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

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In the Matter of	)	
	)	
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
	)	
Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands	)	WT Docket No. 02-8

ORDER

Adopted: September 22, 2006 **Released: September 22, 2006**

By the Acting Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. By this action, we dismiss as repetitious a petition for reconsideration (Petition) of the *Fourth Memorandum Opinion and Order* (*AWS Fourth MO&O*) in this proceeding, filed by the Society of Broadcast Engineers, Inc. (SBE).[1]

II. BACKGROUND

2. In the *Seventh Report and Order* (*AWS Seventh R&O*) in this proceeding, the Commission allowed primary access to the frequency band 2025-2110 MHz (2 GHz band) for Department of Defense (DOD) uplink earth stations at 11 sites to support military space operations (also known as tracking, telemetry, and commanding or "TT&C") on a co-equal basis with stations in the incumbent Television Broadcast Auxiliary Service (BAS), Cable Television Relay Service (CARS), and Local Television Transmission Service (LTTS).[2] In order to protect incumbent BAS operations, the Commission

[1] *See* Society of Broadcast Engineers, Inc. (SBE), Petition for Reconsideration, filed May 2, 2006. The Petition was placed on public notice in Report No. 2777, dated July 7, 2006, 71 FR 41022-01, on July 19, 2006. The Petition seeks reconsideration of *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, Fourth Memorandum Opinion and Order*, ET Docket No. 00-258, 21 FCC Rcd 4441 (2006) (*AWS Fourth MO&O*).

[2] *See 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, Seventh Report and Order*, ET Docket No. 00-258, 19 FCC Rcd 21350 at 21363, ¶¶ 27-33 (2004) (*AWS Seventh R&O*). The BAS, LTTS, and CARS rules are codified at 47 C.F.R. Part 74, Subpart F – Television Broadcast Auxiliary Stations; 47 C.F.R. Part 78 – Cable Television Relay Service; and 47 C.F.R. Part 101, Subpart J – Local Television Transmission Service. We collectively refer to all three services as "BAS" from this point forward.

determined that coordination of each DOD TT&C earth station was required, and found that maintaining flexibility on specific mitigation and technical requirements would allow the spectrum sharing situation to be customized as needed for each of the 11 DOD TT&C earth station sites.[3] In the *AWS Fourth MO&O,* the Commission affirmed its decision in the *AWS Seventh R&O.*[4] It denied petitions for reconsideration of the *AWS Seventh R&O* filed by the SBE and by the Association for Maximum Service Television and National Association of Broadcasters (together, "MSTV/NAB"), finding that the petitioners had not raised any new arguments or concerns that were not already considered by the Commission in its adoption of the *AWS Seventh R&O* and that the Commission's decision properly addressed the relevant facts in order to reach its conclusion that BAS and Federal Government operations will be able to co-exist in the band.[5]

III. DISCUSSION

3. In this instant Petition, SBE objects to language in footnote 43 in paragraph 17 of the *AWS Fourth MO&O,* which SBE views as abandoning a requirement from the *AWS Seventh R&O* that prospective DOD TT&C earth stations demonstrate protection to incumbent BAS electronic newsgathering (ENG) mobile TV Pick-up (TVPU) facilities by a stringent receiver threshold degradation not exceeding 0.5 dB.[6] The language at issue is the last sentence in footnote 43, which reads as follows:

> "... Finally, the Commission noted that, during on-going coordination, receiver threshold degradation, on which this worst case analysis was based, may be supplanted by less stringent criteria which fully consider actual ENG power, modulation, performance, or other requirements."

SBE asserts that a 0.5 dB threshold degradation requirement was adopted in footnote 63 in paragraph 29 of the *AWS Seventh R&O,* and claims that the above language in footnote 43 of the *AWS Fourth MO&O* appears to abandon that requirement. SBE states that it accepted and relied heavily on the adoption of this strict 0.5 dB threshold degradation criterion when framing the issues it raised in its petition for reconsideration of the *AWS Seventh R&O.*[7] SBE further asserts that any abandonment of the 0.5 dB threshold degradation criterion, which it views as a necessary interference protection provision, constitutes impermissible rulemaking by the Commission.[8] SBE accordingly requests that this language from the *AWS Fourth MO&O* be clarified or deleted.[9] MSTV and NAB subsequently filed comments in support of SBE's Petition.[10]

4. In the *AWS Seventh R&O,* the Commission did not adopt, or make any findings relative to, a BAS ENG receiver threshold degradation criterion. Neither did SBE mention its prospective acceptance of any

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[3] *See AWS Seventh R&O,* 19 FCC Rcd at 21363, 21364, 21366, and 21367, ¶¶ 27, 29, 32 and 33.

[4] *See AWS Fourth MO&O,* 21 FCC Rcd at 4441 to 4443, ¶¶ 1 and 2.

[5] *See* SBE Petition for Reconsideration of the *AWS Seventh R&O,* filed Nov. 24, 2004; Association for Maximum Service Television and National Association of Broadcasters, Petition for Reconsideration of the *AWS Seventh R&O,* filed Jan. 28, 2005.

[6] *See AWS Fourth MO&O,* 21 FCC Rcd at 4448 and 4449, fn. 43 and ¶ 17. *See* SBE Petition at 1 and 2.

