

**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	)	
	)	
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	)	ET Docket No. 00-258
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service	)	ET Docket No. 95-18
	)	

**OPPOSITION OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (Sprint Nextel) opposes the March 20, 2007 Petition for Clarification (Petition) filed by Fox Television Stations, Inc. (Fox) and Gray Television Licensee, Inc. (Gray).<sup>1</sup> Fox and Gray ask the Commission to “clarify” that secondary, short-term broadcast auxiliary service (BAS) facilities are entitled to reimbursement from Sprint Nextel for their costs in relocating to the new 2 GHz BAS band plan. There is no need for clarification on this point, however. The Commission’s rules and policies are clear: secondary facilities such as short-term BAS stations are ineligible for relocation compensation.

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<sup>1</sup> Petition for Clarification of Fox Television Stations, Inc. and Gray Television Licensee, Inc., WT Docket No. 02-55 (March 20, 2007).

Short-term BAS operations are secondary and not eligible for relocation. Under Section 74.24 of the Commission's rules, broadcast licensees may operate BAS facilities on a short-term basis (*i.e.*, no more than 720 hours annually per frequency<sup>2</sup>) without prior FCC authorization provided they comply with certain conditions.<sup>3</sup> Specifically, section 74.24(c) of the Commission's rules provide as follows: "Short-term operation is on a *secondary*, non-interference basis to regularly authorized stations and *shall be discontinued immediately upon notification that perceptible interference is being caused to the operation of a regularly authorized station.*"<sup>4</sup> Fox, Gray and other parties that use short-term BAS stations have known since the day they began using short-term facilities that their operations are secondary to all primary operations, including primary BAS systems and primary new entrants, such as Sprint Nextel.<sup>5</sup>

Only primary facilities are eligible for relocation. The Commission has repeatedly emphasized that under its "relocation policies only stations with primary status are entitled to relocation. Because secondary operations, by definition, cannot cause harmful interference to primary operations, new entrants are not required to relocate secondary operations."<sup>6</sup> The Commission reiterated this "well established principle" in the *Memorandum Opinion and Order*

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<sup>2</sup> 47 C.F.R. § 74.24(d).

<sup>3</sup> 47 C.F.R. § 74.24.

<sup>4</sup> 47 C.F.R. § 74.24(c) (emphasis added).

<sup>5</sup> 47 C.F.R. § 2.105(c)(2)(i) (secondary operators "[s]hall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at a later date").

<sup>6</sup> *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd. 25162, ¶ 55 n.142 (2003) (citations omitted); *see also Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd. 12315, ¶ 37 (2000) ("Our relocation policy has *never* provided for secondary licensees or secondary uses.") (emphasis added).

in this proceeding, stating that the Commission's "overall relocation policy" is "that secondary operations are not entitled to relocation or reimbursement from new entrants."<sup>7</sup>

Neither Fox nor Gray sought reconsideration of this clear statement of Commission policy, and should not be allowed to do so now under the guise of a "Petition for Clarification" filed eighteen months after the *800 MHz MO&O* was issued. Sprint Nextel has devoted substantial resources towards relocating eligible BAS facilities, and is far along in implementing BAS relocation. One of the first steps Sprint Nextel took when it initiated this process was to identify BAS facilities eligible for relocation. Consistent with well-established Commission policy, Sprint Nextel has not included short-term BAS facilities in its extensive relocation planning because they are secondary. Re-initiating the transition process to transition operators that the Commission has never before required new entrants to relocate would cause significant disruption to the relocation process. *More than two years* after initiating BAS relocation, Sprint Nextel should not now be forced to go back to "square one" to include these secondary stations in its relocation planning.

Sprint Nextel has diligently worked to overcome numerous complexities and challenges beyond its control in carrying out its responsibilities in relocating eligible BAS licensees.<sup>8</sup> Saddling Sprint Nextel with the additional obligation of relocating secondary stations would represent an unreasonable and arbitrary reversal of the *800 MHz MO&O*. Doing so would also contradict long-established Commission policy, impose unanticipated and unwarranted costs on Sprint Nextel and the U.S. Treasury, and disrupt the BAS relocation process to the detriment of

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<sup>7</sup> *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 107 (2005) ("*800 MHz MO&O*").

<sup>8</sup> See Sprint Nextel BAS Relocation Status Report, WT Docket No. 02-55 (March 7, 2007).

new entrants to the band and the primary BAS licensees that are entitled to relocation. The Commission should dismiss the Petition.

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**

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March 30, 2007

**Certificate of Service**

I, Claudia Del Casino, hereby certify that on this 30th day of March 2007, I caused true and correct copies of the foregoing Opposition of Sprint Nextel Corporation to be mailed by first-class mail to:

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