

Parklawn Building, Room 11C-06, 5600 Fishers Lane, Rockville, Maryland 20857".

- 6. Revise § 102.44 paragraph (d) to read as follows:

**§ 102.44 Representatives of requesters.**

\* \* \* \* \*

(d) No payment or reimbursement for representatives' fees or costs. The Act does not authorize the Secretary to pay, or reimburse for, any fees or costs associated with the requester's use of a personal representative under this Program, including those of an attorney.

**§ 102.83 [Amended]**

- 7. Amend § 102.83, paragraph (c), by removing the second occurrence of the word "requester" and in its place add the word "Secretary" at the end of the fourth sentence of that section.

**§ 102.90 [Amended]**

- 8. Amend § 102.90 as follows:
  - A. In paragraph (b)(1) remove the words "Special Programs Bureau", and add in their place "Healthcare Systems Bureau," and remove the words "Room 16C-17, and add in their place "Room 12-105";
  - B. In paragraph (b)(2) remove the words "Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814," and add in their place "Healthcare Systems Bureau, Parklawn Building, Room 12-105, 5600 Fishers Lane, Rockville, Maryland 20857";
  - C. In paragraph (c), remove the words "Special Programs Bureau" and add in their place "Healthcare Systems Bureau".

[FR Doc. 06-4762 Filed 5-23-06; 8:45 am]

BILLING CODE 4165-15-P

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 2, and 87**

[ET Docket No. 00-258, WT Docket No. 02-8; FCC 06-43]

**Advanced Wireless Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies Petitions for Reconsideration and affirms the Commission's decision that the Broadcast Auxiliary Service and other incumbent services will share the 2025-2110 MHz band with relocated Department of Defense facilities.

**DATES:** Effective June 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ted Ryder, Office of Engineering and Technology, Policy and Rules Division, (202) 418-2803, e-mail: [Ted.Ryder@fcc.gov](mailto:Ted.Ryder@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Fourth Memorandum Opinion and Order*, ET Docket No. 00-258, and WT Docket No. 02-8, FCC 06-43, adopted April 5, 2006, and released April 11, 2006. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

**Summary of the Report and Order**

1. The Commission considered two petitions for reconsideration ("Petitions") of the *Seventh Report and Order*, 69 FR 77938, December 29, 2004, in this proceeding, one filed by the Association for Maximum Service Television and National Association of Broadcasters (together, "MSTV/NAB") and the other by the Society of Broadcast Engineers, Inc. ("SBE"). In the *Seventh Report and Order* ("AWS Seventh Report and Order") in this proceeding, the Commission, among other things, allowed primary access to the band 2025-2110 MHz 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"). For simplicity, in the remainder of this document the BAS, LTTS, and CARS services collectively will be referred to as BAS. The actions taken in the AWS *Seventh Report and Order* were specifically designed to facilitate the introduction of new advanced wireless services ("AWS") in the band 1710-1755 MHz by providing replacement spectrum for clearing that band of incumbent Federal Government operations that would otherwise impede the development of new nationwide AWS services. These actions were

consistent with proposals made in the AWS Fourth NPRM, 68 FR 52156, September 2, 2003, and previous actions in this proceeding and with the United States Department of Commerce, National Telecommunications and Information Administration ("NTIA") *2002 Viability Assessment*, which addressed relocation and reaccommodation options for Federal Government operations in the band 1710-1755 MHz.

2. In the *Memorandum Opinion and Order*, the Commission denied both the MSTV/NAB and the SBE petitions. In this regard, the Commission found that the Petitioners have not raised any new arguments or concerns that were not already considered by the Commission in its adoption of the *AWS Seventh Report and Order* 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. The Commission, however, provided additional clarification on a matter raised in the SBE petition.

3. In the *AWS Seventh Report and Order*, the Commission undertook the specific task of reaccommodating Federal users in order to make the band 1710-1755 MHz available for AWS use. This decision was part of a larger and substantially more complex proceeding designed to make spectrum available for a variety of new and innovative wireless services and involving a variety of bodies, including this Commission, Federal stakeholders as represented through NTIA, and Congress.

