

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	
)	
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
)	
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
)	

To: The Commission

**COMMENTS IN SUPPORT OF
PETITION FOR CLARIFICATION**

Entravision Holdings, LLC ("Entravision"), the licensee of Station KNVO, McAllen, Texas, hereby submits these Comments in Support of the Petition for Clarification filed in the above-referenced dockets by Fox Television Stations, Inc. and Gray Television Licensee, Inc. (collectively, "Stations") on March 20, 2007.

BACKGROUND

Entravision's parent, Entravision Communications Corporation, has been negotiating the terms of a master frequency relocation agreement with Sprint Nextel Corporation ("Sprint Nextel"). An issue has arisen in the course of such negotiations regarding whether Sprint Nextel

is required to reimburse Entravision for certain BAS equipment used at KNVO, or whether – if not required – Sprint Nextel may nevertheless reimburse Entravision on a voluntary basis pursuant to the terms of a negotiated frequency relocation agreement, as part of the BAS transition process, or otherwise. As Sprint Nextel has refused to provide such reimbursement, absent Commission direction, Entravision has had no choice but to pursue the instant filing.

Entravision purchased the equipment at issue in 1999 and it has been in continuous service since 2001. The equipment, transmitting in the 2 GHz band, consists of remote pickup program service transmission and receiving equipment utilizing a live truck and central receive site. Station KNVO regularly employs the equipment for use in its newsgathering operations. The equipment is used approximately two hours per day, five days a week. The equipment is critical to KNVO's newsgathering activities and in furtherance of its public interest obligations as a television broadcast licensee.¹ Entravision estimates that the cost to replace this equipment today is approximately \$160,000.

Entravision has operated the equipment lawfully pursuant to the Commission's short term operation rule, Section 74.24, which allows use of the BAS spectrum on a "short term" (*i.e.*, under 720 hours annually per frequency) basis under the authority of KNVO's underlying broadcast license. It is Entravision's understanding that Sprint Nextel believes the equipment may not be reimbursable pursuant to the *Memorandum Opinion and Order* in WT Docket No. 02-55 because Entravision had not "licensed" the service for KNVO's use on or before

¹ The Commission has noted that short term operations are "used to cover special events and breaking news such as natural disasters and other emergency situations that occur outside a licensee's area of normal operations." *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by 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 New Advanced Wireless Services, Including Third Generation Wireless Systems; 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*, 31 Comm. Reg. (P & F) 152, n.31 (2004).

November 22, 2004.² Entravision submits that separate licensing was not required because the Station operated the equipment lawfully under the short term operation rule³ and, accordingly, the *Memorandum Opinion and Order* does not preclude Sprint Nextel from the reimbursement requirement, for equipment used in short term operations, such as occurred in this case.

COMMENTS IN SUPPORT

Stations' Petition for Clarification seeks Commission clarification on the very issue that Entravision faces concerning KNVO, and Entravision hereby states its support for the well-reasoned Petition they have submitted. In support thereof, Entravision urges the Commission to consider expeditiously the Petition and act favorably on it. Entravision submits that prompt and favorable action not only will resolve an issue of concern to the Stations and Entravision, but will provide other, similarly situated broadcasters, with needed guidance and preclude affected broadcasters from having to terminate BAS operations without reimbursement, especially given that most broadcasters are now subject to huge capital outlays for their digital television installations as part of the digital transition.

As for KNVO, it is relocating its BAS operations pursuant to the Commission's orders. However, Entravision is being told by Sprint Nextel that it cannot be reimbursed for the costs of the critical BAS equipment, providing news and information for KNVO's viewers along the common border with Mexico where public safety concerns are significant, purportedly because

² *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, *Memorandum Opinion and Order*, 20 FCC Rcd. 16015 (2005) ("*Memorandum Opinion and Order*").

³ *See, e.g., "Wireless Telecommunications Bureau and Media Bureau Announce Licensing Procedures to Facilitate the Transition of BAS, CARS and LTTS Licenses*, 20 FCC Rcd. 13028, Section II, B. (rel. July 29, 2005) (acknowledging in the BAS relocation context that short term operations are permissible under Section 74.24: "licensees of broadcast stations may operate auxiliary facilities for up to 720 hours [per year] under the provisions of Section 74.24.").

the equipment is not "licensed" – despite the fact that the equipment: (i) was purchased in 1999; (ii) has been installed and operating continuously under the short term rule since 2001; and, (iii) has been operated during the time period where lawful operation was undertaken in accordance with the Commission's short term operation rule, Section 74.24. Such an outcome, requiring a broadcaster, without any compensation, to replace lawfully operated equipment that it purchased in good faith at its own burden and expense, and expected to use for the foreseeable future, cannot have been contemplated by the Commission when it adopted its 2GHz transition rules. On the contrary, Entravision submits that there is no evidence that Section 74.24 BAS equipment was intended to be excluded in the reimbursement process.

