

16. We will also retain the existing market-segmented approach whereby MSS licensees relocate BAS facilities in markets 1–30 before they begin operations, markets 31–100 within three years after MSS begins operations, and markets 101 and above within five years after MSS begins operations. Those parties that asked us to require that all BAS markets be relocated at once base their arguments, in large part, on the difficulties that will be faced by BAS licensees operating on different channel plans. The Commission previously considered these arguments in the *MSS Second Report and Order*, and ultimately concluded that a market-segmented approach was best suited to balance the needs of the current and future users of the band, notwithstanding the added challenges to BAS operations. Nevertheless, we also recognize that by initiating Phase II, BAS licensees in markets 31–100 will have to operate on five, as opposed to six, channels for up to three years. This situation would occur under our current rules if Phase II is initiated before Phase I is complete. Although licensees will benefit by being certain that they will be relocated to a final band plan in a set time period and in a single step, we also recognize that operation of five channels will create short-term burdens for some BAS licensees.

17. There are several factors that can serve to mitigate any difficulties that may occur in coordinating BAS use in nearby markets that operate on different channel plans during the short duration of the transition. Although the final channel plan calls for the operation of seven channels in a smaller amount of spectrum, the bands of three of the new channels will be fully within the bands of three of the existing BAS channels, as is illustrated in Table 1 on page 10 of this *3rd R&O and 3 MO&O*. In addition, at least some new BAS equipment is expected to be designed so that it can readily be programmed to operate on both new and old BAS channels. We also note that use of BAS channels 8 and 9 is unaffected by the transition. Our decision to initiate Phase II relocation procedures will, in some ways, actually serve to reduce the difficulties associated with BAS licensees operating on different channel plans in different markets at the same time. Because there are now only two channel plans for the BAS band, licensees will not have to account for the possibility of concurrent BAS use of three separate channel plans.

18. MSS licensees—for whom cost deferral continues to be a concern—will continue to occupy former BAS frequencies. We see no reason to change

our decision to require relocation on a market-segmented basis because other types of new licensees will also occupy the band. As SBE notes, it is unclear whether MSS or new terrestrial licensees will be the first to deploy service. Because MSS licensees have significant up-front costs and cannot engage in a gradual buildout because of the large geographic reach of an MSS signal, a MSS licensee that is the first entrant in the band will still be required to pay substantial up-front BAS relocation costs and seek pro-rata reimbursement from subsequent licensees, without the benefit of having had a revenue stream as it builds out its system. A market-differentiated approach allows for important cost-spreading benefits, particularly because the cost deferrals that were anticipated with a delay between Phase I and Phase II are no longer available. For example, although the Ad Hoc Survey shows that the greatest projected relocation costs will occur in markets 1–30, these costs are approximately 40 percent of the estimated cost to relocate all markets. Those commenters that assert that the market-segmented approach is unnecessary incorrectly assume that non-MSS licensees will be the first to initiate service in the 1990–2025 MHz band and, as a result, do not account for the unique needs of MSS licensees. In addition, the introduction of ATC does not alter our conclusion: because MSS licensees are obligated to begin satellite service before offering terrestrial services, our decision to permit ATC operations will not reduce up-front costs or provide an earlier revenue stream to defray such costs.

19. Finally, we find that the other factors that led to the adoption of a market-segmented approach are still valid. Because new equipment is readily available, one concern that drove the original two-phase relocation plan—that additional time would be needed for equipment manufacturers to develop and build equipment that operated in the Phase II channels—is no longer an issue. Nevertheless, we recognize that it will still take time to retune or replace existing BAS equipment. For example, SBE estimates that it takes one month to transition one electronic news gathering transmit and receive system at an average television station. To require the relocation of all BAS facilities before MSS or other new licensees begin service in the band would result in intolerable delays in a process that has already been marked by longer-than-anticipated entry of new services into the band. Such a course would severely undermine the ability of MSS licensees

to secure entry into the band.

Accordingly, our decision to retain a market-segmented approach allows us to maintain a relocation plan that is not overly burdensome to MSS entrants but that is still fair to incumbents in the band.

20. The elimination of Phase I requires the slight modification of several procedures. First, the restriction on the use of the 2023–2025 MHz band until all BAS incumbents have been relocated to the final band plan is no longer appropriate. This restriction was designed to allow BAS licensees to use channel 2 under a channel plan that we will no longer be using. Moreover, we have subsequently reallocated the 2023–2025 MHz band to fixed and mobile services. Next, we re-establish the mandatory negotiation period between new licensees and BAS licensees in the top 30 markets. As discussed previously, this negotiation period was scheduled to end on November 13, 2002, for Phase I, under the terms of the *Third Suspension Order*. Now that we have resolved the issues that prompted us to suspend expiration of the mandatory negotiation period, we anticipate that MSS licensees will move quickly to resume the negotiation process to relocate BAS incumbents in the 1990–2025 MHz band. As such, we establish a new mandatory negotiation period between MSS licensees and BAS incumbents in markets 1–30 (and for all fixed BAS facilities regardless of market, as described in the Memorandum Opinion and Order, *infra*) that ends one year from publication of this Report and Order in the **Federal Register**. This time period is appropriate to maintain the balance of equities between MSS licensees and BAS incumbents given the amount of time that has already passed since adoption of the *MSS Second Report and Order*, and the upcoming MSS milestone requirements. We also modify our rules to make explicit that a one-year mandatory negotiation period for BAS markets 31 and above starts when the first MSS licensee begins operations. Finally, we specify that the relocation procedures will apply to the BAS markets as they existed upon adoption of the *MSS Second Report and Order*—June 27, 2000. Because these rules are based on a ranking of DMAs, and because DMAs and their rank are subject to modification, it is important for us to specify a fixed point in time in order to prevent potential confusion or frustrate negotiations between parties.

21. Under our existing rules, BAS licensees in markets 31 and above would have had to stop using BAS channel 2 after the Phase II negotiations