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May 13, 2005

VIA ELECTRONIC FILING
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Motion of TMI Communications and Company, Limited Partnership and TerreStar Networks Inc. to Accept as Timely its Reply to Nextel Opposition in Various Dockets.

Dear Ms. Dortch:

On May 2, 2005, TMI Communications and Company, Limited Partnership ("TMI") and TerreStar Networks Inc. ("TerreStar") filed their "Reply to Nextel Opposition" in WT Docket No. 02-55, the lead docket. However, due to administrative oversight, this Reply was not filed in ET Docket No. 00-258, RM-9498, RM-10024, and ET Docket No. 95-18. Therefore, out of an abundance of caution, TMI and TerreStar are filing their Reply in these dockets. For the above stated reason, this letter also serves as TMI and TerreStar's motion to accept as timely its Reply.

If you have questions concerning this matter, please do not hesitate to contact me.

Sincerely,

/s/ Gregory C. Staple

Gregory C. Staple
Counsel for TMI and TerreStar

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket No. 02-55
	)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	ET Docket No. 00-258
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	RM-9498
	)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-10024
	)	
Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service	)	ET Docket No. 95-18
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service	)	

REPLY TO NEXTEL OPPOSITION

This "Reply" is filed on behalf of TMI Communications and Company, Limited Partnership ("TMI") and TerreStar Networks Inc. ("TerreStar")[1] in response to the April 21, 2005, "Opposition and Comments of Nextel Communication, Inc. regarding Petitions for

[1] TMI holds a 2 GHz band authorization to provide Mobile Satellite Service ("MSS") in the United States. *See TMI Communications and Company, L.P.*, 19 FCC Rcd 12603 (2004). TerreStar, a TMI affiliate, is the proposed assignee of TMI's authorization and contracted in 2002 with Space System/Loral, Inc. for the construction of the satellite system.

Reconsideration" concerning the *Report and Order* ("*R&O*") and *Supplemental Order* ("*Supplemental Order*") in this docket.[2]

I. Background and Introduction

In its Opposition, Nextel opposes the December 22, 2004, "Joint Request" of TMI and TerreStar to clarify or otherwise modify the *R&O* so that unforeseen delays in implementing the *R&O* do not inadvertently subject 2 GHz Mobile Satellite Service ("MSS") licensees to a greater contribution burden for the relocation of Broadcast Auxiliary Service ("BAS") facilities than was originally contemplated by the Commission. The *R&O* currently requires an MSS licensee to reimburse Nextel for a *pro rata* share of certain BAS relocation costs if the licensee begins service in the former BAS band before the end of the 36 month 800 MHz band reconfiguration period, not the 31.5 month BAS relocation period. Yet, as the Joint Request points out, the formal starting date for the 800 MHz band reconfiguration period was not specified in the *R&O* and has since been fixed at June 27, 2005,[3] as a result of which the reconfiguration period will not end until almost *48 months* after the *R&O* was adopted.

In light of the foregoing, and to prevent 2 GHz MSS licensees from being saddled with an unfair and unintended contribution burden, the TMI/TerreStar Joint Request asked the FCC to cut-off Nextel's right to seek contribution from any MSS licensee after Nextel's 31.5 month BAS relocation period has run (now September 7, 2007). That would be the most equitable approach given that the relocation of BAS facilities will now conclude approximately 38 months

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[2] *See Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial Land Transportation and Business Pool Channels, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order,* 19 FCC Rcd 14969, (2004) ("R&O") and *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) ("Supplemental Order").

[3] Public Notice, Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 900 MHz Regional Privatization Plan," DA 05-619, released March 11, 2005.

after the *R&O* was adopted -- a period roughly equivalent to the 36 month sunset period contemplated in the *R&O*.

Alternatively, the Joint Request asked the FCC to clarify the extent of the 36 month 800 MHz band reconfiguration period for purposes of any MSS contribution payments by making the start date of this period the same as the effective date of the *R&O*, namely January 21, 2005. That would relieve an MSS licensee of any potential contribution liability if it begins service after January 21, 2008.

II. The Commission Should Disregard Nextel's Opposition and, Consistent with the R&O's Intention, Sunset the Obligation of 2 GHz MSS Operators to Reimburse Nextel's BAS Relocation Expenses

While Nextel opposes the Joint Request, it does not even try to rebut TMI/TerreStar's assertion that there is no record support for requiring MSS licensees to pay a *pro rata* portion of specified BAS relocation costs incurred by Nextel if they enter the former BAS band long after Nextel has cleared it, but before Nextel has completed the 800 MHz band reconfiguration. That is why TMI/TerreStar have asked the FCC to permit Nextel to seek contribution from a 2 GHz MSS licensees only if the MSS licensee entered the band before it has been cleared and thus is able to reap a commercial benefit at the same time as Nextel.

Nextel also objects to a fixed 36 month contribution cut-off date because it would differ from the official 36 month 800 MHz reconfiguration period which, as noted, is now set to begin on June 27, 2005. According to Nextel, the public interest is served by "synchronizing the MSS

reimbursement obligation with the completion of 800 MHz reconfiguration and the true-up process established by the *R&O*."[4] Exactly the opposite is the case, however.

