

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 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 OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

As the Commission’s recent *Report and Order and Order* (rel. June 12, 2009)

(“*R&O/O*”) recognizes, the broadcast auxiliary service (“BAS”) is “a critical part of the broadcasting system by which information and entertainment are provided to the American public.”¹ The broadcast community applauds the Commission’s decision to reiterate that the 2 GHz mobile satellite service (“MSS”) entrants must protect BAS licensees from interference

¹ Improving Public Safety Communications in the 800 MHz Band, *Report and Order and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-55, ET Docket Nos. 00-258 and 95-18, FCC 09-49, at ¶ 47 (rel. June 12, 2009) (“*R&O/O-FNPRM*”).

until the BAS licensees are relocated to the new digital band plan, refuse relocation, or the MSS entrants' relocation obligations sunset.

Certain proposals considered in the Further Notice of Proposed Rulemaking (“*Further NPRM*”) that accompanied the *R&O/O*, however, would undo protection for BAS licensees in uncleared markets and thereby endanger coverage of news, public safety emergencies, and a host of other events of local and national importance — even if the affected BAS licensees remain on the analog band plan through no fault of their own and have worked in good faith towards relocation. Accordingly, the Association for Maximum Service Television, Inc. (“MSTV”)² and National Association of Broadcasters (“NAB”)³ file these comments to urge that the Commission reject proposals to prematurely bestow “primary” status on the MSS entrants or otherwise allow them to interfere with BAS operations in uncleared markets.

I. THE MSS ENTRANTS SHOULD NOT BENEFIT FROM THEIR ONGOING REFUSAL TO PARTICIPATE IN THE BAS RELOCATION.

BAS licensees and Sprint Nextel have made substantial progress in the BAS relocation, and continue to work diligently and in good faith to bring the relocation to a timely conclusion. As reported by Sprint Nextel in its most recent report on the BAS relocation, as of June 1, 2009:

- 103 markets, covering 138 million viewers, have been successfully relocated to digital equipment on the new band plan.
- 75 percent of BAS licensees have received all of the equipment needed to complete the relocation, including control systems, mobile and fixed transmitters, connectors, cabling, transmission lines, antennas, decoders, modulators, and central receive antennas.

² MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

³ NAB is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks.

- 60 percent of broadcasters have already installed new BAS equipment.
- 956 of the 965 BAS operators eligible for relocation have executed frequency relocation agreements with Sprint Nextel.⁴

The next bi-monthly report, to be filed by Sprint Nextel in August 2009, will show yet more progress in the BAS relocation. The broadcast community and Sprint Nextel have achieved these results despite the significant complexities of the BAS relocation process. These challenges have included, among many others, “the small number of manufacturers who make the BAS equipment, a shortage of qualified equipment installers and tower climbers, and coordination problems between the new radio equipment and preexisting controllers.”⁵

All of this progress has occurred in the face of the ongoing refusal of the two MSS entrants, TerreStar and ICO, to make any contribution — whether in the form of labor, planning, technical expertise, or financial reimbursement — to the BAS relocation. As far as the BAS relocation is concerned, TerreStar’s and ICO’s sole involvement has been to file comments and make *ex parte* presentations in the above-referenced proceedings, in which they have lobbied the Commission repeatedly for rule changes that would excuse them from paying their fair share of BAS relocation costs prior to commencing operations. TerreStar and ICO chose to sit out the BAS relocation notwithstanding the Commission’s decision five years ago that “MSS licensees will retain the option of accelerating the clearing of . . . markets so that they could begin operations before Nextel has completed nationwide clearing” and its “encourage[ment of] MSS

⁴ See Letter from Trey Hanbury, Director, Sprint Nextel to Marlene H. Dortch, Secretary, FCC, WT Docket No. 02-55 and ET Docket Nos. 00-258 and 95-18 (June 1, 2009).

⁵ *R&O/O-FNPRM* at ¶ 29.

licensees to work cooperatively with Nextel in [BAS] negotiations because all parties will collectively benefit from the expeditious relocation of BAS incumbents to the new band plan.”⁶

The Commission has already provided unprecedented leeway to TerreStar and ICO, allowing them to commence operations before (1) reimbursing Sprint Nextel for their *pro rata* shares of costs incurred in the relocation and (2) ensuring that the Top 30 markets are transitioned to the new band plan.⁷ Certainly, the bestowal of additional special exceptions for the MSS entrants — for example, by according them “primary” status in uncleared markets prior to the sunset date affirmed in the *R&O/O* — would inappropriately reward their continued unwillingness to participate in the BAS relocation.

II. UNINTERRUPTED NEWS COVERAGE DEPENDS UPON THE PRIMARY STATUS OF BAS LICENSEES IN UNCLEARED MARKETS.

In the *R&O/O*, the Commission appropriately held that it would “retain the rule that BAS licensees maintain primary status until they are relocated, decline relocation, or the BAS relocation rules sunset on December 9, 2013.”⁸ MSTV and NAB agree with the Commission that “to modify this rule at this late date in the process would unfairly burden BAS licensees who have been allowed to remain in the band until relocated by new entrants or until their primary status sunsets.”⁹ Even more importantly, if BAS licensees in uncleared markets were downgraded to secondary status prior to the sunset date, in all likelihood they would lose access to the spectrum necessary to deliver on-the-scene news coverage to the public.