4. In the *AWS Seventh Report and Order* decision, the Commission recognized the concerns of the broadcasting community that sharing of the band 2025-2110 MHz ("the 2 GHz band") by TV BAS stations and DOD TT&C uplink earth stations would be challenging in some instances, given the high power and close proximity of some of these earth stations to nearby cities served by BAS. However, it affirmed its confidence that such sharing is feasible and will promote the public interest, particularly in the ultimate provision of AWS to the public. To maintain its longstanding policy that first-licensed facilities have the right of protection from later-licensed facilities operating in the same band, and to facilitate compatible operations, the Commission required each DOD earth station to coordinate with all potentially affected BAS stations prior to earth station authorization. Additionally, for the rare situation where no reasonable coordination can be negotiated, the Commission stated that the issue may be

raised to the FCC and NTIA to jointly arbitrate resolution.

### Petitions

5. *MSTV/NAB Petition for Reconsideration.* In their petition for reconsideration, MSTV/NAB claim that the Commission improperly established a framework for BAS-Federal Government coordination in the band because it did not require NTIA to disclose the complete technical parameters for all of the 11 DOD TT&C uplink earth stations to be relocated to the 2 GHz band. MSTV/NAB argue that without this information, it is impossible to assess the impact of the earth stations on incumbent BAS operations and therefore the Commission's confidence that spectrum sharing is feasible is unsupportable.

6. MSTV/NAB also assert that the Commission fatally failed to properly consider two studies provided in MSTV/NAB's comments in response to the *AWS Fourth NPRM*, which MSTV/NAB contend show that relocation of the DOD TT&C uplink earth stations would require extraordinary coordination and would result in extensive interference to incumbent BAS operations. One of these studies identified all BAS facilities within the coordination zone of each DOD earth station, showing that a large number of BAS licensees would need to coordinate with each earth station, some with multiple earth stations, and a significant number on an ongoing, proactive basis, to prevent interference from the earth stations. The study concluded that a significant impact on BAS licensees in large, congested markets would result. The second study purported to demonstrate that the high powers of DOD earth stations would cause interference, and in some cases cause complete overload, to nearby BAS receive sites, such as those at Goffstown, New Hampshire, any time the earth station operates and concluded that the DOD earth stations would cause harmful interference to nearby BAS systems much of the time. These studies, MSTV/NAB argue, contain evidence that the DOD earth stations would cause unavoidable interference to BAS facilities. As such, they conclude that the Commission's decision mandating sharing was both unsupported by the evidence in the record and inconsistent with the Commission's goals.

7. Finally, MSTV/NAB argue that the Commission erred in not demonstrating, by specific evidence, that the spectrum sharing techniques that can permit sharing will be effective in situations where BAS and DOD facilities will share the band 2025–2110 MHz. As an

example, MSTV/NAB note that one of the techniques, time-sharing, would present broadcasters with the choice of covering a breaking news story with a corrupted news feed, or not covering the story at all.

8. In light of the deficiencies that they allege, MSTV/NAB contend that sharing of the 2025–2110 MHz BAS band with DOD operations should not be allowed until the record shows that measures to protect incumbent BAS operations would be feasible and productive. MSTV/NAB also assert that we should facilitate prospective coordination efforts by establishing a formal process through which the Commission, NTIA, and DOD would investigate, with input from affected parties, the feasibility of coordination and would define the precise technical parameters to be used for coordinating each of the 11 DOD TT&C earth stations.

