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

REPLY OF THE BOEING COMPANY

The Boeing Company ("Boeing"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby replies to the opposition of the Association for Maximum Service Television and the National Association of Broadcasters ("NAB") in the above-captioned proceeding.[1]

I. INTRODUCTION

In its petition for reconsideration, Boeing asked the Commission to reinstate a two-phased process for relocating BAS incumbents from the 2 GHz band. Boeing's proposal suggested minor adjustments in Phase 1 of the two-step process, which would harmonize the

[1] *See Opposition to Petition for Reconsideration and Clarification of The Boeing Company*, ET Docket Nos. 95-18 & 00-258; IB Docket No. 01-185 (March 3, 2004) ("*NAB Opposition*").

Commission's BAS relocation process with the Commission's recent decision to reallocate 30 megahertz of spectrum away from the Mobile-Satellite Service ("MSS").

NAB's opposition to Boeing's petition for reconsideration raises two concerns. First, NAB argues that Boeing's proposal unfairly limits BAS incumbents in markets 31-210 to five BAS channels during Phase 1 of the spectrum clearing process. Second, NAB argues that the Commission should not combine Boeing's proposal with a ten-year sunset on the obligations of 2 GHz MSS licensees to reimburse BAS incumbents for relocation expenses. As Boeing explains below, NAB's concerns are either unfounded or easily addressed through modest adjustments of the relocation process.

II. NAB'S CONCERN ABOUT LIMITING BAS LICENSEES IN MARKETS 101-210 TO FIVE CHANNELS COULD BE RESOLVED IN A NUMBER OF WAYS

NAB argues in its opposition that Boeing's BAS relocation proposal is unfair to BAS licensees in markets 31-210 because it limits them to five 17 megahertz BAS channels during the first phase of the relocation process.[2] In making this argument, NAB acknowledges that it made essentially the same objection to the relocation plan adopted by the Commission in the *Third Report and Order*.[3]

NAB's concern and the spectrum needs of BAS licensees in markets 31-210 can be easily resolved during the first phase of Boeing's proposed two-step process. The Commission could permit BAS licensees in markets with a large number of television news operations to continue

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[2] *See id.* at 5.

[3] *See id.* at 6. Specifically, NAB argued in its petition for reconsideration of the *Third Report and Order* that BAS licensees in markets 31-210 would be unfairly limited to five BAS channels during the three-to-five year period between the start of MSS operations in the 2 GHz band and the relocation of BAS licensees in smaller markets to a seven channel digital band plan (three years for markets 31-100 and five years for markets 101-210). *See id.*

to use BAS channel 1 during the first phase of the relocation. Based on the information provided by NAB, applicable markets would probably include markets 31-50 or 31-100.[4]

Obviously, such an approach would reduce the amount of spectrum available to MSS licensees in markets that continue to use BAS channel 1 during the first phase of the relocation process. The Commission can employ several measures to minimize the impact of this reduction in MSS spectrum. The Commission should explore whether BAS licensees could modify their equipment so that BAS channel 1 operates with a 17 megahertz bandwidth, rather than an 18 megahertz bandwidth. This modification would give MSS licensees 13 megahertz, rather than 12 megahertz, of usable MSS spectrum and should be required by the Commission if it can be done without appreciable expense to BAS licensees.

The Commission should also give MSS licensees the option of requiring some or all BAS licensees that continue to use BAS channel 1 to retune their equipment so that BAS channel 1 operates using a 14.5 megahertz bandwidth. Obviously, MSS licensees would be required to reimburse BAS licensees for the cost of this retuning.

MSS licensees would likely exercise the latter option in order to expand their operations in smaller markets without automatically shifting to the second phase of the relocation process. MSS licensees would also likely exercise this option if a total of three MSS networks satisfy all of their milestones and launch MSS networks. In light of the ready availability of these remedial measures to resolve NAB's concerns, the Commission should adopt Boeing's modified two-step BAS relocation proposal and maximize the efficient use of 2 GHz spectrum.

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[4] *See Petition for Reconsideration and Clarification of the Association for Maximum Service Television and the National Association of Broadcasters*, ET Docket Nos. 95-18 & 00-258; IB Docket No. 01-185, at 6-7 (Jan. 7, 2004) (arguing that the quantity of ENG equipment is "virtually identical" across markets 21-50 and remains high all the way down to market 100").

