of BAS operations.

BAS incumbents in Markets 101-210 would be particularly hard hit by the Boeing proposal. Under the Commission's initial and revised relocation plans, these incumbents would lose two BAS channels for a period of five years after MSS entrants begin service. Under the Boeing proposal, on the other hand, the period during which these incumbents would be required

⁵ See NAB/MSTV Petition for Reconsideration, ET Docket No. 95-18, at 6-12 (Jan. 7, 2004).

⁶ It would not make sense for broadcasters in these markets to convert immediately to the digital channel plan, in part because the Boeing proposal likely would prolong Phase I significantly, making it more important for incumbents to be able to coordinate with others operating on the Phase I channel plan. As noted above, those smaller market broadcasters that paid for their own relocation to the modified Phase I channel plan likely would also receive no compensation for the move to the Phase II digital plan because that move probably would be delayed until after sunset of the MSS entrants' relocation obligations.

to operate on only five BAS channels would extend throughout Phase I (which would be significantly prolonged) until five years after the start of Phase II. And in the end, as noted above, these broadcasters – who are least able to absorb high capital costs – likely would be left with *no* compensation for purchasing the equipment necessary to make spectrum available for MSS and potentially highly-lucrative advanced wireless services. This is simply not a fair result, nor one that recognizes the public interest in local news services.

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CONCLUSION

For the foregoing reasons, MSTV and NAB urge the Commission to reject the Boeing proposal and to adopt a BAS spectrum relocation plan that makes spectrum available for new services *without materially disrupting incumbent services*. To the extent that the Commission entertains adopting a modified Phase I spectrum allocation as proposed by Boeing, it must also consider modifying other aspects of the relocation plan to mitigate the harm to incumbents described herein.

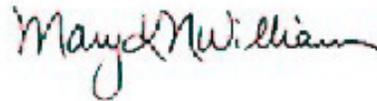
Respectfully submitted,

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