

**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
)	

To: The Commission

REPLY TO OPPOSITION

Fox Television Stations, Inc. and Gray Television Licensee, Inc. (collectively, the “Joint Petitioners”) hereby reply to the Opposition to the Joint Petitioners’ March 20, 2007 Petition for Clarification filed by the Sprint Nextel Corporation (“Sprint Nextel”) on March 30, 2007.¹ In their Petition for Clarification, the Joint Petitioners requested that the Commission resolve in the affirmative the unanswered question of whether “short-term” broadcast auxiliary service (“BAS”) facilities operated pursuant to Section 74.24 are included in the 2 GHz relocation reimbursement plan created in the above-referenced proceedings. In its Opposition, Sprint Nextel claims that short-term BAS facilities are not eligible for relocation reimbursement

¹ Opposition of Sprint Nextel Corporation, WT Docket 02-55 (March 30, 2007) (opposing Petition for Clarification of Fox Television Stations, Inc. and Gray Television Licensee, Inc. (March 20, 2007)) (“Opposition”).

because the facilities are secondary, not primary. Because (i) the Commission clearly intended to treat all BAS facilities similarly, regardless of whether they are short-term or separately licensed, and (ii) denying relocation to short-term BAS facilities would be inequitable and harmful, the Commission should grant the relief the Joint Petitioners requested in the Petition for Clarification.

The ultimate issue in this dispute is whether the Commission intended to include short-term BAS facilities in the 2 GHz relocation plan. Because there is no practical distinction between short-term facilities and BAS facilities licensed under Part 74 of the Commission rules, the Commission's intent is clear: All BAS facilities should be treated similarly. Short-term facilities use the same equipment, serve the same purposes, and operate in the same spectrum as BAS facilities with Part 74 licenses.² Before relocation, short-term BAS facilities and separately licensed BAS facilities together operated as the *primary* service in the spectrum between 1990 MHz and 2025 MHz.³ Given the Commission's express intent to require Sprint Nextel to relocate "*all* BAS operations" and "*all* BAS incumbents" in this band, the Joint Petitioners and other broadcasters have long understood that Sprint Nextel's relocation obligations include not only BAS facilities licensed under Part 74, but also short-term facilities operating under Part 74 requirements.⁴

² Because the Commission previously clarified that BAS facilities licensed after November 22, 2004 are not eligible for reimbursement, the Petition for Clarification proposed that only broadcasters who can present tangible evidence (e.g., receipts, invoices, video, etc.) to demonstrate that their short-term BAS equipment was in operation before November 22, 2004, should be eligible for reimbursement.

³ See 47 C.F.R. § 2.106 (1996).

⁴ As noted in the Petition for Clarification, the Commission refers to Sprint Nextel's obligation to relocate "all BAS operations," "all BAS incumbents" or "all BAS licensees" at least twenty-three times in the *Report and Order* in WT Docket 02-55 and reiterates such obligation multiple times in the *Memorandum Opinion and Order*. See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, ¶¶ 57, 61, 251-56, 266, 268, 270, 273, 275, 326,

On the other hand, Sprint Nextel supports its interpretation of the Commission's original intent with a combination of ambiguous statutory interpretation and irrelevant regulatory history.⁵ Sprint Nextel also ignores that its proposed primary/secondary distinction between short-term BAS facilities and separately licensed facilities is a distinction that the Commission never recognized in its Public Safety Orders. Had the Commission intended to exclude from the relocation plan short-term BAS facilities that are identical to primary licensed facilities, it would have done so explicitly. Since it did not, Sprint Nextel's argument that there is a difference among BAS operations is without merit.

Furthermore, leaving short-term BAS facilities out of the relocation plan unfairly penalizes broadcasters that have used these facilities to deliver important on-location news and weather information to the public. Based on the explicit Commission authority conferred by Section 74.24, the Joint Petitioners and other broadcasters have invested heavily in BAS equipment that they operate without separate licenses. The Commission has endorsed this practice.⁶ Indeed, before Sprint Nextel introduced the argument in its Opposition, most

347, 353 (2004); *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶¶ 101, 106, 112 (2005) (“*Memorandum Opinion and Order*”).

⁵ Specifically, Sprint Nextel cites three Commission decisions: (1) a Report and Order setting forth the relocation policy for the multipoint distribution service (MDS), (2) a Second Report and Order denying reimbursement from mobile satellite service (MSS) licensees for relocation of out-of-area BAS facilities, and (3) the portion of the *Memorandum Opinion and Order* that permits Sprint Nextel to receive credit for reimbursing the relocation of BAS facilities that were licensed between June 27, 2000 and November 22, 2004. See Opposition at 2 n.6 (citing *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), and *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)); Opposition at 3 n.7 (citing *Memorandum Opinion and Order*, 20 FCC Rcd. 16015 at ¶ 107). None of these decisions addresses, let alone rejects, Sprint Nextel's obligation to relocate short-term BAS facilities.

⁶ A recent decision praised Section 74.24 for providing broadcasters with “flexibility” and saving the agency the burden of considering endless requests for special temporary authority. *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, Report and Order, 17 FCC Rcd 22979, ¶ 82 (2002).

broadcasters understood that the only privileges lost by not licensing BAS facilities were interference protection against other short-term facilities, the ability to use the facility for more than 720 hours per year, per frequency, and that a licensed BAS operator could displace them. With frequency coordination and the itinerant nature of most short-term facilities, however, the Joint Petitioners and other short-term BAS operators found these additional rights unnecessary. Denying operators *complete* use of these expensive, vital facilities at this late stage is inequitable and unjustifiably punitive, given that Sprint Nextel is gaining valuable spectrum as a result of the rebanding process.

Additionally, the public would be harmed if short-term BAS facilities are left behind in the 1990-2025 MHz band. First, the public would lose on-location coverage of breaking news and life-threatening weather events until affected broadcast licensees can find sufficient funds to purchase new BAS equipment to operate in the new 2025-2110 MHz band. Given the significant and unexpectedly high cost of transitioning to digital operations, it may take some stations years before they can fund their own 2 GHz relocation. Second, lingering BAS incumbents may impede Nextel's operations, and cause confusion and complication for broadcasters and Nextel's customers.

Accordingly, for the foregoing reasons, the Joint Petitioners respectfully reiterate their request that the Commission clarify (i) that the Public Safety Orders require Sprint Nextel to relocate those BAS facilities that a broadcaster can demonstrate were operated prior to November 22, 2004, under authority conferred by Section 74.24 of the Commission's rules and (ii) that Sprint Nextel may receive credit for the costs it incurs in relocating such facilities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elbert Ortiz, hereby certify that on April 5, 2007, I caused a copy of the foregoing Reply to Opposition to be mailed via first-class postage prepaid mail to the following:

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