III. NO JUSTIFICATION EXISTS FOR THE COMMISSION TO EXTEND ITS EXISTING TEN-YEAR SUNSET ON BAS REIMBURSEMENT OBLIGATIONS

As NAB candidly concedes, it has argued in every phase of this proceeding against the use of a ten-year sunset on the obligations of 2 GHz MSS licensees to provide relocation reimbursement.[5] NAB also acknowledges that, each time the issue has been raised, the Commission has rejected NAB's argument.[6] As the Commission explained in the *Third Report and Order*, "we continue to believe that a sunset date is a vital component of the *Emerging Technologies* relocation principles."[7]

NAB claims in its opposition that a ten-year sunset is inappropriate because BAS licensees in smaller television markets may not be relocated by the close of the ten-year period.[8] The Commission responded to NAB's argument in the *Third Report and Order*[9] by adjusting the starting date for the ten-year tolling period.[10] The Commission, however, declined to lengthen or eliminate the underlying ten-year sunset date.[11]

NAB now argues that a ten-year sunset should not be used in combination with Boeing's proposed two-phased relocation process because Boeing's plan increases the possibility that the

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[5] *See NAB Opposition* at 3 (acknowledging that broadcasters "have long argued" against maintaining a sunset date for BAS relocation compensation).

[6] *See id.* (acknowledging that "[t]he Commission rejected broadcasters' arguments").

[7] *Third Report and Order*, ¶ 46 (citing the *Emerging Technologies* relocation principles as the basis for adopting a ten-year sunset date); *see also Second Report and Order*, ¶ 52 (also citing the *Emerging Technologies* proceeding).

[8] *See NAB Opposition* at 4.

[9] *See Third Report and Order*, ¶ 45 (quoting NAB as arguing that "it is unlikely that the smallest BAS markets will be relocated before the scheduled 2010 sunset date").

[10] *See id.*, ¶ 47.

[11] *See id.*

second phase of the two-phased process will extend beyond the ten-year sunset. NAB's argument should be disregarded for two reasons. First, as explained above, the Commission has always been aware that the ten-year sunset may conclude prior to the relocation of BAS licensees in every market. The Commission has never considered this fact to be adequate justification for abandoning a ten-year sunset deadline.

Second, NAB is incorrect in suggesting that Boeing's proposal would increase the likelihood that the relocation process will extend beyond the ten-year deadline. NAB first argues that MSS licensees may be able to forgo the second phase of the relocation process because their spectrum needs will be satisfied. In reality, the first phase of the relocation process will clear no more than 15 megahertz of usable MSS spectrum (and, as discussed in the prior section, possibly as little as 12 megahertz in smaller markets). Thus, even if only two or three MSS networks successfully commence operations, a significant likelihood exists that the second phase of the relocation process will be initiated before the ten-year deadline. Each MSS licensee has repeatedly demonstrated to the Commission that its actual spectrum needs will extend beyond the five megahertz of paired spectrum currently assigned to each licensee. These additional spectrum requirements will accelerate the initiation of the second phase of the relocation process.

NAB also argues that it is unlikely that the Commission will be able to introduce a new generation of fixed and mobile spectrum services in the 1990-2000 MHz and 2000-2025 MHz bands before the close of the ten-year sunset period. Boeing agrees that the Commission may be unable to issue licenses for new services in *all* 15 megahertz of the reallocated spectrum prior to the close of the sunset period. The Commission, however, is considering using portions of the bands as expansion or relocation spectrum for existing wireless services. Every reason exists to conclude that these existing services will begin operating in portions of the 2 GHz band long

before the ten-year sunset deadline, all but ensuring that the second phase of the relocation process will be implemented well before the close of the sunset period. In light of these facts, the Commission should conclude that Boeing's proposal increases, rather than decreases, the likelihood that all BAS licensees will be relocated to a new seven channel band plan prior to the end of the sunset deadline. As a result, no change in the ten-year sunset is warranted.

IV. CONCLUSION

For the reasons set forth above, the Commission should reinstate a two-phased approach to relocating BAS licensees in the 2 GHz band with the minor alterations recommended by Boeing in its petition for reconsideration in this proceeding. Reinstating a two-phased approach will resolve the primary concern expressed by NAB in their petitions for reconsideration. The Commission should also repeat NAB's oft-repeated argument that the Commission should revisit its decision to adopt a ten-year sunset on the obligations of MSS licensees to reimburse BAS licensees for relocation expenses.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brenda E. Crutchfield, hereby certify that a copy of the foregoing Reply of The Boeing Company was mailed, postage prepaid, first-class mail this 16th day of March, 2004 to the following:

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