[7] *See* SBE Petition at 2 and 3. SBE notes that a 0.5 dB threshold degradation criterion is more stringent than the 1 dB threshold degradation criterion in Section 2.5.5 of TIA-EIA Telecommunications System Bulletin TSB-10F (Interference Criteria for Microwave Systems), cited in Section 101.105(c) of the Commission's Rules as an acceptable interference methodology. *See* 47 C.F.R. § 101.105(c).

[8] *See* SBE Petition at 3.

[9] *See* SBE Petition at 4.

[10] *See* MSTV Comments, filed May 12, 2006; NAB Comments, filed August 14, 2006.

threshold degradation criterion as a condition of its petition for reconsideration of the *AWS Seventh R&O*. The sole reference to a 0.5 dB receiver threshold degradation in the *AWS Seventh R&O* was made in a parenthetical note to calculations within footnote 63, which set forth an example worst case analysis of the potential for interference from DOD earth stations into fixed receive-only (RO) antennas used in connection with BAS ENG TVPU operations.[11] Moreover, footnote 43 of the *AWS Fourth MO&O* is merely a summary of footnote 63 of the *AWS Seventh R&O*, and, as such, its last sentence is not new but is instead substantively identical to that in footnote 63, which reads as follows:

> "... Finally, we note that, during on-going coordination, receiver threshold degradation, on which this worst case was based, may be supplanted by less stringent criteria which fully consider actual ENG power, modulation, performance, or other requirements, *as were considered by Gannett, NAB, and SBE in their comments*." (emphasis added)

Thus, the "less stringent criteria" mentioned both in footnote 63 of the *AWS Seventh R&O*, and in the summary of footnote 63 appearing in footnote 43 of the *AWS Fourth MO&O*, about which SBE is concerned, are simply practical and realistic (as opposed to worst-case) criteria discussed by NAB, Gannett Co., Inc., (Gannett) and SBE in their comments to the *Fourth Notice of Proposed Rulemaking* in this proceeding.[12]

5. We find SBE's Petition repetitious under the provisions of Section 1.429(i) of the Commission's Rules and dismiss it accordingly.[13] Contrary to SBE's assertions, neither the *AWS Seventh R&O* nor the *AWS Fourth MO&O* adopted or modified any rules or requirements relative to a BAS ENG RO receiver threshold degradation criterion.[14] There being, in particular, no such rules modified by the *AWS Fourth MO&O*, there is nothing subject to reconsideration. As such, SBE's Petition is repetitious under the provisions of Section 1.429(i) of the Commission's Rules and we dismiss it accordingly.

6. We remain confident that the coordination procedures established in the *AWS Seventh R&O* and affirmed in the *AWS Fourth MO&O*, when acted upon in good faith by all interested parties, provide a mechanism that will protect incumbent BAS operations. Moreover, in the *AWS Fourth MO&O*, the Commission confirmed, in response to SBE's request, that in coordinating a specific DOD earth station, DOD must demonstrate protection not only to fixed BAS point-to-point facilities, but also to fixed RO antennas used in conjunction with BAS ENG TVPU operations.[15]

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[11] This analysis incorporated protection of a typical BAS ENG RO system as set forth in DOD's analysis in the *DOD IMT-2000 Assessment*. *See* Department of Defense's "Investigation of the Feasibility of Accommodating the International Mobile Telecommunications (IMT) 2000 Within the 1755-1850 MHz Band," dated February 9, 2001, at ¶¶ B.7.2.2.1 and C.6.1.1.1 (*DOD IMT-2000 Assessment*).

[12] *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, Fourth Notice of Proposed Rulemaking* in ET Docket No. 00-258, 18 FCC Rcd 13235 (2003) (*AWS Fourth NPRM*).

[13] *See* 47 C.F.R. § 1.429(i). Section 1.429, Petition for reconsideration, paragraph (i), provides, "The Commission may grant the petition for reconsideration in whole or in part or may deny the petition. Its order will contain a concise statement of the reasons for the action taken. Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, a second petition for reconsideration may be dismissed by the staff as repetitious."

[14] We also note that if we were to agree with SBE regarding the adoption of a threshold degradation requirement, the record in this proceeding lacks the notice and comment required by the Administrative Procedure Act. *See* 5 U.S.C. §§ 553(b), (c).

[15] *See AWS Fourth MO&O*, 21 FCC Rcd at 4451 and 4452, ¶ 22.

IV. PROCEDURAL MATTERS

7. A Regulatory Flexibility Act analysis or certification, *see generally* 5 U.S.C. 604-605, is not required because this order does not promulgate or revise any rules.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 303(f), 303(g), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(f), 303(g), and 405, and Section 0.31, 0.241, and 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, this Order IS ADOPTED.

9. IT IS FURTHER ORDERED that the petition for reconsideration of the *Fourth Memorandum Opinion and Order* in this proceeding filed by the Society of Broadcast Engineers, Inc. (SBE), IS DISMISSED. These actions are taken pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429.

FEDERAL COMMUNICATIONS COMMISSION

Julius P. Knapp
Acting Chief
Office of Engineering and Technology