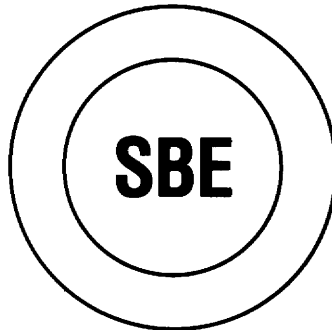


**Comments of the
Society of Broadcast Engineers, Inc.**

**Public Notice DA 01-2610
NAB/MSTV Motion for Stay
of the Two-Year Mandatory Negotiation
Period Between Broadcasters and MSS
Operators**



November 30, 2001

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SOCIETY OF BROADCAST ENGINEERS, INC.
Indianapolis, Indiana

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

In the Matter of)	
)	
Motion for Stay of Mandatory)	ET Docket No. 95-18
Negotiation Period between)	
Broadcasters and MSS)	Public Notice DA 01-21610
)	
)	

To: The Commission

Comments of the Society of Broadcast Engineers, Inc.

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 comments regarding the joint *Motion for Stay of Mandatory Negotiation Period* filed on October 22, 2001, by the National Association of Broadcasters (“NAB”) and the Association for Maximum Service Television, Inc. (“MSTV”). The Commission’s November 8, 2001, public notice, DA 01-2610, requested comments on the NAB/MSTV filing.

**I. SBE Supports the NAB/MSTV Motion for Stay of the
Mandatory Negotiation Period Between Broadcasters and MSS**

1. As was stated in the November 8, 2001 SBE reply comments to the ET Docket 00-258 Further Notice of Proposed Rulemaking (“FNPRM”) regarding third-generation wireless services (“3G”) and also as was stated in the November 12, 2001, SBE reply comments to the IB Docket 01-185 Notice of Proposed Rulemaking (“NPRM”) concerning an ancillary terrestrial component (“ATC”) for the Mobile Satellite Service (“MSS”), SBE supports the NAB/MSTV request for a stay of the two-year mandatory negotiation period (“MNP”) between broadcasters and MSS that commenced on September 6, 2000.¹
2. SBE agrees with NAB and MSTV that given the possible changes to the reallocation of the 1,990–2,025 MHz portion of the 1,990–2,110 MHz TV broadcast auxiliary service

¹ SBE notes that Section 74.690(e)(1) of the FCC Rules incorrectly states that the mandatory two-year negotiation period will begin on September 6, 2010; of course this is incorrect: the two-year mandatory negotiation period commenced on September 6, 2000 (*i.e.*, pursuant to Paragraph 53 of the July 3, 2000, Second Report & Order and Second Memorandum Opinion & Order to ET Docket 95-18, thirty days after the publication of that document in the Federal Register, which occurred on August 6, 2000).

**SBE Comments: NAB/MSTV Motion for Stay of Mandatory Negotiation Period
ET Docket 95-18 (MSS)**

(“BAS”) spectrum raised in the ET Docket 00-258 FNPRM and in the IB Docket 01-185 NPRM, it would be unreasonable to expect broadcasters to negotiate with MSS pending such significant uncertainties.

3. In addition to the ET Docket 00-258 and IB Docket 01-815 uncertainties, and as also pointed out in the SBE reply comments to these rulemakings, the negotiation period should be placed on hold pending resolution of the pending September 5, 2000, SBE Petition for Partial Reconsideration of the July 3, 2000, ET Docket 95-18 Second Report & Order (“R&O”) and Second Memorandum Opinion & Order (“MO&O”) and the completion of the pending ET Docket 01-75 rulemaking. The ET 01-75 rulemaking proposes to allow digital modulation for stations in all of the TV BAS bands, and not just the 6.5 and 18 GHz TV BAS bands, so that the mode of operation about to be necessitated (*i.e.*, digital) due to 12.1 MHz wide channels (or even narrower split channels) for TV BAS will also be a mode authorized by the FCC.