9. *SBE Petition for Reconsideration.* SBE indicates that, in its comments responding to the *AWS Fourth NPRM*, it stated that allowing up to 11 DOD TT&C earth stations to share the 2 GHz band with BAS incumbents would only be feasible if the BAS operations were converted to digital and the earth station antenna side-lobe suppression were improved by 30 dB by the addition of a "pie plate" shroud around the periphery of the antenna. SBE claims that these steps would result in up to a 60 dB improvement in the desired-to-undesired (D/U) signal ratio at fixed receive-only (RO) antennas associated with electronic newsgathering ("ENG") operations, which it asserts could change the BAS-DOD relationship from frequency sharing to frequency re-use. Accordingly, in its petition for reconsideration, SBE asks us to require that all DOD TT&C earth stations have their sidelobe suppression upgraded to at least 90 dB. Similarly, SBE faults our conclusion that the use of shielding berms around an earth station would be one means of enabling sharing of the band. SBE claims that such berms would need to be impractically high—100 to 200 feet above ground level—to protect ENG RO antennas typically located on tall buildings, towers, or mountain tops, and thus would severely restrict the earth station's low elevation look angles to a degree unacceptable to DOD. SBE also claims that the Commission inaccurately characterized SBE's position as to whether the 11 DOD TT&C earth stations could successfully share the 2 GHz band with BAS operations converted to digital by omitting SBE's contention that both digital operations and earth station side-lobe suppression measures must be required.

10. SBE asks that we confirm that a DOD TT&C uplink earth station at 2 GHz must demonstrate protection not only to fixed TV BAS links, such as studio-transmitter links ("STLs") and TV relays (also known as inter-city relays ("ICR")), but also to fixed RO antennas associated with ENG mobile TV pickups ("TVPUs"), which are more difficult to protect, because no allowance can be made for antenna directivity, as such antennas are either omnidirectional or remotely steerable. SBE also seeks clarification of the statement in paragraph 27 of the *AWS Seventh Report and Order*, that "[f]or those rare situations where no reasonable coordination can be negotiated, the issue may be raised to the FCC and NTIA to jointly arbitrate resolution." Specifically, SBE expresses concern that in cases where DOD cannot demonstrate protection to ENG RO sites, joint FCC/NTIA arbitration may overrule the protection requirements and authorize the DOD earth station over BAS objections.

### Decision

11. The record of this proceeding provided sufficient basis for the Commission to determine that, as a general proposition, incumbent BAS facilities will be able to share the band 2025–2110 MHz with relocated DOD TT&C uplink earth stations, and doing so serves the public interest by promoting spectrum efficiency and allowing for the rapid introduction of new and innovative AWS services. In the *AWS Seventh Report and Order*, the Commission adopted an approach that paired the application of a variety of interference mitigation techniques with a requirement of coordination (and further FCC/NTIA arbitration and resolution, if necessary) to allow for shared, co-primary use of the band. Neither MSTV/NAB nor SBE has raised any new arguments or concerns that were not already considered or would otherwise warrant reconsideration of that decision and we are therefore denying their petitions.

12. In the *AWS Seventh Report and Order*, the Commission determined that sharing techniques currently exist that can be deployed to enable the 11 DOD earth stations to be engineered into 2 GHz without harming existing BAS operations. Although the petitions question whether particular interference mitigation techniques would be practical in particular situations, they do not refute the Commission's determination that such techniques are established and accepted means of allowing for co-channel operations and can collectively resolve a variety of

sharing situations. Moreover, to ensure successful coordination in individual situations, the Commission required that coordination be accomplished with BAS licensees of stations within the coordination contour of the earth station, consistent with Appendix 7 of the International Telecommunication Union ("ITU") Radio Regulations, and engage the local BAS frequency coordinator(s), where available, in support of achieving such coordination. For the rare situation where no reasonable coordination can be negotiated, the Commission stated that the issue may be raised to the FCC and NTIA to jointly arbitrate resolution, and that the Commission will not concur with authorizing operation of any 2 GHz DOD TT&C uplink earth station in the absence of successful coordination between DOD and the affected BAS incumbents. Finally, to ensure that future BAS licensees have a means for coordinating their proposed operations with the DOD TT&C uplink earth station, DOD earth stations are required to maintain a point of contact for coordination. We conclude that the use of proven interference mitigation techniques and these coordination safeguards will ensure successful shared DOD-BAS use of the band.

