

Int'l Bureau

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Federal Communications Commission
Office of Secretary

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

In the Matters of)	
)	
ICO Satellite Services G.P.)	File No. 188-SAT-LOI-97
)	
The Boeing Company)	File No. SAT-MOD-20020726-0013
)	
Iridium 2GHz LLC)	File No. 187-SAT-P/LA-97(96)
)	
Celsat America, Inc.)	File Nos. 26/27/28-DSS-P-94 <i>et al.</i>

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Policy Branch
International Bureau

PETITION FOR CLARIFICATION

Pursuant to Section 1.106 of the Commission's rules,¹ the National Association of Broadcasters (NAB)² and the Association for Maximum Service Television, Inc. (MSTV)³ [hereinafter collectively "Broadcasters"] request clarification of one narrow aspect of the *Modification Orders* in the above-captioned proceedings that the International Bureau ("Bureau") released on June 24, 2003.⁴ Specifically, Broadcasters

¹ 47 C.F.R. § 1.106.

² NAB is a nonprofit, incorporated association of television and radio stations that serves and represents the American broadcast industry.

³ MSTV is a nonprofit trade association of local broadcast stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

⁴ *Order* in File No. 188-SAT-LOI-97, IBFS Nos. SAT-LOI-19970926-00163, SAT-AMD-20000612-00107, SAT-AMD-2000110300155 (*rel.* June 24, 2003) ("*ICO Order*"); *Order and Authorization* in File No. SAT-MOD-20020726-0013, File Nos. 179-SAT-P/LA-97(16), 90-SAT-AMEND-98, SAT-LOA-19970926-00149, SAT-AMD-19980318-00021 ("*Boeing Order*"); *Order* in File No. 187-SAT-P/LA-979(6), IBFS Nos. SAT-LOA-19970926-00147, SAT-AMD-20001103-00156 ("*Iridium Order*"); *Order* in File Nos. 26/27/28-DSS-P-94, 36 SAT-AMEND-95, 65/66/67-SAT-AMEND-96, 192-SAT-AMEND-97, 88-SAT-AMEND-98, IBFS Nos. SAT-A/O-19940408-00016/17/18, SAT-AMD-19941125-00089, SAT-AMD-19960124-

seek clarification that the Bureau's reference to Mobile-Satellite Service (MSS) providers' access to certain spectrum at 2 GHz as "primary" has no bearing on the current primacy of broadcasters' use of that spectrum for Broadcast Auxiliary Service (BAS).

In the *Modification Orders*, the Bureau amended the respective licensee's authorization for spectrum in the 2 GHz band, pursuant to a Commission instruction in the *AWS Third Report and Order*.⁵ The Bureau noted in the *Modification Orders* that each authorized MSS provider previously received authority to choose a pair of "Selected Assignments" in the 1990-2025 MHz (uplink) and 2165-2200 (downlink) frequency bands,⁶ but that the Commission later reallocated the 1990-2000 MHz, 2020-2025 MHz, and 2165-2180 MHz bands from MSS to terrestrial wireless services, thereby shrinking the MSS allocations to 2000-2020 MHz (uplink) and 2180-2200 MHz (downlink).⁷ This change made the MSS providers' initial Selected Assignments no longer available; thus, the Commission directed the Bureau to divide the remaining 2 GHz of spectrum, 20 MHz in each direction, among the authorized providers.⁸

00007/8/9, SAT-AMD-19970925-00124, SAT-AMD-19980113-00009, SAT-AMD-20001103-00153 ("*Celsat Order*") (collectively "*Modification Orders*").

⁵ *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order* in ET Docket No. 00-258, 18 FCC Rcd 2223 (2003) ("*AWS Third Report and Order*"), recon. pending.

⁶ See, e.g., *ICO Order* at ¶2.

⁷ *AWS Third Report and Order*, 18 FCC Rcd at 2238.

⁸ *Id.* at 2240.

