

MEMORANDUM

To: John L. Poray, CAE SBE Executive Director
SBE Frequency Coordination Committee
SBE Frequency Coordinators

From: Chris Imlay, Esq. SBE General Counsel

Re: Fee Waiver Denial by FCC

Date: September 10, 2003

On June 2, 2003, SBE filed an Emergency Request for Waiver with the Office of the Managing Director at FCC. The waiver, which would have been applicable to all Part 74 licensees, would waive the requirement of tendering filing fees for certain Part 74 Modification applications filed on FCC Form 601. Specifically, the SBE request asked that Part 74 licensees be permitted to file a form 601 application to modify their existing Part 74 Broadcast Auxiliary (BAS) licenses without tendering a fee, to the extent that the modification applications provide information missing from the Commission's database. A filing fee would, under SBE's proposal, have been necessary for an application filed in order to correct erroneous information, or to otherwise modify an existing Broadcast Auxiliary license. This waiver request was denied by the Commission's Chief Financial Officer, Mark A. Reger, on September 3, 2003. As the result, it is necessary for all Part 74 licensees to review and modify their Part 74 licenses to include any missing information, including especially fixed receive sites, immediately. To do so, FCC Form 601 must be filed and the normal application fee of \$120.00 must be tendered with each modification application.

SBE had requested the waiver in order to encourage licensees to improve the now substantially defective FCC database for Part 74 facilities, in anticipation of the new coordination procedures for Part 74 fixed facilities which are soon to go into effect. In ET Docket No. 01-75, the Commission released a *Report and Order*, FCC 02-298, on November 13, 2002 (the R&O). That docket proceeding revised the Part 74 Broadcast Auxiliary Service (BAS) rules to update them and to permit more efficient technologies to be deployed in that Service. Among many other things, the R&O created a specific, mandatory frequency coordination system prior to licensing of new or modified BAS facilities applicable to most fixed point-to-point Aural and TV BAS facilities. The new prior coordination procedures were modeled after the existing Part 101 procedures used for fixed microwave paths. The procedures involve both standard coordination processes and a prior notification procedure for co-channel and adjacent channel licensees in nearby geographic areas. This process obviously presumes a valid and current database which would be used by the Part 74 coordinators.

After the release of the ET Docket 01-75 R&O, the Commission granted an SBE Request for Temporary Stay of the effective date of the new prior coordination procedures for fixed BAS facilities. SBE asked for additional time to allow BAS licensees to provide and correct BAS receive site information in the licensing database (ULS) to ensure that the new procedures effectively avert interference to existing systems. Though SBE had asked that a stay be granted for a period of one year, the

Commission granted this stay for a period of only six months, on April 15, 2003. The stay terminates October 16, 2003, unless otherwise extended.

SBE argued to FCC that for historic reasons, principally the fact that the old FCC form 313 did not require information such as receive site coordinates, for example, the database now does not include such information for a significant percentage of existing stations. Furthermore, because there was, for years, a disconnect between broadcast license assignments under Part 73 and the Part 74 database, the Part 74 database was, and remains, substantially corrupted. While the new FCC Form 601 solves most of the missing information problem for newer facilities, the database remains corrupted by inaccurate, outdated and missing information. While the Commission staff has on recent occasion called for correction of database information by licensees, some information required to accurately conduct the new prior notification procedures and updated coordination processes is simply missing. SBE argued that it would be unfair to subject BAS licensees to an inaccurate and incomplete database, because prior coordination efforts for new facilities would fail and result in interference. Incumbent licensees have had existing fixed studio-to-transmitter links and other BAS fixed facilities in place for many years and provided all information required at all relevant times to keep their license information up to date, but simply weren't required to, and did not, provide certain information now critical. A bad database is also unfair to new applicants who go through the process of applying for a new fixed BAS facility, only to find that there are existing receive sites which will suffer harmful interference because they were not in the database, precluding the coordinated new facility.

Because there must be an incentive to licensees to correct the database, and because the missing information and the bad database is not the fault of the Part 74 licensee, but rather the legacy of FCC forms and database management, the fee waiver appeared entirely appropriate to SBE.

The FCC's number crunchers, however, taking an unusually unsympathetic tone, said that waivers should be requested for each individual station, not on a blanket basis. In any case, they said, waivers are not granted liberally, but only for extraordinary and compelling circumstances. Obtaining an accurate database is not such a circumstance, they said. FCC indicated that the six-month stay on the effective date of the new, prior coordination procedures, was sufficient accommodation to allow licensees to correct the database, and therefore the fee waiver was not shown to be in the public interest.

Where do we go from here? The stay on the effective date of the new Part 74 prior coordination rules for fixed BAS facilities expires October 16, 2003. SBE intends to request an additional period of 6 months before the new Part 74 prior coordination procedures for fixed BAS facilities goes into effect. In the meantime, licensees should immediately check their Part 74 licenses and add any missing data, such as receive locations and information that might not have been provided in the past using the old FCC Form 313.