13. We disagree with the contention by MSTV/NAB that we could not reach this conclusion without additional detailed and specific information about the 11 DOD TT&C uplink earth stations to be relocated in the 2 GHz band. In analyzing situations where BAS incumbents would be operating in proximity to the 11 DOD TT&C earth station sites, the Commission acknowledged that location data supplied by SBE indicate a significant potential for interference from DOD TT&C earth stations at the 11 sites into fixed receive-only receivers used in connection with BAS ENG TVPUs, and made its determination with this in mind. Site-specific analysis, however, is more appropriate to the point of coordination, well before construction and operation, as is normally the case for any satellite earth station or terrestrial station anticipating operation in spectrum in which coordination is required. At that time, DOD will be able to take timely advantage of the latest technological capabilities, as well as any changes to BAS equipment or use, and select the sharing and mitigation techniques most appropriate to each particular situation, to achieve the most effective sharing with BAS. Because the most effective techniques for sharing will be different at each site, the Commission purposely declined to

mandate sharing techniques to be used in each situation. Doing so would have been impractical and was not necessary to the determination that sharing in the band is feasible. Moreover, the Commission also observed that while enabling relocation of earth station operations from the band 1755–1850 MHz to the 2 GHz band will over time allow DOD the flexibility to accommodate additional systems in the lower band, DOD may eventually choose not to use the 2 GHz band for some of its 11 sites, due to coordination difficulties with incumbent operations. Given the breadth of options available in each particular situation, we do not share MSTV/NAB's belief that more concrete and reliable scientific and technical evidence, or more investigation and analysis is necessary before we can require sharing in the band.

14. In acknowledging that sharing at some of the sites will be difficult, the Commission examined the particularly challenging situation in Denver. It determined that the Buckley AFB ("Buckley") site exhibited numerous and significant interference potentials into ENG receive antennas located on tall buildings and towers in nearby downtown Denver, generally to the west of Buckley, and into mountain site antennas further west, which may tend to point back toward Denver for coverage, and thus toward Buckley. The Commission noted that existing sharing techniques—such as limiting power, pointing direction, or vertical elevation of the DOD earth station antenna; adjusting satellite orbital coverage; constructing berms, installing RF shielding, or increasing earth station antenna sidelobe suppression; operation on adjacent ENG channels; taking advantage of ENG receive antenna sidelobe suppression; arranging time-sharing agreements; or using specific criteria which fully consider ENG power, modulation, and performance—could address those interference potentials. It concluded that because these sharing techniques, together with coordination, can facilitate implementation of the DOD TT&C earth stations at the 11 sites, there are no insurmountable technical obstacles that would prevent a primary, co-equal allocation for such earth stations at 2 GHz. The situations MSTV/NAB describe in the studies referenced in their petition for reconsideration are no more challenging than those at Buckley, and therefore, we conclude that the Commission fully considered the interference concerns of the nature raised by MSTV/NAB.

15. To the extent that MSTV/NAB are concerned that the number of BAS licensees with which a DOD earth station will need to coordinate is too large to be practical, we note that earth stations typically are subject to large coordination distances, varying up to 500 km, and consequently, in spectrum shared with terrestrial microwave systems, large numbers of licensees with which to coordinate. Earth station coordination in the 2 GHz band would be no exception in this regard. The effective engagement of local BAS frequency coordinators, where available in addition to BAS licensees, should be able to facilitate the accomplishment of coordination. Moreover, the establishment of a single BAS coordinator for large areas, for which the BAS coordinator for the Los Angeles/Southern California area may be a model, would be particularly advantageous. With respect to MSTV/NAB's concern for real-time coordination for on-going BAS TVPU ENG deployment, we observe that the need for, and extent of, such coordination can be determined at the time of the initial coordination of the earth station. At that time, the flexibility of both DOD earth station and on-going BAS ENG operations and antenna pointing may be considered, especially where the earth station site is close to a major TV market, as both services will at times need to operate in a manner not anticipated that could result in interference to BAS operations. It will therefore be in the interests of both to reach a mutually agreeable solution concerning coordination of on-going operations. In this connection, NTIA has agreed that the DOD earth station point of contact for coordination, as required by the *AWS Seventh Report and Order* for the coordination of future BAS stations, would also be available for the coordination of on-going BAS TVPU ENG operations, should such a requirement be determined by DOD, in concert with the local BAS coordinator(s) and licensees. Engagement of the earth station's point of contact for coordination, particularly in concert with the local BAS frequency coordinator(s), where available, will address MSTV/NAB's concern that some BAS TVPU ENG operations may face uncertainty regarding protection from DOD earth station transmissions. In view of the above, we disagree with MSTV/NAB's contention that the Commission acted in an arbitrary and capricious manner with respect to its evaluation of the studies MSTV/NAB reference in their petition.

