

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 73, 74, 78 and 101

[ET Docket No. 01–75; FCC 02–298]

Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends our rules pertaining to the Broadcast Auxiliary Services (BAS) to permit BAS stations to introduce new technologies and create a more efficient BAS that can more readily adapt as the broadcast industry converts to the use of digital technology, such as digital television (DTV). We also make conforming amendments our rules pertaining to the Radio Broadcast Services, the Cable Television Relay Service (CARS), and to our rules pertaining to Fixed Microwave Services (FS). In many cases, the BAS, CARS, and FS share frequency bands and have technically and operationally similar stations, and our rule changes will permit these three services to operate under consistent regulatory guidelines.

DATES: Effective April 16, 2003, except for §§ 74.535 and 74.637 which became effective on October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 01–75, FCC 02–298, adopted October 30, 2002, and released November 13, 2002. The full text of this document is 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 complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Report and Order

1. The *Report and Order* amends part 74 of our rules pertaining to the Broadcast Auxiliary Services (BAS) to permit BAS stations to introduce new technologies and create a more efficient BAS that can more readily adapt as the broadcast industry converts to the use of digital technology, such as digital

television (DTV). We also make conforming amendments to part 73 of our rules pertaining to the Radio Broadcast Services, to part 78 of our rules pertaining to the Cable Television Relay Service (CARS), and to part 101 of our rules pertaining to Fixed Microwave Services (FS). In many cases, the BAS, CARS, and FS share frequency bands and have technically and operationally similar stations, and our rule changes will permit these three services to operate under consistent regulatory guidelines.

BAS Technical Rules (Part 74) and Conforming Technical Rules for Parts 74, 78 and 101 Digital Modulation in All Television and Aural BAS Bands

2. Section 74.637 of the Commission's rules sets forth emission requirements for TV BAS operations. Digital modulation provides for analog or digital modulation in the 6425–6525 MHz, 17.7–19.7 GHz, and 31.0–31.3 GHz bands. Although the rules do not specifically prohibit digital modulation in other TV BAS bands (*i.e.*, 2025–2110 MHz and 2450–2483.5 MHz (2 GHz), 6875–7125 MHz (7 GHz), and 12.7–13.25 GHz (13 GHz)), the Commission's policy relative to BAS has been to allow digital modulation only in bands where it specifically authorized. Therefore, under current policy, licensees must obtain a waiver of the rules to transmit using digital modulation in the 2 GHz, 7 GHz, and 13 GHz bands.

3. The *Report and Order* modified § 74.637 to permit use of any available digital modulation technique in all TV BAS bands and also modifies § 74.535 to permit digital modulation in all aural BAS bands. We find that permitting digital modulation in the 2 GHz, 7 GHz, 13 GHz TV BAS bands, and all aural BAS bands will provide licensees with increased flexibility in the provision of BAS operations, promote more efficient use of this spectrum, and facilitate the transition to reduced channel bandwidths in the 2 GHz band, and to DTV.

4. In order to facilitate the expeditious processing of the approximately 500 pending applications for digital BAS operations, the following BAS rules will become effective October 30, 2002, the adopted date of the *Report and Order*: §§ 74.535 and 74.637. Pursuant to 5 U.S.C. 553(d)(1) and 553(d)(3), we find good cause to make these rules effective immediately rather than to follow the normal practice of making them effective 30 days after publication in the **Federal Register**, due to the pendency of the BAS applications. Accordingly, we began processing these BAS applications on October 30, 2002, the

adoption date of the *Report and Order*. Defective BAS applications filed on or before November 13, 2002, the release date of the *Report and Order*, will be returned with the opportunity to amend. Defective BAS applications filed after November 13, 2002, the release date of the *Report and Order* may be subject to dismissal. In addition, we will allow relief from any new frequency coordination requirement imposed by the rules we adopted, such as new prior coordination procedures for fixed systems proposed in applications accepted for filing before the effective date of the rules. Specifically, we deem digital applications filed before the effective date of the rules in the *Report and Order* to have been properly coordinated under the existing coordination requirements, absent any evidence to the contrary, and we will not require re-coordination of these applications under prior coordination procedures effective under the new rules that also permit digital modulation (see footnote 22 in the *Report and Order*). We conclude that adherence to the existing frequency coordination requirements has been sufficient to ensure that these digital and analog/digital systems do not cause harmful interference to existing stations, and that re-coordination, or the imposition of frequency coordination where it was not previously required, would be unnecessarily burdensome to the applicants. Moreover, most digital BAS systems that have been applied for are operating under an STA and we have not received any evidence of interference from these systems. We therefore will not require re-coordination for digital applications filed before the effective date of the rules. Finally, we will exercise flexibility with respect to compliance with the technical rules adopted herein when processing these applications.

Maximum Effective Isotropic Radiated Power for Short Paths

5. We have modified the rules to implement in §§ 74.644 and 78.108 the same equation codified at § 101.143 for determining the maximum effective isotropic radiated power for short paths (EIRP) for path lengths shorter than the specified minimum. Further, we are grandfathering existing fixed links that are less than 17 km in length in the 2450–2483.5 MHz band. However, we will not permit grandfathered or other existing links that are modifying from analog operation to analog/digital or digital operation, to retain grandfathered status, and thus continue operation at their current elevated power levels, or be