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

SPRINT NEXTEL CORPORATION OPPOSITION TO
NEW ICO COMMENTS ANI) REQUEST FOR EXPEDITED RELIEF

The Comments and Request for Expedited Relief (Request) filed by New ICO Satellite Services G.P. (ICO) represent an impermissible attempt by ICO to avoid its obligations to relocate Broadcast Auxiliary Service (BAS) incumbents.[1] ICO blithely asserts that the Commission should simply require Sprint Nextel Corporation (Sprint Nextel) to relocate BAS incumbents in the top 30 markets and all fixed BAS stations by December 31, 2007. ICO ignores the unforeseen complexities and circumstances that have delayed BAS relocation, all of which are beyond the control of Sprint Nextel and which are fully described in the relocation status reports Sprint Nextel has filed with the Commission. Moreover, ICO ignores its own

[1] New ICO Comments and Request for Expedited Relief, WT Docket No. 02-55 (April 13, 2007).

obligation to relocate BAS incumbents. ICO undertook these obligations nearly *seven years ago*, yet in those seven years it has done nearly nothing to move BAS relocation forward. It has instead repeatedly tried to shirk its responsibilities, with its Request the latest example of these tactics.

Since early 2005, Sprint Nextel has worked diligently with all stakeholders, including the broadcast industry, manufacturers, service vendors, and Mobile Satellite Service (MSS) operators, to expedite BAS relocation. The great majority of these parties have similarly worked in good faith to overcome the challenges involved in relocating BAS stations to the new 2 GHz band plan. They include TMI Communications and Company, L.P. (TMI) and TerreStar Networks, Inc. (TerreStar), two MSS parties which have worked with Sprint Nextel in a cooperative, productive spirit to complete the process as soon as possible without disrupting broadcasters' electronic newsgathering (ENG) operations. These cooperative efforts stand in stark contrast to ICO's actions. As demonstrated in its Request, ICO seeks to avoid its obligations and get a free ride as others dedicate the substantial resources necessary to relocate BAS licensees. The Commission should reject ICO's Request.

I. ICO Ignores the Realities of BAS Relocation: It Has Proven to be Far More Complicated Than Initially Anticipated

In the 800 MHz proceeding, the Commission established a 31.5-month benchmark for completing BAS relocation, but at the same time recognized that factors beyond Sprint Nextel's reasonable control could make it impossible to meet this benchmark.[2] This has proven to be the

[2] *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, ¶ 353 (2004) (800 *MHz R&O*) ("If Nextel fails to meet this [thirty-month] benchmark, *for reasons that Nextel could reasonably have avoided*, the Commission will determine whether [appropriate sanctions] should be imposed") (emphasis added). *See also* 800 *MHz R&O* ¶¶ 252,

case, as detailed in Sprint Nextel's March 2007 BAS Relocation Status Report.[3] Approximately 1000 BAS licensees must be relocated to a completely new band plan that entails operating on narrower bandwidth channels. This has never been done in BAS. Television electronic newsgathering (C'ENG") operations developed over the past four decades on a link-by-link, charnel-by-channel basis. Most existing BAS equipment uses analog technology; the relocation project retunes every station to advanced digital technology with different propagation properties and operating characteristics than analog radios. Moreover, each licensee has its own complex network of fixed and mobile links and ENG equipment and the new digital equipment must be integrated with all of these systems and control equipment. In short, BAS relocation involves transitioning from analog to digital technology all ENG/BAS transmitting equipment for the entire television industry – all without disrupting ENG operations during sweeps periods, major political, sports and community events, and natural disasters and other unanticipated incidents.

ICO's Request completely ignores these complexities, all of which are explained in detail in Sprint Nextel's March 2007 report. ICO makes only a few oblique references to the report and baldly asserts that the Commission should order Sprint Nextel to complete BAS relocation by December 31,2007 to meet ICO's particular needs. ICO offers no suggestions as to how this would be accomplished, demonstrating a continuing disregard for the important functions served by BAS.

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352 (establishing 30-month BAS relocation benchmark), as amended by Erratum, WT Docket No. 02-55 (rel. Sep. 10,2004); Second Erratum, 19 FCC Rcd. 19651 (2004); Public Notice, "Commission Seeks Comment on *Ex Parte* Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd. 21492 (2004) (extending BAS relocation deadlines by 45 days).

[3] Sprint Nextel BAS Relocation Status Report, WT Docket No. 02-55 (March 7,2007) (March 2007 Status Report).