If the MSS reimbursement obligation is held open until the end of the 800 MHz reconfiguration period -- a period that is now approximately 48 months from the time the *R&O* was adopted – then the basic public interest balance struck by the Commission in July 2004 will be fatally undermined.[5] That would be manifestly inequitable and undercut the FCC's decade-long effort to facilitate the introduction of a competitive 2 GHz MSS. The timely provision of next generation MSS by January 2008 at latest should not be held hostage to payment of a multimillion dollar bonus to Nextel. As one of the largest and most established incumbent mobile service providers, Nextel should not be able to impose a contribution burden on 2 GHz MSS licensees that was never contemplated by the FCC and that would be plainly anti-competitive.[6]

The inequitable and unintended impact of the current "36 month" contribution period stems from the various unforeseen delays that have occurred in implementation of the 800 MHz band reconfiguration process. When the *R&O* was adopted in July 2004, the Commission reasonably anticipated that both the BAS relocation (scheduled for 30 months) and the 800 MHz band reconfiguration (set for 36 months) would be completed prior to the July 2007 operational milestones set for most MSS licensees and certainly before TMI's later November 2007 launch

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[4] Nextel "Opposition" at 22.

[5] To the extent Nextel is also suggesting that the post-configuration true-up provides a valid reason for synchronizing the BAS contribution period with the 800 MHz band reconfiguration period, it is also in error. The true-up is not expected now before 2009, and so long as an MSS contribution to Nextel is made beforehand, whether in 2007 or 2008, it can still be taken into account.

[6] Nextel claims (at p. 22) that conforming the contribution cut-off period to the original intent of the *R&O*, as TMI/TerreStar request, "would give MSS licensees a perverse incentive to delay the initiation of service to avoid the reimbursement obligation." Nextel has it backwards: it would be perverse for the FCC not to reform the *R&O* and leave TMI/TerreStar with the dilemma that Nextel describes.

date. Hence, in limiting Nextel's right to seek contribution to the 36 month reconfiguration period, the FCC plainly intended to limit the contribution burden on the MSS industry unless one or more licensees elected to enter the market before the 36 month period (i.e., prior to July 2007). Intervening events, however, have now thrown a wrench into the FCC's carefully calibrated cost-sharing calendar and the related 800 MHz reconfiguration schedule.

The *R&O* did not become effective until January 21, 2005, more than six months after it was adopted. Thereafter, pursuant to the *R&O*, the start of the 36 month 800 MHz reconfiguration period could not begin until the 800 MHz band Transition Administrator's ("TA's") proposed schedule was filed and approved by the FCC. This did not happen until March 2005, when the FCC issued a Public Notice confirming the TA's plan to begin reconfiguring the first National Public Safety Policy Advisory Committee ("NPSPAC") region on June 27, 2005.[7] Based on that Public Notice, it now appears that the 36 month reconfiguration period will not end until June 27, 2008 – approximately 48 months after the *R&O* was adopted and well beyond the in-service and launch milestones of all 2 GHz licensees.

In view of the foregoing, on reconsideration the FCC should decouple the 36 month BAS contribution clock from the 36 month 800 MHz reconfiguration clock so that the careful public interest balance struck in the original *R&O* regarding BAS cost sharing is not changed by default. The *R&O* contains an implicit quid pro quo regarding cost sharing. In exchange for replacement spectrum at 1990-1995 MHz, the FCC authorized Nextel *inter alia* to expedite clearance of the whole BAS band. The FCC did this so that Nextel could use its new spectrum

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[7] See note 3, *supra*. Nextel has requested that the 36 month reconfiguration period start on the date when mandatory negotiations actually commence for the first NPSPAC market rather than the date of the prior FCC Public Notice announcing the start of negotiations. *See* Ex Parte Letter from Regina M. Keeney to Marlene H. Dortch, Secretary, FCC, WT Docket No. 02-55, dated September 16, 2004, at 3.

as early as it wished and seek a *pro rata* contribution from 2 GHz MSS licensees only if they entered the band before their anticipated MSS operational date (July 2007 or 36 months hence). It would be entirely contrary to the *R&O* and the public interest balance it reflects to now subject MSS licensees to a greater contribution burden merely because the 36 month 800 MHz reconfiguration period has, de facto, become a 47 or 48 month period. Certainly the *R&O* never intended such a result.

III. Conclusion

For all of the reasons stated herein and in the Joint Request, the Commission should modify the applicable contribution period on reconsideration by sunsetting that period as of September 7, 2007, at the end of the BAS relocation period. That is approximately 36 months from the date the *R&O* was adopted. At the very least, the right of Nextel to receive contributions from 2 GHz operators for BAS relocation should sunset 36 months from the effective date of the *R&O,* or on January 21, 2008.

Respectfully submitted,

TMI COMMUNICATIONS AND COMPANY,
LIMITED PARTNERSHIP

and

TERRESTAR NETWORKS INC.

By: /s/ Gregory C. Staple

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May 2, 2005

CERTIFICATION OF SERVICE

I, Gregory C. Staple, do hereby certify that I have this 2nd day of May, 2005, sent by the United States First Class Mail, postage prepaid, copies of the foregoing *REPLY TO NEXTEL OPPOSITION*, to the following parties:

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