

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Improving Public Safety Communications) WT Docket 02-55
in the 800 MHz Band)

To: The Commission

REPLY TO OPPOSITION OF SPRINT NEXTEL CORPORATION

The Association for Maximum Service Television, Inc. (“MSTV”) hereby responds to the Opposition of Sprint Nextel Corp. (“Nextel”)¹ concerning MSTV’s Petition for Clarification in the above-referenced docket.² That Petition, as well as a similar Petition for Clarification or Reconsideration of the Mohave County Board of Supervisors,³ requests the Commission to clarify that as part of the *800 MHz Public Safety* proceeding, Sprint Nextel Corp. (“Nextel”) must relocate Broadcast Auxiliary Service (“BAS”) equipment licensed to TV translator stations,⁴ and that Nextel will receive credit for such relocation in the “true-up” process.⁵ In opposing MSTV’s Petition, Nextel fails to acknowledge both its uniquely broad

¹ See Opposition of Sprint Nextel Corp., WT Docket No. 02-55 (filed March 23, 2006) (“Nextel Opposition”).

² Petition for Clarification of the Association for Maximum Service Television, Inc., WT Docket No. 02-55 (filed Jan. 27, 2006) (“MSTV Petition”).

³ Petition for Clarification or Reconsideration of Mohave County Board of Supervisors, WT Docket No. 02-55 (filed Jan. 27, 2006) (“Mohave Board Petition”).

⁴ See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969 (2004) (“*800 MHz R&O*”).

⁵ Under the “true-up” process, Sprint Nextel will pay to the U.S. Treasury the difference between the value of the replacement spectrum it obtained in this proceeding and the various credits it will receive for the costs it incurs to satisfy its obligations under the *800 MHz R&O*. *Id.* at 15131 ¶ 353.

BAS relocation obligations, as announced in the *800 MHz Report and Order* (“800 MHz R&O”), and the critical role that BAS facilities licensed to TV translators play in bringing local emergency and other programming to rural, unserved and underserved communities.

I. THE RECORD OVERWHELMINGLY SPEAKS TO THE NEED FOR RELOCATION OF BAS FACILITIES THAT ARE LICENSED TO TV TRANSLATORS.

As extensively documented in this proceeding, BAS facilities licensed to TV translator stations are critical to the provision of local television service in rural and other unserved and underserved communities.⁶ While Nextel has failed to even comment on the importance of these facilities, other parties have made clear that without the requested clarification, many of them will not be transitioned to the new BAS band plan, thereby cutting off countless viewers from their sole source of free, over-the-air programming.

The Mohave County Board of Supervisors (“Mohave Board”), the governing body of Mohave County, provides a compelling example of the need for relocation of such BAS facilities. Its network of translators delivers free, over-the-air television service to approximately 100,000 residents who “depend upon this system for national and State-wide news, information, and entertainment which they have been receiving for years from the [Arizona] State capital.”⁷ Because of the distance involved – some 180 miles – a total of eight TV translator relay stations

⁶ See, e.g.; Mohave Board Petition at 3-4; Comments in Support of Petition for Clarification or Reconsideration, Arizona Broadcasters Association, WT Docket No. 02-55, at 3 (filed March 22, 2006) (“ABA Comments”); Comments of Oregon Public Broadcasting in Support of Petitions for Clarification or Reconsideration, WT Docket No. 02-55 (filed March 23, 2006) (“OPB Comments”); Comments of Dutchess Community College in Support of Petitions for Clarification or Reconsideration, WT Docket No. 02-55 (filed March 23, 2006) (“DCC Comments”); Letter from Sen. John McCain and Sen. John Kyl to Hon. Kevin Martin, Chairman, FCC (filed March 22, 2006).

⁷ See Mohave County Petition at 3-4.

are used to bring the full-service television signals from Phoenix to viewers in Mohave County. In its comments, the Arizona Broadcasters Association emphasizes the importance of these relay stations, noting that they were used to “carr[y] emergency information to the [Mohave County] residents and first responders in remote areas” during a massive wildfire in 2002.⁸ The viewing public in Arizona would be ill-served were the Commission to allow Nextel to refuse funding for the relocation of the Mohave Board’s BAS facilities, which it is estimated would cost the people of Mohave County over \$350,000.

Dutchess Community College (“DCC”), which uses a translator relay station to deliver noncommercial, PBS-affiliated programming to underserved viewers in Poughkeepsie, New York, echoes the Mohave Board’s call for relocation of BAS facilities licensed to TV translator stations. As DCC notes, without its translator relay station, it could not bring distant PBS and other noncommercial programming to the 165,000 households it currently serves. Like many entities across the country which operate translator stations, DCC simply cannot afford the cost of relocating its station to the new BAS band plan.⁹ MSTV agrees with DCC that any failure by Nextel to reimburse these costs as part of the BAS transition “will result in a loss of service ... in a manner that disserves the public interest.”¹⁰

Nextel’s opposition to funding the relocation of these BAS facilities is particularly curious given its acknowledgement that it must fund the relocation of translator relay

⁸ ABA Comments at 3.

⁹ For example, Oregon Public Broadcasting (“OPB”) estimates that relocation of its translator relay stations, which are critical to the delivery of noncommercial programming to as many as 275,000 residents of Oregon, would cost approximately \$900,000. OPB explains, “this is clearly money that a non-profit public broadcasting entity does not have.” *See* OPB Comments at 3.