16. We also deny SBE's request that we adopt specific sidelobe suppression criteria that would require the use of "pie plate" shrouds on all DOD TT&C earth station antennas. In the *AWS Seventh Report and Order*, the Commission declined a request by Gannett to impose certain conditions that would restrict DOD's options at the Buckley site, such as relocation of the DOD earth station away from Denver, limiting power or vertical elevation of its antenna, or increasing its antenna sidelobe suppression through the use of a "pie plate" shroud. The Commission found that maintaining flexibility on specific mitigation requirements, while requiring coordination to protect incumbent BAS operations, will allow the spectrum sharing situation to be customized for each site to meet the requirements when DOD needs to use the 2 GHz band. In this connection, we expect that the relationship between each DOD earth station and incumbent BAS stations need not be one of strict frequency re-use, as suggested by SBE. Rather, it should be one of frequency sharing, incorporating coordination of on-going operations where appropriate to accommodate the varying needs of both earth station and local ENG RO operations and antenna pointing, so that both services can operate at the same time in the same area, whether on the same or adjacent frequencies, to the maximum extent practicable.

17. Although MSTV/NAB are concerned that the coordination efforts we describe could be wasteful of BAS or DOD resources, we believe the alternative approach—establishing rigid sharing criteria and imposing particular mitigation measures that must be employed in every situation—would be more likely to waste valuable resources. By setting forth a plan to allow for sharing in this band, we take a significant and substantial step to allow for the development of AWS spectrum in the 1710–1755 MHz and 2110–2155 MHz bands, which furthers one of the primary goals of this proceeding and, in turn, promotes the public interest. Although MSTV/NAB claim that our approach "threatens to divert time and effort from spectrum allocation strategies that could more effectively accomplish the Commission's goals in this proceeding," it is unclear what these alternate strategies are, and the primary solution offered by the Petitioners—additional studies of BAS–DOD sharing—would likely hinder the quick and efficient deployment of AWS in the reallocated bands. However, as discussed, we have ample record to provide for shared use of the band;

while the specifics of how DOD facilities will accomplish such sharing in individual cases can and should be determined closer to the time such facilities are deployed, we would interject considerable uncertainty into the ability of AWS to enter the 1710–1755 MHz band if we eliminated the provisions the Commission made in the *AWS Seventh Report and Order* for DOD to move its facilities into the spectrum at 2025–2110 MHz. Similarly, MSTV/NAB's concerns that difficulties associated with coordination could prove wasteful of BAS or DOD resources or deprive consumers of new or enhanced services that would be facilitated by BAS are, at best, speculative and do not outweigh the expected new and enhanced services and consumer benefits that the rapid deployment of the AWS spectrum is widely anticipated to provide. Finally we note that, as a practical matter, only the party initiating coordination (i.e., DOD) would be in a position to make the unlikely determination that further coordination of a particular DOD earth station may not be productive—or wasteful as suggested by MSTV/NAB—and only at the time of coordination, when specific BAS–earth station sharing parameters can be established.

18. We agree with MSTV/NAB's assessment that the successful coordination of a DOD TT&C earth station could inhibit the operation of some new BAS stations in an area. As the Commission observed in the *AWS Seventh Report and Order*, once a DOD TT&C uplink earth station has begun coordination, new BAS stations for which coordination begins later must accept interference from the DOD earth station, as is normally the case for new stations sharing spectrum on a co-primary basis. However, given the existing proliferation of BAS facilities, particularly TVPUs, in the 2 GHz band, we believe it likely that many new BAS stations would in effect be protected indirectly through the earth station's protection of existing incumbents.