Sprint Nextel has as much, if not more, incentive than any other 2 GHz licensee to complete BAS relocation. Indeed, the Commission has recognized the importance of providing Sprint Nextel "timely and certain access to 1.9 GHz spectrum rights in exchange for vacating certain 800 MHz spectrum and assuming the cost of 800 MHz band reconfiguration."[4] The reality, however, is that while Sprint Nextel and the broadcast industry have made very substantial progress in relocating BAS incumbents, the immense complexity of the transition means that it is very likely that more time will be needed to complete BAS relocation.[5]

ICO's Request offers nothing to rebut the detailed explanation set forth in Sprint Nextel's March 2007 Report regarding the need for more time to complete BAS relocation.[6] ICO's Request ignores the serious disruption to BAS operations that would result if incumbents are unreasonably forced to relocate before they are ready. This flies in the face of the admonition by Chairman Dingell and Congressman Upton that the Commission's BAS relocation procedures "should not jeopardize the ability of local stations to fulfill their primary role – to provide live local coverage of news events."[7]

11. ICO Ignores Its Own Relocation Obligations and Its Failure Over the Past Seven Years to Move BAS Relocation Forward

In its Request, ICO expresses concern that it will not be able to certify that its MSS system is operational by December 31, 2007 if BAS relocation is not be completed by that date,

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4 *800 MHz R&O* ¶ 222.

5 March 2007 Status Report at 25. Sprint Nextel anticipates that it will be filing a request to extend the current BAS relocation completion benchmark based on the facts and circumstances described in its March 7 report.

6 March 2007 Status Report.

7 Letter from Honorable Fred Upton and Honorable John D. Dingell to FCC Chairman Powell, at 3 (March 23, 2004). *See also 800 MHz R&O* ¶ 250 ("[W]e expect that Nextel and MSS licensees will work together to minimize the disruption BAS licensees will experience in the transition.").

and effectively seeks to make Sprint Nextel responsible for satisfying *ICO*'s regulatory requirements. ICO ignores its own separate, independent obligation to relocate BAS incumbents. This obligation dates back to 2000, when the Commission adopted BAS relocation rules "to allow new … MSS … licenses to clear spectrum for their operations."[8] Although the Commission established rules in 2004 for the Sprint Nextel – BAS relocation process, it expressly retained the existing MSS – BAS relocation rules.[9] Under the *800 MHz R&O,* MSS licensees may choose to let Sprint Nextel take the lead in relocating BAS licensees, but the Commission made clear that "MSS licenses will retain the option of accelerating the clearing of [BAS markets] so that they could begin operations before Nextel has Completed nationwide clearing."[10] ICO consequently has "its own relocation and reimbursement obligations to BAS incumbents,"[11] a fact that ICO has conceded in filings with the Securities and Exchange Commission.[12]

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8 *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, ¶ 1 (2000) *(2000 MSS MO&O*).

9 *800 MHz R&O* ¶¶ 250,264.

10 *800 MHz R&O* ¶ 257. In October 2005, six months after Sprint Nextel filed its BAS Relocation Schedule and Implementation Plan, the Comrnission reiterated that "MSS licensees retain the option of accelerating the clearing [of BAS] so that they could begin operations before Nextel has completed nationwide clearing." *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, ¶ 114 (2005) ("*800 MHz MO&O*"). The Commission also stated that MSS licensees could join in the negotiations between Nextel and BAS incumbents. *800 MHz R&O* ¶ 257; *800 MHz MO&O* ¶ 114. In addition, the Commission provided that Sprint Nextel "is obligated to reimburse MSS licensees for [its] *pro rata* share of the MSS licensees' relocation expenses, should the MSS licensee trigger involuntary relocation or otherwise participate in the relocation process before [Sprint Nextel] has completed its nationwide clearing of the band." *800 MHz R&O* ¶ 262.

11 *800 MHz MO&O* ¶ 114.

12 ICO, Annual Report (Form 10-K), at 23 (April 2,2007) ("The FCC's rules require new entrants to the 2 GHz band, including 2 GHz MSS licensees, to relocate incumbent BAS users.").

ICO also, of course, is the entity responsible for meeting its MSS operational milestones, *not* Sprint Nextel. ICO was on notice as early as March 2006 that BAS relocation would not be completed in 2007.[13] ICO could have taken steps to help expedite BAS relocation in light of its December 2007 target for initiating MSS operations, but it chose not to. Indeed, ICO could have taken steps *over the past seven years* to move BAS relocation forward, but the record shows that it has done almost nothing to meet its relocation obligations. This is in stark contrast to the strong progress Sprint Nextel has made.

As described in its March 2007 report, within two years after the start of its BAS relocation obligations, Sprint Nextel has kicked off the relocation process in every market in the country, collected equipment inventories from 99% of all eligible BAS incumbents, verified the great majority of these inventories, entered into Frequency Relocation Agreements (FRAs) with almost 25% of all eligible incumbents, placed purchase orders for the necessary replacement equipment for over 15% of the incumbents, and completed relocation in ten markets.[14] Sprint Nextel had also within that two-year period laid the groundwork to accelerate the pace of relocation in the future. Sprint Nextel has spent more than $186 million to purchase an inventory of more than 12,000 pieces of BAS radiofrequency equipment for BAS transition. It has worked closely with manufacturers, system integrators, and contractors to expand the scale and scope of their operations to meet anticipated retuning demand during the transition. And Sprint Nextel has worked closely with the broadcast industry to resolve numerous complex legal and logistical

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[13] Sprint Nextel BAS Relocation Status Report, WT Docket No. 02-55, at 4 (March 7, 2006) ("BAS licensees are far behind schedule for completing relocation by the end of the Commission-mandated 31.5 month retuning period."); ***id.*** at 22 ("[I]t is highly unlikely that the BAS relocation can be achieved within the timelines established by the Commission.").

