

began but before MSS operations actually commenced in the 2008–2025 MHz band. Because BAS incumbents have not had the benefits of relocation under Phase I, we find this requirement is overly burdensome and we will ease our rules to allow all BAS licensees to use channels 1 and 2 (*i.e.* the 1990–2025 MHz band) while new licensees are negotiating with BAS licensees in the top 30 markets. BAS operations on the 1990–2025 MHz band in these markets must instead end once the first MSS licensee begins service.

22. We decline to consider more comprehensive modifications to our relocation procedures. We reject the Joint Commenters' suggestion that we explore such revisions as part of a Notice of Proposed Rulemaking as unnecessarily burdensome and time consuming. The modified version of the existing plan we are adopting serves the goals of our relocation policy and also accounts for the special circumstances involved in the transition of BAS and introduction of satellite services into the band.

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23. *Sunset Date.* In its Petition for Partial Reconsideration, NAB/MSTV requests that the sunset date after which new MSS licensees are not required to relocate BAS operations be eliminated, or at a minimum, revised to take effect ten years after the start of Phase II negotiations. We continue to believe that a sunset date is a vital component of the Emerging Technologies relocation principles. As stated in the MSS Second Report and Order, a sunset date provides a measure of certainty for new technology licensees, while giving incumbents time to prepare for the eventuality of moving to another frequency band. We recognize that the unresolved issues relating to MSS deployment have resulted in limited negotiation between BAS and MSS licensees to date. Now that we have addressed allocation matters for the 2 GHz MSS band, we find that revising a sunset date is appropriate. Further, our decision to initiate the Phase II negotiation period by way of this Report and Order is similar to our earlier decision to begin the Phase I negotiation period after publication of the MSS Second Report and Order in the **Federal Register**, which also began the original sunset date. In both cases, the beginning of the negotiation period marks a starting point for active negotiations between incumbents and new licensees. Accordingly, we are revising the sunset date as follows: a new licensee's obligation to relocate an incumbent BAS operator in the 1990–2025 MHz band

will end ten years after the publication of this Report and Order in the **Federal Register**.

24. *Special Considerations for Fixed Facilities.* Under the two-phase relocation policy, BAS licensees would first cease operations on the 1990–2008 MHz band once MSS operations begin and, during Phase II, would stop using the 2008–2025 MHz band. In their Petition for Reconsideration of the MSS Second Report and Order, the Broadcast Filers ask that we expand mandatory relocation to those BAS facilities operating on channel 1 (1990–2008 MHz) in markets 31 and above that cannot be retuned and refiltered to accommodate the Phase I channelization. SBE, in a substantially similar request, asks that we require the relocation of all non-frequency agile links in both BAS channels 1 and 2 (1990–2025 MHz) outside the top 30 markets. This situation has the potential to disrupt some BAS operations and uniquely burden a limited class of licensees in a manner not considered in the MSS Second Report and Order.

While the Commission found in the MSS Second Report and Order that the number of BAS channels could be reduced during the transition, it discussed the aggregate need for seven channels in a particular market and not the unique needs of incumbent licensees in the 1990–2025 MHz band with facilities that cannot operate on the remaining available channels. Many BAS facilities that potentially could have been retuned to operate in the interim Phase I channels will likely need to be replaced with spectrally efficient digital equipment in order to operate in the narrow Phase II channels. The elimination of BAS operations in the 1990–2025 MHz band can be expected to have a significant effect on fixed BAS facilities, such as intercity relays and studio-to-transmitter links. By contrast, mobile BAS facilities are generally licensed from band edge to band edge (*i.e.* authorized to operate in any one of the BAS channels) and should not suffer such harm.

Accordingly, we will expand our relocation procedures to require fixed facilities operating on the 1990–2025 MHz band in markets 31 and above that are licensed on a primary basis to be relocated on the same schedule as other BAS facilities in the top 30 markets. If a suitable replacement channel cannot be found within a BAS market for a BAS channel 1 or 2 facility and the parties are unable to agree to an alternative relocation plan as part of the mandatory negotiation process, then the MSS licensee will not be obligated to replace

that facility until such time that it is obligated to relocate all BAS facilities in that market. In this situation, the incumbent BAS licensee will still be required to cease use of the 1990–2025 MHz band once the first new licensee begins operations. The relocation of fixed stations on channels 1 and 2 in markets 31 and above will follow the same procedures that we established for the relocation of facilities in BAS markets 1–30, including a mandatory negotiation period that ends one year from publication of this Report and Order in the **Federal Register**.

25. *Subsequently Licensed BAS Stations.* In the MSS Second Report and Order, the Commission decided that those BAS facilities where the receipt date of the initial application was prior to June 27, 2000, the adoption date of the MSS Second Report and Order, could continue to operate on a primary basis until relocated or the sunset date. Initial applications filed after that date have been licensed on a secondary basis and, therefore, are not eligible for relocation. We find that the relocation eligibility cut-off date remains appropriate and, therefore, are denying petitions for reconsideration. None of the subsequent decisions to allow new services in the band or pleadings filed in response to the MSS Second Report and Order affects the fundamental decision to provide for an 85 megahertz BAS allocation. Holders of BAS licenses issued after the MSS Second Report and Order have known that the Commission proposed to reduce the 2 GHz BAS band to the 85 megahertz allocation in the 2025–2110 MHz band and have an opportunity to consider any additional expenses that may be associated with phased relocation as well as the development, availability, and Commission approval of digital equipment that can be used in the band.

26. *Phase II BAS Channel Plan.* SBE asks us to modify the channel plan that was adopted in the MSS Second Report and Order in order to provide consistent channel spacing. The use of seven 12 megahertz-wide channels will also allow for two 500 kilohertz-wide data return link ("DRL") bands—one at each end of the re-farmed 2025–2110 MHz BAS band. These DRL bands would be available for narrowband downstream control channels to TVPU transmitters (such as an ENG truck) for applications such as transmitter power control. We find merit in this proposal. As SBE notes, a prime benefit of this plan is that manufacturers will be able to design for uniform bandwidth ratios. Moreover, by providing for two 500 kilohertz-wide DRL bands, we can promote efficient use of the band by BAS licensees.