

permanent TV BAS operation, we expect that the NGSO MSS gateway earth station licensee will be able to accommodate a temporary mobile TV BAS operation if it is not operating across the whole authorized bandwidth at the time of the request. As long as the temporary mobile TV BAS does not cause interference to the gateway earth station, TV BAS use would not constrain the growth and long-term functionality of the gateway earth station. Accordingly, regarding mobile BAS use, we deny here SBE's request that coordination and protection of NGSO MSS gateway earth stations be based on current spectrum use, but we will explore whether, and under what circumstances, temporary mobile TV BAS use of the 7 GHz band within interference range of such earth stations could be permitted in the *Notice of Proposed Rulemaking* referenced in paragraph 5, herein.

8. *Grandfathered TVPU.* Grant of SBE's request to permit TVPU stations authorized after Globalstar's and ICO's three existing NGSO MSS gateway earth stations to operate without regard to harmful interference to those earth stations would disregard the Commission's long-standing policy that authorized and coordinated stations have rights to protection from subsequently authorized stations of the same status (primary or secondary). SBE's request appears to be based on the premise that, because Globalstar's and ICO's NGSO MSS feeder downlink spectrum assignments were conditioned on the outcome of the allocation decision in this proceeding, their earth stations' interference protection rights do not commence until the date of release of the *R&O*. However, the waiver grants to Globalstar and ICO authorized primary feeder downlink use of the 6875–7055 MHz and 6975–7075 MHz bands, respectively, as of the dates of the waivers, which are November 18, 1996 and July 17, 2001, respectively. Subsequently, Globalstar's and ICO's earth stations were individually authorized. The *R&O* allocated the 6700–7025 MHz band for NGSO MSS feeder downlinks and grandfathered the three existing Globalstar and ICO earth stations in the 7025–7075 MHz band, including facilities in the process of being built, but did not modify the waiver grants or earth station authorizations. Accordingly, those earth stations have maintained primary status since the grant of the waivers. Therefore, we deny SBE's petition for reconsideration with respect to this issue.

9. *Final Regulatory Flexibility Certification.* We find that SBE has

presented no evidence to contradict our finding that there would be a *de minimis* burden on TV BAS stations in the 7 GHz band. SBE simply cites the number of TV translator, LPTV, Class A TV, and full service TV stations within 145 km of Globalstar's and ICO's three existing NGSO MSS gateway earth stations that *might* use 7 GHz TV BAS stations that *might* be subject to protecting the three earth stations from harmful interference. However, SBE fails to recognize that only those 7 GHz TV BAS stations located in relatively close proximity to an NGSO MSS gateway earth station and that were authorized *after* the earth station would have to bear the cost of frequency coordination with the earth station, nor does SBE recognize that new TV BAS stations must already coordinate with *all* existing primary licensees in the band, including other TV BAS stations and FSS uplinks. SBE does not estimate the number of 7 GHz TV BAS stations likely to be affected by coordination with existing or future NGSO MSS downlinks, nor does it estimate the cost burden on the affected TV BAS stations attributable to such coordination.

10. Because the 7 GHz FSS downlink allocation is limited to serving the feeder link needs of NGSO MSS systems, the number of gateway earth stations constructed will be very small and most likely will be deployed away from major populated areas where the 7 GHz TV BAS band is used most. Further, it is incumbent upon the new entrant in any shared band to perform coordination, so that a coordination burden on TV BAS stations located in the vicinity of an existing NGSO MSS gateway earth station would affect only new TV BAS stations, and SBE has not demonstrated that we should expect a substantial number of small entities to have new TV BAS stations. Moreover, because of the existing co-primary FSS uplink allocation in the 7 GHz band, any new TV BAS station would already have to coordinate with FSS operations and bear the associated costs. Therefore, new 7 GHz TV BAS stations locating near an NGSO MSS gateway earth station will not be confronted with a significant additional satellite coordination requirement as a result of our action.

11. We also note that, typically, a frequency coordinator will charge a fee to a new TV BAS station based on the number of existing station links that must be coordinated. It is unclear how much coordination with an NGSO MSS gateway earth station would add to that cost, but in reply comments in ET Docket No. 01–75, Viacom, Inc. indicates that a single coordination

costs no more than \$1,000 per frequency to a BAS station. This relatively low cost combined with the limiting factors discussed above leads us to affirm our conclusion that the impact of our action is *de minimis* on TV BAS operations as a whole.

12. In summary, we find that only a relatively small number of TV BAS stations in the 7 GHz band will be affected by the *R&O*'s decision to authorize NGSO MSS feeder downlink use of that band because only a new 7 GHz TV BAS station locating in the vicinity of an NGSO MSS gateway earth station will have to protect the earth station from harmful interference attributable to the operation of the new TV BAS station. A 7 GHz TV BAS station authorized prior to the authorization of an NGSO MSS gateway earth station will not be affected. The majority of TV BAS stations are, or will be, located at a sufficient distance from the small number of NGSO MSS gateway earth stations to have no additional burden. Even with respect to the relatively limited number of 7 GHz TV BAS stations in the vicinity of an NGSO MSS gateway earth station authorized, or that will be authorized, subsequent to the authorization of that earth station, it is unclear whether coordination costs attributable to the existence of the earth station will be significant relative to coordination costs attributable to the existence of other authorized 7 GHz stations. Finally, new BAS stations locating in an NGSO MSS gateway earth station area will not be confronted with an unprecedented satellite coordination requirement. Taking into account all of these factors, we find that the *R&O*'s decision authorizing NGSO MSS gateway earth stations in the 7 GHz band does not impose on TV BAS stations as a whole a coordination burden that will be more than *de minimis*, as stated in the Certification.

13. Accordingly, we are persuaded by only one of SBE's contentions set forth in its petition for reconsideration—namely, that 7 GHz TV BAS licensees located in the vicinity of Globalstar's Clifton, TX NGSO MSS gateway earth station need to coordinate with that earth station only if they are located within 145-km of it. That coordination distance, and the other coordination distances specified in paragraph 5, herein, will be used as an interim measure pending a final decision in the forthcoming proceeding. In all other respects, we deny SBE's petition for reconsideration.