[14] March 2007 Status Report at 4-6. Since the Status Report was filed in March, Sprint Nextel has entered into additional agreements and has now signed FRAs with *over* 25% of incumbents.

issues, including completing individualized template contracts with all major broadcast group licensees that collectively represent 65% of BAS licensees.[15]

What had ICO accomplished within two years of the start of its relocation obligations? Not much. In a June 2002 letter filed almost two years after the adoption of the MSS-BAS relocation rules, the broadcast industry reported:

> Despite the Commission's efforts to ease entry for MSS providers, there has been little progress towards BAS relocation. NAB surveyed stations in the 30 largest television markets – the markets involved in the first phase of relocation – to find out the status of relocation negotiations. *Only two stations have had any contact with an MSS licensee beyond receipt of a routine request for information. To our knowledge, 21 months into the two-year mandatory negotiation period, there have been no substantive relocation negotiations undertaken by any MSS licensee?*

In October 2003, ICO filed a letter with the Commission stating "that significant effort is required to accurately determine the scope of the 2 GHz relocation task."[17] To Sprint Nextel's knowledge, ICO has not demonstrated that it has made any efforts since these filings to move BAS relocation forward.

On a number of occasions, ICO has sought to avoid or minimize its responsibilities for relocating BAS incumbents. In 1999, ICO unsuccessfully argued that it should be able to commence operations and displace BAS incumbents without having to pay to relocate BAS licensees to comparable facilities, even though this was directly contrary to the Commission's

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15 *Id.* at ii.

16 Letter from Edward O. Fritts, National Association of Broadcasters, and David L. Donovan, Association for Maximum Service Television, Inc., to FCC Chairman Michael Powell, ET Docket No. 95-18, at 2 (June 6, 2002) (emphasis added).

17 Letter from Suzanne Hutchings, ICO, to Marlene Dortch, FCC Secretary, ET Docket No. 95-18, at 4 (Oct. 9, 2003).

Emerging Technologies relocation principles.[18] It also unsuccessfully sought to limit its reimbursement obligation to the depreciation value of BAS equipment, again contrary to well-established Commission relocation policies.[19] ICO subsequently suggested to the broadcast industry that BAS equipment could be retuned on-site by using a kit provided by a BAS equipment manufacturer, even though the manufacturers had made clear that this would rarely be a viable solution.[20] In short, ICO has dragged its feet over the past seven years, doing nearly nothing to clear the 2 GHz band.

ICO's April 13 Request is part of the same pattern. It once again seeks to avoid responsibility for its obligation to clear the 2 GHz band so that it can launch its MSS operations consistent with its milestone requirements. The Commission should reject ICO's Request and reconfirm that the responsibility for complying with (or seeking a modification of) these requirements rests with ICO, not Sprint Nextel.

111. Conclusion

The Commission has "recognize[d] that the parties will have to work cooperatively to ensure a smooth transition for BAS incumbents,"[21] and has noted that MSS licensees and Sprint Nextel "would collectively benefit from the expeditious relocation of BAS incumbents to the

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18 *See* Letter from Ellen P. Goodman, Counsel for MSTV, and Jack N. Goodman, NAB, to Magalie Roman Salas, FCC Secretary, ET Docket No. 95-18 (July 12, 1999) (opposing efforts by ICO to avoid BAS relocation obligations).

19 *2000 MSS MO&O* ¶¶ 103-112.

20 Letter from Jack N. Goodman, NAB, to William J. Caton, FCC Secretary, ET Docket No. 95-18, Attachment at 21 (March 26, 2002). *See also* Letter from Jeffrey A. Krause, Ph.D., to FCC Secretary, ET Docket No. 95-18, Attachment at 8 (June 19,2002) ("Except for the state-of-the-art radios, re-tuning must be conducted in factory setting to ensure proper levels, alignment, and operation.").

21 *800 MHz R&O* ¶ 257.

new band plan."[22] Sprint Nextel has worked in good faith with all parties, including MSS licensees, throughout the relocation process. For example, it has met on a bi-weekly basis with TMI and TerreStar regarding relocation issues, and is exploring ways in which TMI and TerreStar might take an even more active role to help expedite BAS relocation. Sprint Nextel appreciates TMI and TerreStar's productive, active participation in the process.

Sprint Nextel has thus sought to work cooperatively with all stakeholders to relocate BAS licensees as quickly and efficiently as possible. ICO, in contrast, has filed its Request, ignoring the comprehensive record concerning the complexities of relocating BAS incumbents.[23] The Request should be dismissed, and the Commission should admonish ICO to heed its prior call for the parties to work together in a cooperative spirit.

Respectfully submitted,

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[22] *800 MHz MO&O* ¶ 114.

[23] ICO asserts that the "lack of detailed information" has made it difficult for it "to actively participate in relocation," Request at 6-7, but it provides no evidence to back up this vague claim.

Certificate of Service

I, Claudia Del Casino, hereby certify that on this 26th day of April 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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