19. While we are denying the Petitions and affirming our decision that the BAS and other incumbent services will share the 2025–2110 MHz band with relocated DOD facilities, several matters the parties have raised warrant additional clarification. We confirm, as requested by SBE, that in coordinating a DOD earth station, DOD must demonstrate protection not only to fixed BAS point-to-point facilities such as STL stations, TV relay stations, and TV translator relay stations, but also to fixed RO antennas used in conjunction with BAS TVPUs ENG operations. We

believe that DOD can protect the point-to-point and fixed RO facilities through coordination with licensees or with the assistance of a local BAS frequency coordinator. Further, we recognize, as we did in the *AWS Seventh Report and Order*, and as noted by SBE, that protecting these ENG RO antennas will be challenging, as they must be able to receive, and thus point, in all directions—and in the case of omnidirectional antennas, without any sidelobe suppression to reduce interference—to maximize coverage. We also clarify, at SBE's request, for those rare situations where no reasonable coordination can be negotiated, and the parties raise the issue with the Commission or NTIA for their joint arbitration, that the Commission will act expeditiously in concert with NTIA to consider the needs of both incumbent BAS stations and the DOD earth station. In such situations, the protection of BAS TVPUs ENG RO sites, as well as fixed BAS sites, must be demonstrated. However, joint arbitration, if needed, must necessarily consider the flexibilities inherent to both earth station and local ENG RO operations and antenna pointing, and any arbitration will be binding on both parties. In this connection, we expect that both DOD and BAS interests will act in good faith to exercise flexibility, where feasible, in negotiating a reasonable accommodation and coordination, and thus obviate the need for arbitration.

## Other Matters

20. As requested by NTIA in a letter of September 22, 2005, we are also adopting minor editorial changes and corrections to footnotes G122, G123, and US276 to the United States Table of Frequency Allocations in Section 2.106—Table of Frequency Allocations. Specifically, we merge footnotes G122 and G123 into a single footnote G122, deleting the historical cite to the Omnibus Budget Reconciliation Act of 1993 ("OBRA-93") in G123 and slightly modifying the language regarding Federal operations. We also modified the last sentence of footnote US276 to replace language describing other mobile telemetering uses as "secondary to the above uses"—which may lead to confusion as to those uses' underlying primary allocation status—with language stating that such uses "shall not cause interference to, or claim protection from, the above uses."

21. We also adopt minor editorial changes to § 87.303(d)(1) to align the language of that section with footnotes US78 and US276.

## Regulatory Flexibility Analysis

22. *Final Regulatory Flexibility Certification:* The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”<sup>2</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>3</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>4</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

23. The Fourth Memorandum Opinion and Order makes only minor editorial changes and corrections to the Rules adopted by the *Seventh Report and Order* in ET Docket No. 00-258. We find that these changes are insignificant.<sup>6</sup> We thus conclude that these changes will have only a minor effect on the incumbent Television Broadcast Auxiliary Service (“BAS”) under part 74, Cable Television Relay Service (“CARS”), under part 78, and Local Television Transmission Service (“LTTS”) under part 101, in the band 2025–2110 MHz, and on the Aviation Services under part 87 and Amateur Radio Service under part 97, in the band 2360–2400 MHz, and hence a minimal economic impact on licensees.<sup>7</sup> Therefore, we certify that the requirements of this Fourth Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Fourth Memorandum Opinion and Order, including a copy of this final certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, this Fourth Memorandum Opinion and Order and this certification will be sent to the

Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

## Congressional Review Act

24. The Commission will send a copy of this Fourth Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## Ordering Clauses

25. Pursuant to Sections 1, 4(i), 7(a), 302, 303(f), 303(g), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 302a, 303(f), 303(g), and 405, and Section 1.429 of the Commission’s Rules, 47 CFR 1.429, this Fourth Memorandum Opinion and order is adopted.

26. Parts 1, 2 and 87 of the Commission’s Rules are amended as specified in rule changes, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to Sections 1, 4(i), 7(a), 302, 303(f), and 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 302a, 303(f), and 303(g).