⁶ Improving Public Safety in the 800 MHz Band, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 at ¶¶ 257-58 (2004).

⁷ See *R&O/O-FNPRM* at ¶¶ 39 and 45.

⁸ *Id.* at ¶ 42.

⁹ *Id.*

A. Proposals to Downgrade the Status of BAS Licensees in Uncleared Markets Are Overbroad and Unnecessary.

In the *Further NPRM*, the Commission understandably seeks to penalize any BAS licensee that may be found to “not be making a good faith effort to complete the BAS transition in a timely manner.”¹⁰ Yet the proposals under consideration — a demotion of BAS licensees in uncleared markets to secondary status, or a requirement that such BAS licensees cease operation altogether in the 1990-2025 MHz band — would punish all BAS licensees that find themselves in an uncleared market after February 8, 2010.¹¹ This overbroad approach runs counter to the acknowledgement of the *Further NPRM* that BAS licensees can be delayed in transitioning to the new band plan despite their good-faith efforts: “Because of the integrated nature of BAS, all BAS licensees in a market must transition as a group. Consequently, the failure of one BAS licensee to cooperate in the transition can delay many other BAS incumbents from completing the transition.”¹² Similarly, it is entirely possible that in an uncleared market no BAS licensee will have been at fault, but (as with past delays) a weather emergency, equipment shortage, or other unexpected occurrence will have delayed clearing for some period of time.

Moreover, the record makes clear that there are few, if any, BAS licensees that have failed to participate in good faith in the BAS relocation. (And there is no evidence that any BAS licensee has, like TerreStar and ICO, ignored the BAS relocation altogether.) As noted above, only 9 of 965 eligible BAS licensees have yet to enter into a frequency relocation agreement with Sprint Nextel, and unique state contracting rules have been the cause of delay in

¹⁰ *Id.* at ¶ 110.

¹¹ February 8, 2010 is the deadline by which the *R&O/O* mandates that Sprint Nextel complete the relocation of all eligible BAS licensees. *Id.* at ¶ 111.

¹² *Id.*

nearly half of those cases.¹³ Simply put, there is no basis upon which to find that BAS licensees as a group should automatically be downgraded to secondary status or otherwise subject to interference from the MSS entrants if a market remains uncleared after February 8, 2010.

To the extent that, after February 8, 2010, the Commission becomes aware that an individual BAS licensee has failed to act in good faith in transitioning to the new digital band plan, it can address that licensee on an individual basis. Furthermore, as the *R&O/O* notes, “If a party believes that another party, whether a BAS licensee or a new entrant, is not negotiating in good faith, it may petition the Commission for a declaratory ruling.”¹⁴ Rather than paint a broad brush that punishes all BAS licensees and viewers if a market remains uncleared after February 8, 2010, the Commission should address circumstances on a case-by-case basis.

B. Failure to Protect BAS Licensees in Uncleared Markets Will Harm the Public Interest.

If BAS licensees were made secondary, or otherwise required to cease operations in the 1990-2025 MHz band after February 8, 2010, they would lack the spectrum necessary to cover breaking news and other events of importance to their local communities. Local television stations use the full seven 2 GHz BAS channels consistently to provide spot news reports, special events coverage, emergency information, and to relay programming to translator stations that serve rural and remote communities. Local newscasts, which usually occur at the same time on all stations, include reports via BAS facilities from several locations during each newscast. BAS

¹³ See Supplemental Joint Request Concerning the BAS Relocation, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, at 16-17 (Feb. 12, 2009). Note that every eligible commercial broadcaster with a BAS license has entered into a relocation agreement with Sprint Nextel.

¹⁴ *R&O/O-FNPRM* at ¶ 33.

channels are also used regularly for traffic and other reporting from helicopters and for transmitting video from stationary cameras at major traffic routes.

Any action that prevents BAS licensees in an uncleared market from using BAS channels 1 and 2 will also add to the already complex challenges of coordinating BAS use across markets.¹⁵ If a market with access to only five BAS channels experiences a major news event such as a hurricane, broadcasters from adjacent markets will find it virtually impossible to provide simultaneous BAS coverage of that event because so few BAS channels will be available. The bottom line is that if accorded primary status, MSS entrants would have, in effect, the right to shut down live news operations in any market that remains uncleared.

