

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	CS Docket No. 99-250
Amendment of Eligibility Requirements in Part 78	)	
Regarding 12 GHz Cable Television Relay	)	RM-9257
Service	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 20, 2003**

**Released: March 26, 2003**

By the Commission:

**I. INTRODUCTION**

1. Before us is a petition for reconsideration ("Petition") in which we are asked to reconsider our decision to allow licensees in the Cable Television Relay Service ("CARS") to operate on frequencies in the 13.20 to 13.25 GHz band on a secondary basis<sup>1</sup> to Broadcast Auxiliary Service ("BAS") licensees, if they can demonstrate that sufficient spectrum is not available in the lower adjacent 12.70 to 13.20 GHz CARS band. We deny the petition.

**II. BACKGROUND**

2. In July 1999, the Commission released a *Notice of Proposed Rulemaking* ("NPRM") in this proceeding, which sought comment on whether to amend the Commission's rules to allow Private Cable Operators ("PCOs") and other Multichannel Video Programming Distributors ("MVPDs") to use frequencies in the 12 GHz (12.70 to 13.20 GHz) CARS band for the delivery of video programming.<sup>2</sup> PCOs had requested access to 12 GHz CARS frequencies which would allow longer links at less cost than in 18 GHz band, where they are also authorized under Part 101 of the Commission's rules. They also expressed a need for 550 MHz of contiguous spectrum—50 MHz more than in the 12 GHz CARS band—

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<sup>1</sup> The Commission has explained that "a secondary service is allowed to use the band as long as its operations do not cause interference to any primary designated operations. If a secondary service operation causes interference to a primary service, the secondary service provider must cease operation [and] a service designated as primary is the only service given priority status to operate in a frequency band. A service designated as co-primary must share operations with other services designated as co-primary in the frequency band on a co-equal basis." See *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use*, 13 FCC Rcd 19923 at n.4 (1998) ("*Redesignation NPRM*"). In addition, secondary users must accept interference from primary users.

<sup>2</sup> *Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service*, 14 FCC Rcd 11967 (1999) ("NPRM").

to provide a larger number of video channels and facilitate competition with cable systems. Thus, among the issues addressed was whether MVPDs should be eligible to operate on frequencies in the 13.20 GHz to 13.25 GHz band used by Broadcast Auxiliary Stations ("BAS") and not allocated to CARS.<sup>3</sup> In its Order the Commission expanded eligibility for CARS licensees to include all MVPDs and granted secondary status for operation by CARS stations in the 13.20 to 13.25 GHz band.<sup>4</sup>

3. The Walt Disney Company/ABC, Inc. and the National Association of Broadcasters ("Petitioners") filed a joint petition for reconsideration asking that the Commission reverse its decision that CARS may use the spectrum from 13.20 to 13.25 GHz on a secondary basis. The Association for Maximum Service Television, Inc.; AOL Time Warner, Inc.; and the Society of Broadcast Engineers, Inc., filed supporting comments ("Comments").

4. Television broadcasters use the BAS pursuant to Part 74, Subpart F.<sup>5</sup> BAS uses the spectrum from 12.70 – 13.25 GHz for both fixed and short-range mobile transmissions. In electronic news gathering ("ENG") operations, for example, these frequencies, together with 2 GHz (1990 to 2110 MHz) and 7 GHz (6875 to 7125 MHz) frequencies, may be used to transmit a signal from the scene of an event to a nearby vehicle, where the signal is relayed to the TV station.<sup>6</sup>

### III. DISCUSSION

5. We agree with the Petitioners and Commenters on the importance of use of this spectrum to BAS, which was considered in our original decision.<sup>7</sup> They also call attention to increasing restrictions and limitations in the 2 and 7 GHz bands.<sup>8</sup> The key argument of the Petitioners is that the "primary/secondary distinction is meaningless in practice because of the substantial likelihood that the supposed 'secondary' CARS operators intend to use the spectrum full-time, which is incompatible with itinerant, and often emergency, TV pickup operations."<sup>9</sup> More specifically, Petitioners assert that the distinction between primary and secondary users is meaningless because the primary users would be "forced to communicate" with the secondary users each time the primary user wants to use the spectrum. Petitioners also assert that a primary and secondary arrangement implies that the secondary licensee can operate "continuously and simultaneously" with the primary user, and that is not possible.<sup>10</sup>

6. We agree that CARS operators out of necessity will likely use the 13.20 to 13.25 GHz spectrum full time, but that use does not exclude primary users from using the band. We reiterate that CARS users are secondary and must accept interference from, and not cause interference to, BAS users in this band. As Petitioners point out, referring to our Order, operators will not invest in, or rely on,

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<sup>3</sup> 47 C.F.R. §§ 74.600 – 74.690.

