



Federal Communications Commission
Washington, D.C. 20554

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Small Entity Compliance Guide

2 GHz Broadcast Auxiliary Service Relocation

Fifth Report and Order, Eleventh Report and Order,
Sixth Report and Order, and Declaratory Ruling
FCC 10-179

WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18
Released: September 29, 2010

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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2 GHz Broadcast Auxiliary Service Relocation Compliance Requirements

Objectives of the Proceeding

In the *Fifth Report and Order*, *Eleventh Report and Order*, *Sixth Report and Order*, and *Declaratory Ruling (Report and Order)* adopted in September 2010 in this proceeding, the Commission clarified the obligation of licensees receiving spectrum in the 1990-2025 MHz band to share in the cost of relocating the Broadcast Auxiliary Service (BAS) incumbents who formerly occupied the spectrum. BAS use of the 1990-2110 MHz band has been reduced to 2025-2110 MHz by replacing the existing analog BAS equipment with more spectrally efficient digital BAS equipment. The cleared spectrum will be shared by Sprint Nextel (1990-1995 MHz), the Mobile Satellite Service (MSS) (2000-2020 MHz), and future Advanced Wireless Service (AWS) licensees (1995-2000 MHz and 2020-2025 MHz). Sprint Nextel has paid to relocate the BAS incumbents. The *Report and Order* clarifies the rules under which MSS and AWS licensees are responsible for reimbursing Sprint Nextel for a share of the cost of relocating the BAS incumbents.

A copy of the *Report and Order* is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-179A1_Rcd.pdf (25 FCC Rcd 13874 (2010))

BAS Relocation Reimbursement Requirements

Sprint Nextel is required to make a payment to the United States Treasury at a future date for the 1990-1995 MHz band spectrum it is receiving. Sprint Nextel may choose to reduce the size of this payment (or possibly eliminate it altogether) by taking a credit for the cost of relocating the BAS incumbents in the 1990-2025 MHz band as well as another band. If Sprint Nextel chooses not to take a credit for all of the cost of relocating the BAS incumbents, Sprint may obtain reimbursement for a portion of the BAS relocation cost from MSS or AWS licensees who are receiving spectrum in the 1990-2025 MHz band. Sprint Nextel may not receive reimbursement from MSS and AWS licensees for a BAS relocation expense for which it has taken a credit to reduce the payment it must make to the United States Treasury.

If Sprint Nextel chooses to receive reimbursement from MSS or AWS licensees, MSS or AWS licensees that enter the 1990-2025 MHz band prior to December 9, 2013 will be responsible for reimbursing Sprint Nextel for a portion of the cost of relocating the BAS incumbents. An MSS licensee will enter the band by certifying that its satellite is operational for purposes of meeting its operational milestone. An AWS licensee will enter the band upon grant of its long form application for its license. If an MSS or AWS licensee does not enter the band before December 9, 2013, it will have no obligation to reimburse Sprint Nextel for relocating the BAS incumbents. The specific relocation obligations are as follows:

MSS licensees that incur an obligation to reimburse Sprint Nextel are not required to share in the cost of relocating all of the BAS incumbents' equipment. In general, BAS equipment falls into two categories: mobile equipment and fixed links. Mobile equipment is used for transmitting signals from remote locations on a temporary basis such as the locations of news events or live sporting events. Mobile equipment includes the fixed location equipment used to receive the signals from the remote locations. Fixed links send signals between two fixed locations such as studio to transmitter links or intercity relay of television signals. MSS licensees are only required to share in

the cost of relocating BAS mobile equipment for BAS incumbents in the thirty largest television markets. The thirty largest television markets are the thirty largest Designated Market Areas as determined by Nielsen Media Research as of September 6, 2000. MSS licensees must share in the cost of relocating BAS fixed links in all television markets.

AWS licensees that incur an obligation to reimburse Sprint Nextel will be required to share in the cost of relocating the BAS incumbents in all television markets for both mobile equipment and fixed links. The Commission will adopt specific cost sharing rules for AWS licensees when it adopts service rules which define the licensing scheme for the AWS bands.

The share of the BAS relocation costs that MSS and AWS licensees must reimburse Sprint Nextel for is in proportion to the amount of spectrum that they receive. For example, if an AWS licensee receives five megahertz of the thirty-five megahertz of spectrum in the 1990-2025 MHz band, it must reimburse Sprint Nextel for 1/7 of the cost of relocating the BAS incumbents. Apportioning the cost among the AWS licensees will also depend on whether the licenses are issued for geographic areas or on a nationwide basis. Each MSS licensee has received ten megahertz of spectrum in the 1990-2025 MHz and, consequently, is responsible for 2/7 of the cost of relocating BAS incumbents' mobile equipment in the thirty largest markets and BAS fixed links in all markets.

Once an MSS or AWS licensee has entered the band, Sprint Nextel may request reimbursement of a portion of the cost of relocating the BAS incumbents (assuming Sprint Nextel does not choose to take a credit for the cost against the payment it must make to the United States Treasury). When requesting payment Sprint Nextel must share with the MSS or AWS licensee its relocation cost as documented in its annual audit provided to the 800 MHz transition administrator. In addition, Sprint Nextel must produce copies of the frequency relocation agreements that it has made with any BAS incumbent for which it is seeking cost sharing. Once Sprint Nextel has requested payment and produced this documentation, the MSS or AWS licensee will have thirty days to make its payment unless other terms are agreed upon.

If an MSS or AWS licensee in the 1990-2025 MHz band assigns its rights to another party before satisfying the obligation to reimburse Sprint Nextel, both the MSS or AWS licensee and the assignee shall have an equal obligation to pay a share of the BAS relocation cost to Sprint Nextel (assuming Sprint Nextel does not choose to take a credit for the cost against the payment it must make to the United States Treasury). Sprint Nextel in that case would have the choice of seeking payment from either the assignee obtaining the rights to use the spectrum or the MSS or AWS licensee who transferred the rights. However, Sprint Nextel could not recover reimbursement for the same BAS relocation costs from both parties.

Weblink and Citations

Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, FCC 10-179, 25 FCC Rcd 13874 (2010); 75 Fed. Reg. 67227;
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-179A1_Rcd.pdf

Other relevant FCC documents include:

Report and Order and Order and Further Notice of Proposed Rulemaking, FCC 09-49, 24 FCC Rcd 7904 (2009); 74 Fed. Reg. 29607; http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-09-49A1.pdf

Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 08-73, 23 FCC Rcd 4393 (2008); 73 Fed. Reg. 16822; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-73A1.pdf

Memorandum Opinion and Order, FCC 05-174, 20 FCC Rcd 16015 (2005); 70 Fed. Reg. 76704; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-174A1.pdf

Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, FCC 04-168, 19 FCC Rcd 14969 (2004); 69 Fed. Reg. 67823; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-168A1.pdf