C. The Bestowal of Primary Status Would Take Away Any Incentive That Remains for MSS Entrants to Relocate BAS Licensees.

With secondary status, the MSS entrants have at least some incentive to ensure relocation of any BAS licensees remaining in the band after February 8, 2010. Under the *R&O/O*, the MSS entrants can operate in an uncleared market only if they “successfully coordinate” with the BAS licensees.¹⁶ The MSS entrants cannot force BAS licensees to “agree to coordination proposals that would impair their ability to meet the electronic newsgathering needs of a particular market at a particular time or that would delay the scheduled relocation of BAS”.¹⁷ In addition, the MSS entrants must accept any interference from the BAS licensees, and

¹⁵ While the proposal to downgrade the status of BAS licensees in uncleared markets presents the most severe risk to electronic newsgathering, the Commission likewise should reject any proposal that would allow the MSS entrants to interfere with BAS licensees in uncleared markets prior to the sunset date. *See, e.g., id.* at ¶ 103 (requesting comment on proposal to permit operation of MSS mobile terminals within line-of-sight of BAS receive sites in uncleared markets, despite finding of *R&O/O* that such operation risks interference to BAS operations).

¹⁶ *Id.* at ¶ 53.

¹⁷ *Id.* at ¶ 55.

they are prohibited from operating Ancillary Terrestrial Component (“ATC”) networks or allowing mobile terminals to operate within line-of-sight of BAS receiver sites. The rules affirmed by the *R&O/O* appropriately make fulfillment of the MSS entrants’ relocation obligations a precondition of their unfettered operation in a market.

Yet if BAS licensees in uncleared markets were made secondary, the MSS entrants would have no incentive to relocate them. TerreStar and ICO would be able to begin unfettered operations in any uncleared market after February 8, 2010, but according to the *Further NPRM* they would not be required to compensate the displaced BAS licensees for three years (for markets 1-100) or five years (for markets 101-210). This approach would upend the Commission’s *Emerging Technologies* policies, allowing a new entrant to displace incumbent, primary licensees before paying any relocation costs, and raising the possibility that the displaced incumbents will never receive compensation.¹⁸

III. COORDINATION BY MSS INCUMBENTS IS ESSENTIAL TO PREVENT DISRUPTION OF NEWS COVERAGE IN UNCLEARED MARKETS.

The record in this proceeding is clear that unrestricted MSS operation in uncleared markets will cause harmful interference to BAS operations. Thus, the proposal to undo the requirement that TerreStar and ICO coordinate with BAS licensees in uncleared markets prior to MSS operation would have the same effect as demotion of the BAS licensees to secondary status: significant disruption of news coverage otherwise made possible by BAS operations.

¹⁸ Demotion of BAS licensees in the 1990-2025 MHz band to secondary status after February 8, 2010 would thus have the effect of undoing the *R&O/O*’s decision to maintain the sunset date of December 9, 2013.

As the Commission recognized just one month ago in the *R&O/O*, “interference to nonrelocated BAS incumbents cannot be avoided if MSS is allowed to conduct unrestricted operations in uncleared markets.”¹⁹ The Commission reached this conclusion after a thorough review of technical studies submitted in the record by both BAS and MSS representatives. TerreStar’s study admitted that interference to BAS licensees can occur, but attempted to downplay those risks through assumptions that the Commission rightly found to be faulty — such as an inapposite focus on digital BAS equipment in uncleared markets, where analog equipment dominates.²⁰ Indeed, the Commission found claims by TerreStar and ICO concerning the feasibility of unrestricted MSS operations in uncleared markets to be “troubling”.²¹

The *Further NPRM* also notes the Commission’s concern that “if interference occurs to BAS licensees in nonrelocated markets, that interference will harm BAS operations and could prove difficult to resolve because the location of the handset which is the source of the interference may not be easily determined.”²² MSTV and NAB share this concern. If MSS interference were to occur because of non-coordinated operations, it could take hours or more to determine the source of interference; in contrast, broadcasters often use BAS facilities to deliver breaking news or emergency information where a window of just a few minutes can literally save lives.

¹⁹ *Id.* at ¶ 52.

²⁰ *See id.* at ¶ 50 (“We agree with TerreStar’s conclusion that interference to BAS incumbents from the MSS operations can occur, but we have no means of estimating how frequent or severe such interference will be”); *see also id.* at ¶ 50 n. 117.

²¹ *Id.* (“ICO’s filings are equally troubling, as we are unable to determine if ICO’s assumptions as to how often its mobile terminals will transmit and how many of its customers are likely to travel into areas where BAS has not been relocated are correct”).

²² *Id.* at ¶ 102.

CONCLUSION

As Congress and the Commission have recognized, the provision of local news and emergency information is a cornerstone of communications policy in the United States.²³ This goal will be undermined if the key technical element in the provision of local news, *i.e.*, live reporting using BAS facilities, is subject to harmful interference from TerreStar and ICO. Accordingly, MSTV and NAB respectfully request that the Commission uphold the decision of its recent *R&O/O* to (1) maintain the primary status of BAS licensees in the 1990-2025 MHz spectrum until a licensee is relocated to the new band plan, refuses relocation, or reaches the sunset date of December 9, 2013, and (2) require the MSS entrants to engage in successful coordination with BAS licensees prior to operating in an uncleared market.

Respectfully submitted,

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²³ See *e.g.*, Implementation of the Short-term Analog Flash and Emergency Readiness Act, *Report and Order*, MD Docket No. 88-255, 24 FCC Rcd 6966 (2009); Short-term Analog Flash and Emergency Readiness Act, Pub. L. No. 110-459, 122 Stat. 5121 (2008).