27. The petition for reconsideration of the *AWS Seventh Report and Order* in this proceeding filed by the Association for Maximum Service Television and National Association of Broadcasters (together, “MSTV/NAB”) is denied, and the petition for reconsideration filed by the Society of Broadcast Engineers, Inc. (“SBE”), is granted in part and denied in part. 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 CFR 1.429.

28. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of the Fourth Memorandum Opinion and Order, ET Docket No. 00-258 and WT Docket No. 02-8, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

## List of Subjects

### 47 CFR Part 1

Administrative practice and procedure.

### 47 CFR Parts 2 and 87

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

## Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 87 as follows:

### PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e) unless otherwise noted.

### § 1.9005 [Amended]

■ 2. In § 1.9005, remove and reserve paragraph (p).

### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise pages 35 and 36.  
■ b. In the list of United States (US) footnotes, revise footnote US276.

■ c. In the list of Federal Government (G) footnotes, revise footnote G122 and remove footnote G123.

The revisions and additions read as follows:

### § 2.106 Table of Frequency Allocations.

\* \* \* \* \*

**BILLING CODE 6712-01-P**

<sup>1</sup> The RFA, see 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act (SBREFA).

<sup>2</sup> 5 U.S.C. 605(b).

<sup>3</sup> 5 U.S.C. 601(6).

<sup>4</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in Small

Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.<sup>5</sup>

<sup>5</sup> Small Business Act, 15 U.S.C. 632.

<sup>6</sup> See ¶ 22 (clarifications) and ¶ 23 (minor editorial changes), in the Fourth Memorandum Opinion and Order.

<sup>7</sup> See 47 CFR part 74, Subpart F—Television Broadcast Auxiliary Stations; 47 CFR part 78—Cable Television Relay Service; 47 CFR part 101, Subpart J—Local Television Transmission Service; 47 CFR part 87—Aviation Services, and 47 CFR part 97—Amateur Radio Service.

Table of Frequency Allocations			2200-2655 MHz (UHF)		Page 35
Region 1 Table	Region 2 Table	International Table	Region 3 Table	Region 3 Table	FCC Rule Part(s)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			Federal Table 2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)	United States Table 2200-2290	Non-Federal Table 2200-2290
5.392			5.392 US303 2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	US303 2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE RADIOLOCATION Amateur Radiolocation			2300-2305 G122 2305-2310 US338 G122 2310-2320 Fixed Mobile US339 Radiolocation G2 G120 US327 2320-2345 Fixed Radiolocation G2 G120 US327 2345-2360 Fixed Mobile US339 Radiolocation G2 G120 US327 2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed MOBILE US276 AMATEUR	2300-2305 Amateur (97) 2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338 2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327 2320-2345 BROADCASTING-SATELLITE 5.396 US327 US327 2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327 2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed MOBILE US276 AMATEUR	Amateur (97) Wireless Communications (27) Amateur (97) Wireless Communications (27) Aviation (87)

		2395-2400 G122	2395-2400 AMATEUR	Amateur (97)
		2400-2417	2400-2417 AMATEUR	ISM Equipment (18) Amateur (97)
		5.150 G122 2417-2450 Radiolocation G2	5.150 5.282 2417-2450 Amateur	
		5.150 G124	5.150 5.282 2450-2483.5 FIXED MOBILE RADILOCATION	ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101)
		5.150 US41	2450-2483.5 FIXED MOBILE RADILOCATION	ISM Equipment (18) Satellite Communications (25)
		2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398
		2495-2500		2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398
		5.150 5.398 2500-2520 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation	5.150 5.402 2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403	5.150 5.402 US41 2500-2655 FIXED 5.409 MOBILE except aeronautical mobile
		5.404 5.407 5.412 5.414 2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	5.404 5.407 5.414 5.415A 2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A BROADCASTING-SATELLITE 5.413 5.416	5.150 5.402 US41 US391 NG147 2500-2655 FIXED US205 MOBILE except aeronautical mobile
		5.339 5.403 5.405 5.412 5.417C 5.417D 5.418B 5.418C	5.339 5.403 5.417C 5.417D 5.418 5.418C 5.339 US205	5.339 Wireless Communications (27)

