

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)	
)	
Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules)	ET Docket No. 01-75
)	
Telecommunications Industry Association, Petition for Rule Making Regarding Digital Modulation for the Television Broadcast Auxiliary Service)	RM-9418
)	
Alliance of Motion Picture and Television Producers, Petition for Rule Making Regarding Low-Power Video Assist Devices in Portions of the UHF and VHF Television Bands)	RM-9856
)	

ORDER

Adopted: April 15, 2003

Released: April 15, 2003

By the Chief, Office of Engineering and Technology:

1. In this Order, we grant a Request for Temporary Stay (Request) filed by the Society of Broadcast Engineers (SBE)¹ to delay the effective date of prior coordination procedures adopted by the *Report and Order*² in the above-captioned proceeding for most fixed point-to-point Aural and TV Broadcast Auxiliary Service (BAS) stations. SBE requests the stay to allow BAS licensees time to provide and to correct BAS receive site information in our licensing database, the Universal Licensing System (ULS), to ensure that the new procedures effectively avert interference to existing systems.³ We grant the requested relief for six months, delaying the effective date to October 16, 2003.

2. In the *Report and Order*, we adopted prior coordination procedures for fixed Aural BAS stations above 944 MHz and fixed Television BAS (TV BAS) stations above 2110 MHz under Part 74.⁴

¹ Society of Broadcast Engineers, Request for Temporary Stay of the PCN Requirement, Revision of the Broadcast Auxiliary Service, ET Docket No. 01-75, Digital Modulation for all TV BAS Bands, RM-9418, and Low-Power Video Assist Devices, RM-9856, filed April 4, 2003.

² Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, ET Docket No. 01-75, FCC 02-298, 17 FCC Rcd 22979 (rel. Nov. 13, 2002), 68 FR 12743 (Mar. 17, 2003) (*Report and Order*).

³ See Request at 1, 5-6.

⁴ See *Report and Order* at ¶¶ 53-65 and Appendix A: Final Rules, §§ 74.502(d) and 74.638. The *Report and Order* also adopted the prior coordination requirement for fixed stations in the Cable Television Relay Service (CARS) under Part 78. See *Report and Order* at Appendix A: Final Rules, § 78.36.

We adopted these procedures to conform procedures for fixed BAS, and Cable Auxiliary Relay Service (CARS) under Part 78, with those already in effect for Fixed Microwave Services (FS) under Part 101, Section 101.103(d). We found that the FS procedures were appropriate for fixed BAS and CARS, stating that uniform procedures for bands shared among these services are necessary to promote spectrum efficiency and to minimize the possibility of harmful interference.⁵ We note that because these procedures were already in effect for Aural and TV BAS stations in the bands 6425-6525 MHz and 17700-19700 MHz, the new rules only affect fixed BAS in the bands 944-952 MHz (950 MHz), 2450-2583.5 MHz (2.5 GHz), 6875-7125 MHz (7 GHz), and 12700-13250 MHz (13 GHz).

3. SBE requests a one-year stay to allow BAS licensees time to correct inaccurate receive site information, such as geographic coordinates, antenna height, make, and model. It notes that these errors are a legacy of licensing schemes previous to the ULS and occur in 29% of all fixed point-to-point BAS license records. SBE further notes that receive site information was not even required prior to 1974 and that it remains missing on many old licenses.⁶ SBE explains that, compared to the informal coordination procedures currently in effect, prior coordination procedures require a more accurate database. SBE acknowledges previous Commission public notices asking broadcasters to examine and correct inaccuracies in the ULS, via informal correction procedures, but asserts that with the adoption of the prior coordination procedures, BAS licensees will now have a greater incentive to ensure that their license records are up to date.⁷ We also note that SBE asserts that interference standards for the mix of analog, hybrid analog-digital, and digital links encountered in BAS need to be developed and formalized before prior coordination procedures can take effect.⁸ Life Talk Radio and CPBE support SBE's Request.⁹

4. We agree with SBE that legacy database inaccuracies in the ULS could seriously affect the efficacy of prior coordination procedures, which was not anticipated when the Order setting these procedures was adopted. We will therefore delay for six months the effective date of the prior coordination procedures for fixed BAS. We find that this six month time period is the proper balance to allow sufficient time for BAS licensees to correct legacy database inaccuracies without unnecessarily delaying the efficiency and protection benefits offered by prior coordination procedures.

5. The Commission generally employs a four-part test under the standard set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*¹⁰ in determining whether to grant motions for stay.¹¹ Under this standard, the petitioner must demonstrate (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties

⁵ See Report and Order at ¶¶ 2, 53, 61.

⁶ See Request at 1-2.

⁷ See Request at 5. See also "Wireless Telecommunications Bureau Makes Broadcast Auxiliary Radio Station License Databases Available for Review prior to ULS Implementation", *Public Notice*, May 7, 1999.

⁸ See Request at 4.

⁹ See Life Talk Radio Comments at 1; CPBE at 1.

¹⁰ *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977).

¹¹ See Florida Public Service Commission, Request for Interpretation of the Applicability of the Limit on Change in Interstate Allocation, Section 36.154(f) of the Commission's Rules, *Order Granting Motion for Partial Stay*, 12 FCC Rcd 14324 (Accounting and Audits Division 1996).

will not be harmed if the stay is granted; and (4) that the public interest favors grant of the stay.¹² As discussed below, we find that a stay is warranted.

6. First, we believe the database issues raised by SBE are valid and have merit. The period of the stay will provide time for Commission staff to address completion and correction of receive site information in the ULS database, so that prior coordination procedures can begin. Second, we find that SBE has demonstrated that, absent a stay, BAS licensees will suffer irreparable harm because there is an increased likelihood of interference to their receive facilities. Third, we find that granting a delay for six months will not harm any interested parties. As with our finding in the *Report and Order* that use of existing local coordination procedures would be sufficient to avert harmful interference until the effective date of the prior coordination procedures,¹³ we find that continuance of these procedures during a six-month period will be sufficient to avert harmful interference. Finally, we find that the public interest favors a grant of a temporary stay, given the short time before the new rules would be effective and the benefits of reducing the risk for harmful interference to existing BAS receive facilities.

7. With regard to SBE's assertion that adequate time must be provided for interference standards to be developed, we note that five months have already passed since the release of the *Report and Order* on November 13, 2002. Moreover, as we pointed out in the *Report and Order*, the existing baseline interference criteria for 13 GHz BAS in current Section 74.638 are identical to those for FS in Section 101.105.¹⁴ Also, the FS criteria in Section 101.105(c) already provide the flexibility to follow generally acceptable good engineering practices, such as the existing interference criteria already in use by broadcasters and cited by SBE,¹⁵ and we would therefore be hesitant to further delay prior coordination for the mix of signals needed to effect transition to DTV pending the development of more detailed criteria.

8. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), and Section 1.429 (k) of the Commission's rules, 47 C.F.R. § 1.429 (k), that the Society of Broadcast Engineers' Request for Temporary Stay **IS GRANTED** to the extent indicated herein until October 16, 2003.

9. **IT IS FURTHER ORDERED** that this Stay is effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Edmond J. Thomas
Chief
Office of Engineering and Technology

¹² *Id.*

¹³ See *Report and Order* at ¶ 19.

¹⁴ 47 C.F.R. §§ 74.638, 78.36, 101.105. See also *Report and Order* at ¶¶ 53, 64.

¹⁵ See Request at 4.