In the *Modification Orders*, the Bureau instructs the remaining qualified MSS providers to choose a new Selected Assignment in the modified MSS bands.⁹ In addition, of relevance to Broadcasters, the *Modification Orders* state:

“The Selected Assignment shall give [MSS provider] access to 5 megahertz in each direction of transmission *on a primary basis*.”¹⁰

In this petition, Broadcasters merely seek clarification of the Bureau’s meaning in describing the MSS providers’ access to the modified spectrum as “primary.”

The Broadcast Auxiliary Service is a vital part of television newsgathering that stations use for on-location news coverage. The ability to transmit pictures and sounds from location at news events immeasurably enhances the immediacy and usefulness of television news to viewers, including during weather and other emergencies. To provide BAS, broadcasters use spectrum at 2 GHz that the Commission has targeted for reallocation to MSS, pursuant to a complex reallocation scheme.¹¹

Under the Commission’s rules, broadcasters’ access to the 2 GHz spectrum used for BAS is, and always has been, on a primary basis.¹² Broadcasters understand that, under the Commission’s BAS reallocation plan, the 1990-2025 band may be allocated to

⁹ See, e.g., *ICO Order* at ¶3.

¹⁰ *Id.* at ¶4 (emphasis added).

¹¹ See, e.g., *Second Report and Order and Second Memorandum Opinion and Order* in ET Docket No. 95-18, 15 FCC Rcd 12315 (2000) (“*Second Report and Order*”), *recon. pending*. The change made in the *AWS Third Report and Order*, as well as other developments, will require modification of the BAS relocation plan.

¹² See 47 C.F.R. § 2.106/NG156: “The band 1990-2025 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000 . . .”

the fixed and mobile services on a secondary basis, but only after September 6, 2010.¹³ We also note that the Commission established a two-year period for mandatory negotiation period among BAS and MSS providers that was extended to September 6, 2003. Finally, we acknowledge that the Commission has designated spectrum at 2025-2110 MHz for eventual reallocation to BAS.¹⁴

Nevertheless, Broadcasters are concerned that the Bureau's characterization of MSS providers' access to spectrum in the 2000-2020 MHz/2180-2200 MHz bands in the *Modification Orders* as "primary" unintentionally may cause confusion regarding the status of MSS and BAS in the bands, at a time when implementation of the relocation scheme requires as much certainty as possible. Although we recognize the relative unlikelihood of such a scenario, Broadcasters believe that the possibility remains that an MSS provider may interpret the *Modification Orders* to somehow increase their rights to the spectrum as compared to BAS, especially given the failure of MSS providers to negotiate with broadcasters despite the relocation scheme's mandatory negotiating period, as well as the uncertain viability of the MSS providers themselves.¹⁵

Broadcasters merely seek assurance that the Bureau's use of the term "primary" in no way alters the current rights of broadcasters to use the relevant spectrum for BAS on a primary basis. For example, the Bureau might clarify that its use of the term "primary" in

¹³ Broadcasters seek clarification only of the one narrow question presented in this petition. Broadcasters preserve their long-standing objections to certain parts of the Commission's overall plan for transitioning the 2 GHz currently used for BAS to MSS, including the proposed compensation scheme. *See, e.g., Motion for Stay of Mandatory Negotiation Period*, ET Docket No. 95-18 (filed October 22, 2001); *Petition for Partial Reconsideration*, ET Docket No. 95-18 (filed September 6, 2000).

¹⁴ *Second Report and Order* at ¶13.

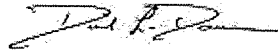
¹⁵ *See, e.g., CTIA Petition Takes On MSS*, Wireless Week (May 28, 2001).

the *Modification Orders* referred to the rights of currently authorized MSS providers *vis-à-vis* other, belated MSS providers, and not *vis-à-vis* broadcasters and BAS. Or, the Bureau could simply clarify that the *Modification Orders* merely implement the underlying MSS relocation rules and has no bearing on broadcasters' current primacy in the bands, or some other logical explanation.

Respectfully Submitted,



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