4. SBE disagrees with the New ICO Global Communications (“New ICO”) IB Docket 01-185 reply comments that there is no need to stay the negotiation period. The above rulemakings raise fundamental issues regarding 2 GHz electronic news gathering (“ENG”) equipment issues, what the intermediate and/or final 2 GHz TV BAS band plans will be, whether the Phase I transition from 120 MHz of 2 GHz TV BAS spectrum to 102 MHz to 2 GHz ENG spectrum will be abandoned in favor of an immediate jump to a Phase II transition to just 85 MHz of 2 GHz ENG spectrum, whether broadcasters should continue to pursue the technical issues regarding “equivalently performing” analog radios with 14.5-MHz wide channels or whether broadcasters should instead concentrate on replacing their 2 GHz hardware with digital radios, and a plethora of related issues. It makes no sense to suggest that broadcasters should be expected to negotiate with the MSS industry given the issues and questions that have been raised by the ET Docket 00-258 and IB Docket 01-185 rulemakings.

5. SBE is unaware of any negotiations between New ICO and TV BAS licensees that have actually progressed to the active negotiations stage; *i.e.*, it is not as if a stay of the MNP would scuttle any negotiations now taking place between MSS and broadcasters. It would be one thing if the negotiations were 25, 50 or 75 percent completed. But if they have hardly even started, SBE sees this instant NAB/MSTV Motion as the appropriate forum for making the Commission aware of this lack of progress, more than one year into an MNP that has only two years to run. Right now, Part 74 TV BAS licensees are effectively blind as to

**SBE Comments: NAB/MSTV Motion for Stay of Mandatory Negotiation Period
ET Docket 95-18 (MSS)**

exactly who will be on the other side of the bargaining table as SBE is not aware of any MSS entity that has started negotiations with broadcasters, and no one appears to even be in the on-deck position. These rulemakings may not only affect the substance of the negotiations that the MSS users have hardly begun, but as noted could significantly change who the BAS users would negotiate with.

6. In its reply comments to the ET Docket 00-258 FNPRM, New ICO states that “...regardless of whether some 2 GHz MSS spectrum may be reallocated for other uses, there is no reasoned basis for granting BAS incumbents a longer period of time to relocate to their final BAS band, which was adopted more than a year ago and is unaffected by any proposed reallocation of 2 GHz MSS spectrum.” To the contrary, and for the reasons given above, SBE disagrees. The possible changes proposed in the ET Docket 00-258 rulemaking and in the related IB Docket 01-185 rulemaking go to the heart of the negotiation process and involve issues fundamental to virtually every aspect of the negotiation process including, particularly, whether this is to be a two-step or a one-step relocation, as broadcasters are not currently instructed to relocate “to their final TV BAS band.”

7. SBE finds itself in agreement with one portion of the New ICO reply comments, where New ICO states “While their concern about the impact that new independent terrestrial operations would have on the 2 GHz relocation are well founded, ...”² The concerns expressed by the American Petroleum Institute, by the Joint Broadcasters, by NAB/MSTV, and by SBE are indeed well founded, and SBE finds it a small hope that agreement on this point will be the first step to good-faith negotiations by New ICO and other MSS parties with broadcasters.

² New ICO reply comments to IB Docket 01-185, at Page 13.

**SBE Comments: NAB/MSTV Motion for Stay of Mandatory Negotiation Period
ET Docket 95-18 (MSS)**

II. Summary

8. SBE supports the entirely appropriate and reasonable NAB/MSTV Motion for Stay of Mandatory Negotiation Period. The fundamental spectrum allocation and technical issues raised by the IB 01-185 and ET 00-258 rulemakings, especially in concert with the unresolved SBE Petition for Partial Reconsideration of the ET 95-18 Second R&O/Second MO&O, and finally the uncompleted ET Docket 01-75 rulemaking, make the need for a stay of the present two-year MNP appropriate and necessary. Finally, the present lack of any known negotiations between MSS and broadcasters, more than halfway through the two-year MNP, makes it all the more appropriate for favorable action on the NAB/MSTV Motion.

Respectfully submitted,

Society of Broadcast Engineers, Inc.

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