

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

In the Matter of)
)
Clarification of Reconsideration Period) WT Docket No. 05-23
and Effective Date for Terminations of)
Wireless Radio Service Authorizations)
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)

To: The Commission

Society of Broadcast Engineers, Inc. Request for Clarification

The Society of Broadcast Engineers, Incorporated (SBE), the national association of broadcast engineers and technical communications professionals, with more than 5,000 members world wide, hereby respectfully submits its Request for Clarification of the January 21, 2005, Declaratory Ruling regarding automatic terminations of wireless radio services authorizations in the Universal Licensing System (ULS).

I. The Declaratory Ruling Fails to Address the Needs of Part 74 BAS Licensees

1. On January 21, 2005, the Commission issued a Declaratory Ruling to WT Docket 05-23, stating that as of July 1, 2005, the Commission would automatically terminate and delete from the ULS any wireless radio services authorizations for which no notification of completion of construction had been filed. Although Footnotes 2 and 4 to the Declaratory Ruling list the affected stations as including Parts 22 (Public Mobile Services), 24 (Personal Communications Services), 26 (General Wireless Communications Service), 27 (Miscellaneous Wireless Communications Services), 80 (Stations in the Maritime Services), 87 (Aviation Services), 90 (Private Land Mobile Radio Services), 95 (Personal Radio Services), 97 (Amateur Radio Services) and 101 (Fixed Microwave Services), and did not include Part 74 (Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributions Services), SBE nevertheless notes that Section 1.901 of the FCC Rules specifically includes Part 74 as one of the wireless radio services. Thus, it would appear that Part 74 Broadcast Auxiliary Service (BAS) stations are subject to the Declaratory Ruling.¹ If this is not the case, then SBE asks the Commission to issue an amended

¹ SBE notes that the ET Docket 01-75 rulemaking added Section 74.34 to the Part 74 BAS rules ("Period of Construction; Certification of Completion of Construction"), and that Section 74.34(e) specifically refers to Section 1.946 of the FCC rules ("Constructin and Coverage Requirements").

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or supplemental Declaratory Ruling, stating that the Section 1.901 definition of wireless radio services does not apply to the Declaratory Ruling; that is, that the omission of Part 74 from Footnotes 2 and 4 was intentional.

2. On the assumption that the Declaratory Ruling is intended to apply to Part 74 Subpart D Remote Pickup (RPU) Broadcast stations, to Part 74 Subpart E Aural BAS stations, and to Part 74 Subpart F TV BAS stations, all of which require applications to be filed using the ULS, SBE submits that the proposed automatic termination of modification applications would violate broadcasters' due process rights.

3. SBE has no problem with the Commission automatically deleting the license of a new RPU station for which no notification of construction has been filed within 12 months, or deleting the license of a new Aural BAS or TV BAS station for which no notification of construction has been filed within 18 months. However, SBE has a serious problem with this same approach being applied to ULS applications filed to modify an existing RPU, Aural BAS, or TV BAS station. Rather than deleting the license from the ULS, the Commission should have the ULS revert to the prior, licensed, BAS facilities as they existed before the filing of the modification application. In effect, SBE asks the Commission to treat RPU, Aural BAS, and TV BAS licenses just as the Media Bureau's Consolidated Data Base System (CDBS) treats broadcast station construction permits (CPs): If a CP is not consummated by the filing of a station license, and is instead allowed to expire, then the existing station license remains in force. That is, an existing broadcast station license only gets modified if a Form 302 license application to consummate a CP gets filed. Otherwise, the existing license is unaffected. A similar approach is needed for RPU, Aural BAS, and TV BAS licenses in the ULS.

II. Existing Aural BAS and TV BAS Links Must Continue to Show Up in the ULS Until Such Time as an Application for Modified Facilities Has Had a Construction Completed Notification Filed, or Has Exceeded the Allowable Construction Period and Expired

4. A corollary issue is that for Aural BAS and TV BAS fixed links, as soon as a modification application of an existing fixed BAS link is granted, the old record disappears from the ULS, and only the proposed new facilities show up. Since Aural BAS and TV BAS stations are allowed an 18-month construction period, both the old and new paths need to show up in the ULS during this period, in order to ensure that an existing but not yet changed path is properly protected. With the advent of Part 101 Prior Coordination Notice (PCN) frequency coordination protocols to 950 MHz Aural BAS stations, and to 7 and 13 GHz TV BAS stations, as of April 16, 2003,

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Aural BAS and TV BAS frequency coordination studies are now typically done by a commercial microwave frequency coordinator (CMFC), rather than an SBE-affiliated volunteer BAS frequency coordinator. While a local BAS frequency coordinator would generally be aware whether a radio or TV studio relocation has in fact been implemented, a CMFC, using just ULS data and often with no familiarity with the local market, is unlikely to know when, or even whether, a studio move has been implemented. Thus, the ULS needs to show both the existing path and the proposed path during the 18-month allowable construction period. Only when (or if) the required ULS notification of construction of a modified Aural BAS or TV BAS path has been filed should the "before" record be deleted from the ULS.

5. Construction of new radio or TV station studios, at a different site from an existing studio, is a non-trivial task. The construction time can easily take an appreciable portion of the allowable 18-month construction period. Thus, from the time a radio or TV station files a studio-to-transmitter link (STL) or intercity relay (ICR) modification application, to the time the microwave link is in fact modified, could be many months. During this interval the existing, unmodified path(s) must continue to be protected, but that protection cannot occur if the ULS has already deleted the existing path(s) in favor of the proposed modified path(s). There is also the possibility that an expected studio move ends up never happening, in which case the radio or TV licensee would intentionally never file a notification of construction in the ULS. In that event, at the end of the 18-month construction deadline the proper action is to delete the proposed but never actually implemented modified path from the ULS, and leave the still-in-use, properly licensed original path in the ULS.

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III. Summary

6. The Declaratory Order did not include Part 74 in its list of FCC rule parts to which the new policy of automatic-deletion-of-a-station-license-from-the-ULS-if-no-construction-notification-is-filed would apply, yet Section 1.901 of the FCC Rules clearly includes Part 74 stations in its definition of wireless radio service stations. It is therefore unclear whether the announced policy does, or does not, apply to Part 74 BAS stations. If the new policy is intended to apply to Part 74 RPU stations, Aural BAS stations, and TV BAS stations, then the deletion of a valid, existing, BAS license for which a modification application was filed, but for which no timely notification of construction was filed, is an inappropriate action by the Commission; instead, the appropriate action is the deletion of the modified record, leaving the original record and license intact. Finally, the ULS needs to show both existing and proposed modified BAS records during the pendency of the allowable construction period, to ensure that existing but not-yet-modified paths continue to be protected.

Respectfully submitted,

Society of Broadcast Engineers, Inc.

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