<sup>4</sup> CARS Eligibility Order, 17 FCC Rcd 9930. The Order addressed multiple issues related to expanding eligibility for CARS in addition to use of the 13.20 to 13.25 GHz band.

<sup>5</sup> *Id.* §§ 74.600-74.690.

<sup>6</sup> *Id.* § 74.602(a).

<sup>7</sup> 17 FCC Rcd at 9940.

<sup>8</sup> Petition at 5. The 2 and 7 GHz bands are shared by BAS and CARS users. Both are subject to similar restrictions.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.*

facilities which are subject to being shut down to eliminate interference.<sup>11</sup> We expect that MVPDs will not construct or rely on CARS facilities in areas where there is a significant possibility of interference from and to TV pickup operations because their operation will be subject to disruption and won't be able to maintain the level of service they need.

7. Petitioners further assert that there are no technical solutions that would allow spectrum sharing by BAS and CARS in this band. BAS and CARS stations are line of sight operations. The fixed receiver locations of existing BAS mobile operations are known to frequency coordinators and potential CARS licensees. When CARS paths are proposed, the CARS licensee, as a secondary user, has available standard practices employed in microwave engineering for sharing frequencies which may allow its operation without causing interference to the BAS licensees. The CARS path may be routed around areas of potential problems. The beamwidth of the CARS signal may also be narrowed. The CARS receiving antenna may also be shielded to avoid spurious radiation. Once the CARS link is in operation and the CARS licensee is notified that a new BAS operation is about to commence with which it may interfere, the CARS licensee may avail itself of any of the techniques mentioned above or cease operation on these frequencies to avoid the interference. In all cases, of course, the CARS licensee, as secondary user will be responsible for any engineering or re-engineering of its system to avoid interference to an existing or new BAS operation. Should the CARS operation of an MVPD cause unavoidable interference to a primary BAS operation the CARS operation will be subject to termination of further use of these frequencies. Petitioners should be familiar with technical solutions to spectrum sharing—they share these frequencies with each other. Our rules for the Television BAS provide for sharing a common channel by two or more licensees with simultaneous operation in the same area.<sup>12</sup> CARS and BAS licensees have been sharing the same spectrum—co-primary on 2, 7, and 18 GHz and co-primary on 12.7 – 13.20 GHz with CARS using 13.20 to 13.25 GHz on a secondary basis—for over two decades by coordinating their operations; we have not experienced significant problems during that time.

8. To further alleviate BAS user concerns, our rules specify conditions that must be met before a CARS license is granted for operation in the 13.20 to 13.25 GHz band. The CARS licensee must be using all frequencies available to it in the 12 GHz CARS band before being authorized to use the 13.20 to 13.25 GHz band on a secondary basis.

9. Petitioners request that, should we not reverse our position on sharing in this band, we clarify how the sharing should be implemented, including requiring CARS licensees to provide a 24-hour contact person.<sup>13</sup> Procedures are already in place. Local frequency coordination is the primary means for ensuring that all licensees are aware of, and do not interfere with, other operations in their area. This is especially important for mobile operations. Our rules provide that a CARS licensee must be able to discontinue operation at any time and have personnel available, including a contact, who can do that.<sup>14</sup>

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<sup>11</sup> *Id.* at 9.

<sup>12</sup> 47 C.F.R. § 74.604(b).

<sup>13</sup> Petition at 10 – 11.

<sup>14</sup> 47 C.F.R. § 78.53(a).

#### **IV. CONCLUSION**

10. This policy provides for more efficient use of the spectrum for similar video relay services. Our decision will continue to protect TV pickup operations. It also makes unused spectrum available where it might otherwise lie fallow. Petitioners would have us preserve portions of this spectrum to ensure that it is there when they need it. Our decision addresses their concern while promoting more effective use of the spectrum.

#### **V. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED that, pursuant to authority found in Sections 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 303(c), (f), and (r), and 309(j), the Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary