

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Other FEIN(s) or Social Security Numbers(s) (or ITINs) used;

* * * * *

■ 4. Section 61.10 is amended by republishing the introductory text for paragraphs (b) and (b)(1) and revising paragraph (b)(1)(ii); republishing introductory paragraph (b)(3) and revising paragraph (b)(3)(iii); and by republishing introductory paragraph (c) and (c)(3) and revising paragraph (c)(3)(iii) to read as follows:

§ 61.10 Reporting exclusions from participation in Federal or State health care programs.

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(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

* * * * *

(ii) Social Security Number (or ITIN);

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Federal Employer Identification Number (FEIN), or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

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(c) Entities described in paragraph (a) of this section should report, if known, the following information:

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Other FEIN(s) or Social Security Numbers(s) (or ITINs) used;

* * * * *

Dated: April 1, 2004.

Dara Corrigan,

Acting Principal Deputy Inspector General.

Approved: April 19, 2004.

Tommy G. Thompson,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[ET Docket No. 01-75; FCC 04-104]

Revision of Broadcast Auxiliary Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of application for review of decision.

SUMMARY: This document addresses the application for review filed by the Society of Broadcast Engineers, Inc. The Application responds to the denial of SBE's request for a second stay of the rules for coordination of fixed aural and video stations in the Broadcast Auxiliary Service (BAS) adopted in the *Report and Order*. The Commission affirms the Office of Engineering and Technology's (OET) *Order (Denial Order)* denying SBE's request (Second Request) seeking an additional six-month stay of the effective date of those rules. The Commission agrees with OET's determination that an additional stay of the BAS coordination rules is not in the public interest. The Commission denies SBE's application for review.

FOR FURTHER INFORMATION CONTACT:

James Miller, Office of Engineering and Technology, (202) 418-7351.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* adopted April 21, 2004, and released May 4, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of the Memorandum Opinion and Order

1. The *Order* denies the application for review (Application) filed by the Society of Broadcast Engineers, Inc. (SBE) who was seeking a second stay of the rules for coordination of fixed aural and video stations in the BAS adopted in the *Report and Order*, 68 FR 12744, March 17, 2003. In the *Report and Order*, the Commission adopted coordination procedures for fixed Aural BAS stations operating on frequencies

above 944 MHz and fixed Television BAS stations operating on frequencies above 2110 MHz under part 74 of the rules. The Commission adopted these procedures to conform the coordination procedures for fixed BAS, and Cable Television Relay Service (CARS) under parts 74 and 78, with those already in effect for Fixed Microwave Services (FS) under § 101.103(d) of the rules. It found that the FS procedures were appropriate for fixed BAS and CARS, stating that uniform procedures for bands shared among these services are necessary to promote spectrum efficiency and to minimize the possibility of harmful interference. Because these procedures were already in effect for Aural and TV BAS stations in the bands 6425-6525 MHz and 17700-19700 MHz, the new rules only affected fixed BAS in the bands 944-952 MHz (950 MHz), 2450-2583.5 MHz (2.5 GHz), 6875-7125 MHz (7 GHz), and 12700-13250 MHz (13 GHz).

2. During the six-month stay, SBE requested a blanket waiver of application fees for BAS applications filed to provide information missing from the ULS, in order to encourage the filing of such applications. On September 3, 2003, the FCC's Office of Managing Director (OMD) dismissed SBE's request for relief and denied the request for waiver, stating that the Commission may only consider such requests filed by individual applicants pertaining to their own applications in accordance with § 1.1117, and, moreover, that SBE had not established good cause for a waiver of application fees.

3. SBE sought a further stay of the Commission rules on October 1, 2003. In its Second Request, SBE generally reiterated the reasons set forth in its Initial Request and argued for an additional six-month stay. SBE provided updated figures suggesting that approximately 50% of fixed stations in the 7 GHz and 13 GHz bands do not have receive site coordinates listed in the ULS. SBE noted that many BAS licensees had waited for a determination of the outcome of its fee waiver request before filing applications to provide the receive site information. SBE stated that it had publicized the September 3, 2003, denial of the waiver request and had taken more aggressive steps to urge BAS licensees to complete and correct the license record for their facilities, but that the initial six-month stay had proven insufficient. SBE requested the additional six months as a "final opportunity" for BAS licensees to supply the information. The National Spectrum Managers Association (NSMA), in its Opposition to the

Request for Extension of Temporary Stay (Opposition), opposed an additional stay, asserting that the institution of new coordination procedures would best satisfy SBE's concerns about appropriate interference analysis, whereas delay would not address or satisfy SBE's concerns about database completeness and accuracy. NSMA argued that the opportunity for response in the coordination process would most effectively generate interaction and data sharing and address SBE's concerns. NSMA conceded that the database inaccuracies could lead to inaccurate interference analysis before the notification is initiated, but emphasized that the bilateral process would address the possibility of missing or inaccurate BAS path information. SBE, in its reply to the Opposition, asserted that NSMA's experience with the more accurate databases used by the FS under part 101 was not relevant in evaluating the additional time needed to address deficiencies with Aural and TV BAS information in the ULS. SBE objected to NSMA's suggestion that the coordination under the new rules could proceed by relying on responses from broadcasters contacted to address potential missing or inaccurate BAS information as suggested by NSMA. However, SBE stated in its reply that it would be reasonable to proceed with the new coordination rules if, after an additional six months, the database was still inaccurate.