¹⁰ DCC Comments at 2.

stations licensed to full-power stations.¹¹ If Nextel's interpretation of its relocation obligations is allowed to stand, viewers served by entities like DCC and the Mohave Board will lose access to over-the-air programming while similarly situated viewers who receive programming from translators that use relay stations licensed to full-power stations will continue to receive service. Although MSTV is relieved that Nextel has not attempted to avoid its relocation obligations with respect to at least *some* low power stations, the Commission should not allow Nextel's splitting of hairs to deprive *any* rural viewers of access to over-the-air programming.

II. NEXTEL HAS MISREAD THE OCTOBER 2005 MO&O, WHICH WAS NOT INTENDED TO OVERRULE THE REQUIREMENT THAT NEXTEL RELOCATE BAS FACILITIES LICENSED TO TV TRANSLATORS.

As explained in MSTV's Petition, in the *800 MHz R&O*, the Commission made clear that Nextel "is obligated to participate in the relocation of *all* BAS operations from 1990-2025 MHz."¹² No exception was made for "secondary" BAS facilities licensed to translator stations. In providing for a broad relocation obligation, the Commission underscored the unique nature of the Nextel BAS relocation process, which, as part of the comprehensive solution to public safety interference concerns in the 800 MHz band, may be informed by the more strict *Emerging Technologies* principles but need not be strictly bound by them.¹³

¹¹ In its Opposition, Nextel appears to oppose only the notion that it is required to "fund the relocation of BAS facilities licensed to TV translator stations and LPTV licensees." Nextel Opposition at 8.

¹² See MSTV Petition, quoting *800 MHz R&O*, 19 FCC Rcd at 15096 ¶ 252.

¹³ As MSTV explained in its Petition, in adopting the Nextel BAS relocation plan, the Commission noted merely that the plan was "sufficiently similar" to the earlier MSS relocation plan that was designed in strict conformity with the *Emerging Technologies* principles. See MSTV Petition at 5 n.19, citing *800 MHz R&O* at 15095 ¶ 252. The Commission did not, however, require the Nextel BAS relocation plan to directly follow those principles.

Indeed, Nextel's Opposition acknowledges that prior to the Commission's issuance of the its *Memorandum Opinion & Order* in October 2005 ("*Oct. 2005 MO&O*"), even Nextel read the *800 MHz R&O* to require it to relocate BAS facilities licensed to translator stations.¹⁴ In reversing its earlier position, Nextel has misread the *Oct. 2005 MO&O*, which dealt solely with the question of whether Nextel would be credited for relocation of BAS facilities that were licensed after June 27, 2000, even though such facilities had been licensed under the express condition that they were secondary and were not to be part of the BAS relocation plan.¹⁵ In deciding to allow relocation of facilities licensed after June 27, 2000, the Commission noted merely that it was not overruling the general principle of *Emerging Technologies* that "secondary operations are not entitled to relocation or reimbursement from new entrants."¹⁶

Taking this narrow reference to *Emerging Technologies* far out of context, Nextel claimed in letters to TV translator stations across the United States (in many cases contradicting letters it had sent earlier to such stations) that the *Oct. 2005 MO&O* meant that they were no longer "entitled to compensation or reimbursement for any relocation costs" incurred in the BAS relocation process.¹⁷ Nextel's argument, however, overlooks the expressly narrow focus of the *Oct. 2005 MO&O*, in which the Commission emphasized that "the only issue we are considering here is whether to allow Nextel to obtain credit for the costs of relocating secondary BAS

¹⁴ Nextel Opposition at 10 n.28 ("Prior to release of the *MO&O*, Sprint Nextel initially indicated to TV translator and LPTV licensees that it intended to fund their BAS relocation costs.").

¹⁵ See *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, 16063 ¶ 107 (2005) ("*Oct. 2005 MO&O*").

¹⁶ *Id.*

¹⁷ See, e.g., Mohave County Petition at Ex. B, Letter from Michael Degitz, Vice President, Sprint Nextel to Ron Walker, Mohave County Board of Supervisors (dated Dec. 1, 2005).

incumbents licensed before November 22, 2004.”¹⁸ Accordingly, Nextel is mistaken in its claim that the narrow reference to *Emerging Technologies* in the *Oct. 2005 MO&O* overrules the broad relocation obligations imposed on it by the *800 MHz R&O*, and specifically the requirement that it relocate BAS facilities licensed to TV translators. The Commission should clarify that Nextel’s original interpretation – that it is required to relocate such BAS facilities – is the right one.

* * *

To ensure that rural communities do not lose access to free, over-the-air television services, MSTV respectfully reiterates its request for clarification that Nextel must relocate BAS facilities licensed to TV translator stations and that Nextel will receive credit for such relocation expenses in the “true-up” process.

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Respectfully submitted,



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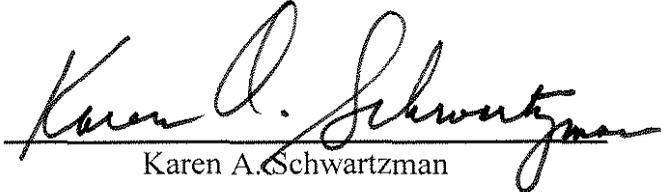
¹⁸ 20 FCC Rcd. at 16063 ¶ 107.

CERTIFICATE OF SERVICE

I, Karen A. Schwartzman, a secretary at the law firm of Covington & Burling, do hereby certify that on this 5th day of April, 2006, I caused a copy of the foregoing "Reply to Opposition of Sprint Nextel Corp." to be sent via first-class U.S. Mail, postage prepaid, to the following:

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