Entravision agrees with the Stations' request that the Commission issue a clarification that broadcasters who can reasonably demonstrate to Sprint Nextel that the BAS facilities were used in short term operation, pursuant to Section 74.24 of the Commission's Rules -- and had in-service dates prior to November 22, 2004 -- should be entitled to reimbursement from Sprint Nextel and Sprint Nextel should receive credit for the costs it incurs to relocate these facilities. Entravision also agrees with the Stations that the requested clarification "would ensure that the important services provided by short-term BAS operations continue without disruption...thereby ensuring that the BAS relocation is completed without complication in a timely fashion." Entravision further believes that there is every reason for the Commission to issue such a clarification. Sprint Nextel has not provided Entravision with any reason why it is unable to proffer reimbursement other than a belief that the Commission would not approve such a result and Sprint Nextel would, consequently, be unable to recoup its costs. Entravision asks the Commission to consider why broadcasters should bear this financial burden themselves when Sprint Nextel is deriving a substantial benefit from the BAS spectrum relocation.

The Commission has recognized the significant public interest goal of Sprint Nextel's "timely clearing of *all incumbent operations* in the 1990-2025 MHz band, which in turn will facilitate the timely transition of the 800 MHz band as well."⁴ Short-term operations pursuant to Section 74.24 are "incumbent operations," and authorized pursuant to the underlying broadcast station's Section 73 broadcast license. In KNVO's case, the incumbent operations date back to 2001, when Entravision was not on notice that its use of the Section 74.24 service and its investment in BAS equipment would ever be displaced to an entirely new band in order to accommodate and benefit a wireless telecommunications service.

In the 800 MHz proceeding, the Commission stated that one of its "paramount" goals was to find a "solution that is both *equitable* and *imposes minimum disruption*..."⁵ The Commission also repeated that its transition plan was designed to ensure that Nextel did not gain an undue "windfall."⁶ And, the Commission specifically noted, it respected the "need to minimize the disruption to incumbent BAS operations during the transition."⁷ Requiring broadcasters such as Entravision and Stations to discard Section 74.24 authorized, operational and in-use equipment and forcing the broadcasters to expend substantial, unbudgeted funds to purchase new equipment would defeat all of the aforementioned Commission goals without any material reason for doing so.

⁴ Memorandum Opinion and Order, ¶ 107.

⁵ *In the Matter of Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels; 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; Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service; Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service*, Report and Order, 19 FCC Rcd. 14969, ¶ 2 (2004).

⁶ *Id.*, ¶¶ 5, 12.

⁷ *Id.*, ¶ 252.

Critical BAS operations may, in fact, be disrupted while these licensees procure new equipment. As noted above, Entravision uses its BAS service to inform its viewers on the Mexican border of matters related to severe weather (including hurricanes), flooding, and international border matters. As the Commission has never indicated that equipment associated with authorized short term operations would not be reimbursed, such an obligation to self-fund equipment purchases now, which purchases would be unnecessary but for the relocation, would be an inequitable result – placing an undue burden on the BAS licensees, and resulting in just such a Sprint Nextel windfall that the Commission sought to avoid.

Considering the facts presented herein, and by the Stations in their Petition, Entravision submits that there is no basis, in law, fact, or equity, for the Commission not to grant the requested relief. The broadcasters involved in this matter have been operating in accord with Commission requirements. They have made substantial investments in order to better serve the public interest. These investments would have continued to serve them, but for Sprint Nextel's relocation plan that will result in Sprint Nextel securing spectrum that will benefit its private interests. The broadcasters should receive reimbursement so that they are not detrimentally affected by the BAS relocation. Entravision urges the Commission to act favorably on this clarification matter at the earliest possible time.

CONCLUSION

For the foregoing reasons, Entravision requests that the Commission grant Stations' Petition for Clarification and require Sprint Nextel to reimburse broadcasters for equipment

lawfully operated pursuant to the Section 74.24 short term operation rule when the equipment has been in service on or prior to November 22, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that on March 29, 2007, I caused a copy of the foregoing Comments in Support of Petition for Clarification to be mailed first-class postage prepaid mail to the following:

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