4. OET applied the Commission's four-part test for evaluating stay requests and issued its *Denial Order*, 18 FCC Rcd 21134, (2003), denying SBE's Second Request for stay, finding it was not warranted, and ordering that the coordination rules would go into effect on October 16, 2003. In applying the four-part test, OET considered whether: the stay would likely succeed on its merits; irreparable harm would be suffered if a stay was not granted; other interested parties would be harmed if the stay were granted; and the public interest would favor granting of the stay. OET concluded that while the database concerns raised again by SBE might remain a concern, there was no indication that additional time would cure these issues. OET noted that licensees had already had nearly one year since the rules were first adopted and released until the expiration of the first stay. Moreover, OET noted that licensees had six weeks from notice of the waiver denial to the end of the stay to file or correct information for the ULS. OET concluded that the database issues would not seriously affect the efficacy of the coordination process and

harm licensees subject to these rules. Finally, OET found that further delay in the application of the coordination procedures would not be in the public interest, because it would unnecessarily delay the efficiency and protection benefits offered by these procedures.

5. The Commission deny SBE's request to review and reverse the *Denial Order*, because any remaining concerns to resolve database inaccuracies do not warrant further delay of the benefit of the rules. In the application for review, SBE urges review of the *Denial Order*, arguing that a further stay of the coordination rules is warranted because, contrary to OET's conclusions in the *Denial Order*, an additional six-month extension would cure existing database issues, and prior coordination under the adopted rules cannot proceed until the database inaccuracies are corrected. SBE, while acknowledging that licensees were not required to wait for the resolution of the request for a blanket waiver of application fees for BAS applications, argues that licensees' delay in complying with the *Report and Order* until the resolution of the fee waiver request on September 3, 2003 was reasonable. SBE also argues that although OET pointed out in its *Denial Order* that the coordination rules adopted in the *Report and Order* were released to the public on November 13, 2002, the rules were not published in the **Federal Register** until March 17, 2003. Finally, SBE argues that the Commission cannot conclude that there is any benefit or efficiency to be gained from letting the coordination rules take effect under the present circumstances. No comments were filed in response to the application for review.

6. The Commission disagree with SBE and, thus, deny its Application to reverse the *Denial Order*. Commission rules require that applications for review concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law and which of the five factors identified by the rules warrant Commission consideration. SBE asserts that OET made various erroneous factual conclusions. However, we find no "erroneous finding as to any important or material question of fact," or other factor that warrants review. We agree with the substantive conclusions of OET stated in the *Denial Order*, and find that OET correctly determined that granting SBE's Second Request for stay was not warranted. OET correctly concluded that the request was not likely to prevail on the merits; that irreparable harm was not likely to result if the stay was denied; and that the public interest did

not favor granting the stay, and it properly denied the request.

7. The Commission believes that, while further improvements of the database are desirable, as raised by SBE in its Application, there is no indication that additional time would result in the resolution of the inaccuracies complained of, nor that a need is demonstrated by the likelihood of irreparable harm if these issues are not resolved prior to the coordination rules coming into effect. SBE acknowledges in its reply comments to its Second Request that even if the Commission should grant additional time, there is a possibility database inaccuracies would remain unresolved. It further agrees that at some point the coordination rules should enter into effect, irrespective of any remaining database inaccuracies. This admission is counter to SBE's arguments that additional time would cure the remaining database inaccuracies. Further, SBE's admission that the rules should go into effect even if the inaccuracies are not completely resolved (whether on October 16, 2003 or six months later) supports our conclusion that OET correctly found that the efficacy of the coordination rules need not be seriously impacted by possible database inaccuracies. Moreover, whereas OET found that the potential benefit of database corrections weighed favorably in the context of a brief delay in the implementation of our rules and an anticipated improvement in the database, we note that the grant of additional extensions would result in a lengthy period of time between the adoption and effectiveness of the new coordination procedures, with little apparent benefit to be derived, based on our experience with the last stay. Whereas OET may have considered the probable effect of the initial extension of time in a light most favorable to SBE, we are not obliged to do so, and activity during the six-month stay confirms that the case has not been made for any further delay.