\* \* \* \* \*

#### United States (US) Footnotes

\* \* \* \* \*

US276 Except as otherwise provided for herein, use of the band 2360–2395 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of aircraft, missiles or major components thereof. The following three frequencies are shared on a co-equal basis by Federal and non-Federal stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles, whether or not such operations involve flight testing: 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall not cause harmful interference to, or claim protection from interference from, the above uses.

\* \* \* \* \*

#### Federal Government (G) Footnotes

\* \* \* \* \*

G122 In the bands 2300–2310 MHz, 2395–2400 MHz, 2400–2417 MHz, and 4940–4990 MHz, Federal operations may be authorized on a non-interference basis to authorized non-Federal operations, and shall not constrain the implementation of any non-Federal operations.

\* \* \* \* \*

### PART 87—AVIATION SERVICES

■ 5. The authority citation for part 87 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

■ 6. Section 87.303 is amended by revising paragraph (d)(1) to read as follows:

#### § 87.303 Frequencies.

\* \* \* \* \*

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2395 MHz are assigned in the mobile service primarily for aeronautical telemetry and associated telecommand operations for flight testing of aircraft and missiles, or their major components. The bands 2310–2320 MHz and 2345–2360 MHz are also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and associated telecommand operations associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of objects undergoing flight tests. In the band 1435–1525 MHz, the

following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz. In the band 2360–2395 MHz, the following frequencies may be assigned for telemetry and associated telecommand operations of expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In the band 2360–2395 MHz, all other mobile telemetry uses shall not cause harmful interference to, or claim protection from interference from, the above uses.

\* \* \* \* \*

[FR Doc. 06-4655 Filed 5-23-06; 8:45 am]

**BILLING CODE 6712-01-C**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 22, 27, and 101

[ET Docket No. 00-258; WT Docket No. 02-353; FCC 06-45]

#### Advanced Wireless Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document establishes procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150–2160/62 MHz band, as well as for the relocation of Fixed Microwave Service (FS) operations from the 2160–2175 MHz band, and modifies existing relocation procedures for the 2110–2150 MHz and 2175–2180 MHz bands. This document also establishes cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–2160/62 MHz band. We continue our ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including AWS. This document also dismisses a petition for reconsideration filed by the Wireless Communications Association International, Inc. (WCA) as moot.

**DATES:** Effective June 23, 2006, except for §§ 27.1166(a), (b) and (e); 27.1170; 27.1182(a), (b); and 27.1186, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Federal

Communications Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

#### FOR FURTHER INFORMATION CONTACT:

Patrick Forster, Office of Engineering & Technology, (202) 418-7061.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Ninth Report and Order and Order*, ET Docket No. 00-258, WT Docket No. 02-353, FCC 06-45, adopted April 12, 2006, and released April 21, 2006. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

#### Summary of the Report and Order (ET Docket No. 00-258)

1. In the *Ninth Report and Order* (“*Ninth R&O*”) in ET Docket No. 00-258, the Commission discusses the specific relocation procedures that will apply to BRS and FS incumbents in the 2150–2160/62 MHz and 2160–2175 MHz bands, respectively. We also discuss the cost-sharing rules that identify the reimbursement obligations for AWS and MSS entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2175–2180 MHz bands. This document also establishes cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–2160/62 MHz band. The Commission, in earlier decisions in this docket, has allocated the spectrum in the 2150–2160/62 MHz and 2160–2175 MHz bands for Advanced Wireless Service (AWS), which is the collective term we use for new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of applications, including those using voice and data (such as Internet browsing, message services, and full-motion video) content. Advanced wireless systems could provide, for example, a wide range of voice, data, and broadband services over a variety of mobile and fixed networks. In establishing these relocation procedures, we facilitate the introduction of AWS in these bands, while also ensuring the continuation of BRS and FS service to the public.