8. SBE raises the issue of whether it was reasonable for licensees to wait on a determination of SBE's blanket fee waiver request before addressing database inaccuracies. We find this concern is not material and does not warrant review of the *Denial Order*. OET correctly states that licensees were not barred from taking steps to address the database inaccuracies during the initial six-month stay until the fee waiver request was resolved, because if the fee waiver was granted their application fees would have been refunded. In any event, the grant or denial of the blanket fee waiver would not have cured the issues that were argued to support the

Initial Request, or relieved licensees from the need to prepare their applications. Whether or not licensees' application fees would have been refunded, those applications would presumably still have had to be prepared and filed to cure the database concerns. Moreover as OET indicated, even after the disposition of the blanket fee waiver, individual licensees could have filed their own requests for fee waivers, if a waiver of application fees was compelling. It seems prudent and reasonable that licensees electing to wait would have prepared for filing in anticipation of the resolution of the waiver request, and filed during the six week window remaining between the September 3, 2003, determination of SBE's fee waiver request and the last day of the stay, October 15, 2003. In fact, as OET notes, Commission records indicate the modest increase in the filing of applications for Aural and TV BAS modifications during the stay, possibly attributable to filings for completion and correction of receive site information, primarily occurred in the last month of the stay. We infer from this that even parties who waited prepared to file during the stay period, and in fact did complete filings to complete or correct receive site information, and that our actions taken in this proceeding to address licensees' filings to database inaccuracies have been appropriate but do not warrant further delay.

9. The Commission agrees with OET that the continued existence of incomplete and inaccurate records in the ULS, while undesirable, is not fatally detrimental to the efficacy of coordination procedures nor otherwise likely to result in irreparable harm due to interference to existing facilities, as stated in the *Stay Order*, 68 FR 41284, July 11, 2003. We agree with OET that coordination procedures using appropriate conservative default criteria, as discussed in the *Stay Order*, can proceed successfully even with incomplete or inaccurate database information. The procedures provide a practicable opportunity for all potentially affected parties to respond to the proposed coordination request to address missing or corrective information where needed, before the facilities are formally subject to an application. As the *Denial Order* clarified, consistent with the

coordination requirement for full cooperation and reasonable effort among all parties in resolving potential conflicts, existing licensees have a responsibility to respond whenever a notification contains any omissions or errors regarding their facilities that could lead to potential interference. It will be the initiating party's responsibility to provide existing licensees with the complete information used to characterize the notified party's facilities for the engineering studies and analyses upon which the coordination is based. Further, where data is missing or incorrect in the notification, and the complete or corrective data is brought to the initiating party's attention via response, it will be the initiating party's responsibility to conduct any engineering studies and analyses required to reassess the impact on the existing facilities, as newly documented, and reinitiate coordination, as needed.

10. Finally, in view of the above, the Commission agrees with OET that further delay in the application of the coordination procedures for Aural and TV BAS is not in the public interest, because it will unnecessarily delay the efficiency and protection benefits offered by these procedures. These new procedures afford all potentially affected existing licensees sufficient opportunity to respond to each proposal, and are sufficient to avert harmful interference to or from existing facilities. The effect of these rules will enable parties to identify complete and accurate information on existing facilities. Thus, while the initial stay was a reasonable response towards the goal of achieving a complete and accurate database, it now appears that further delay would not significantly advance that goal.

11. As the *Denial Order* discussed, under these coordination rules, licensees can be expected to act in their own self-interest to avoid interference. The coordination process provides an opportunity for a potentially affected licensee to respond or otherwise provide corrective information regarding the consideration of its facilities, or the effect of the applicant's new facilities on its facilities. However, in the absence of such a response, the applicant will be deemed to have made reasonable efforts to coordinate and may file the application. The Commission

recognizes that if the licensee's receive information in the database is incomplete or incorrect and the licensee fails to provide corrective information during coordination, there could result a grant of new facilities that could ultimately cause interference to an existing licensee. As indicated above, however, we believe that licensees will act in their own self-interest and ensure that the licensee's receive information in the database is complete and correct or provide complete and correct information in response to the applicant's notification.

12. The Commission, therefore, also affirms the action taken in the *Denial Order* to encourage BAS licensees to file applications for minor modification where needed to complete receive site data that is missing in the ULS. The Commission will continue to allow the filing of such applications without frequency coordination, provided the application supplies only missing receive site data. Receive site data may include parameters such as site geographic coordinates, site elevation above mean sea level, and antenna height, beamwidth, gain, manufacturer, and model number. Further, the application must include a showing demonstrating that the station was licensed at a time when receive site information was not required, or documenting that the information now missing was previously licensed or provided under application to the FCC. The information provided must also be consistent with any data already in the database, such as transmit azimuth or receive site data. The filing of receive site information without coordination, where it is missing under circumstances as described above, is appropriate and will continue to be permitted.

Ordering Clauses

Pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j), the application for review filed by the Society of Broadcast Engineers is denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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