

**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
)	

**REPLY COMMENTS OF
SPRINT NEXTEL CORPORATION, THE ASSOCIATION FOR MAXIMUM SERVICE
TELEVISION, INC., THE NATIONAL ASSOCIATION OF BROADCASTERS, AND
THE SOCIETY OF BROADCAST ENGINEERS**

January 4, 2008

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Sprint Nextel Corp. (Sprint Nextel), the Association for Maximum Service Television, Inc. (MSTV), the National Association of Broadcasters (NAB), and the Society of Broadcast Engineers (SBE) (collectively, Joint Parties), file these reply comments to urge adoption of the Consensus Plan filed on Sept. 4, 2007. As the record in this proceeding demonstrates, the Consensus Plan presents the best way forward to accelerate the transition of Broadcast Auxiliary Service (BAS) equipment, to the benefit of both the viewing public and the nascent Mobile Satellite Service (MSS) providers.

INTRODUCTION AND SUMMARY

Although the Commission established rules in 2000 to allow MSS licensees to relocate BAS licensees,¹ the MSS licensees made no progress in such relocation. Not until 2005 when Sprint Nextel began implementing a relocation plan developed with the broadcast industry and approved by the Commission did any progress toward relocating BAS occur. Since that time, Sprint Nextel and broadcasters have devoted substantial resources to relocation.

While significant progress has been made, additional time is necessary to complete relocation, as explained in detail in the September 4, 2007 waiver request filed by the Joint Parties.² As requested by the Commission, the Joint Parties engaged in extensive discussions with all stakeholders, including the two MSS licensees in the 2 GHz band, and on December 6, 2007 filed a Consensus Plan setting forth measures that will accelerate BAS relocation.³ The Consensus Plan establishes a framework by which New ICO Satellite Services G. P. (ICO) and TerreStar Networks (TerreStar) can commence significant service in January 2009, with all markets expected to be cleared by August of that year. Notably, before the end of 2007, the Joint Parties announced the successful transition of the Las Vegas and Harrisburg markets to the digital BAS band plan — a step which facilitates the in-orbit testing plans of MSS licensee ICO well ahead of schedule.⁴

¹ 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).

² Joint Party Petition for Waiver (Sept. 4, 2007) (Waiver Request). Unless otherwise indicated, all filings referenced in these reply comments were filed in WT Docket No. 02-55.

³ Joint Party Consensus Plan (Dec. 6, 2007) (Consensus Plan).

⁴ Letter from Lawrence R. Krevor, Sprint Nextel, David L. Donovan, MSTV, Marsha McBride, NAB, and Barry Thomas, SBE, to Marlene Dortch, Secretary, FCC, WT Docket No. 02-55 (Jan. 2, 2008).

In response to the Consensus Plan, ICO and TerreStar filed comments that recognize that BAS relocation raises complexities that require compromise by all involved.⁵ The Consensus Plan presents a realistic framework for expediting relocation and balances the needs of all parties. Completing the process will require the good faith cooperation of all parties.

Notwithstanding the above, ICO and, to a much lesser extent, TerreStar, also suggest arbitrary deadlines and mandates which lack support in the record and are unnecessary. Despite the substantial accommodations made to its business plan by the Consensus Plan, ICO asks to be made primary in the 2 GHz band eight months before the transition's projected completion. Such action would needlessly endanger local news coverage to the detriment of the viewing public. ICO's inflexible demands are particularly unreasonable in light of the myriad granted *and pending* requests for relief it has sought from FCC rules. Moreover, while the Joint Parties greatly appreciate TerreStar's constructive dialogue and submission of interim data, its technical proposals cannot be evaluated at the earliest until TerreStar's additional research is complete and available. In any event, as explained in the Consensus Plan, each of the Joint Parties has a strong incentive for completing the BAS relocation as soon as possible.⁶ Accordingly, the Commission should promptly adopt the Consensus Plan as proposed by the Joint Parties.

I. THE CONSENSUS PLAN STRIKES AN APPROPRIATE BALANCE AND SUBSTANTIALLY ACCOMMODATES THE NEEDS OF THE TWO MSS LICENSEES.

As TerreStar states in its comments, the "Consensus Plan represents a diligent advance, and is a product of numerous phone calls, e-mails, meetings, and other communications

⁵ Comments of New ICO Satellite Services G.P. at 1 (Dec. 19, 2007) (ICO Comments) (recognizing that "relocating 2 GHz BAS incumbents is a complex undertaking"); Comments of TerreStar Networks Inc. at 2 (Dec. 18, 2007) (TerreStar Comments) ("The Consensus Plan would not have been possible without sacrifices and compromises on all sides.").

⁶ Consensus Plan at 9-10.

involving Sprint Nextel, broadcasters, BAS equipment manufacturers, BAS equipment installation companies, and the 2 GHz MSS licensees.”⁷ Based on these extensive discussions, the Consensus Plan sets forth a four-part plan that, barring unforeseen circumstances, should conclude the BAS transition by August 2009. The Consensus Plan adopts a number of steps to accelerate BAS relocation, and establishes a comprehensive monthly market-by-market relocation schedule based in large part on the market-entry needs of ICO, TerreStar and other new entrants.

The Consensus Plan is designed to allow TerreStar and ICO to conduct in-orbit testing and to launch service in a number of trial markets by clearing five priority markets by July 2008. Indeed, Sprint Nextel and BAS licensees have already completed relocation in the Las Vegas market, well ahead of ICO’s current schedule for testing and deploying service in that market. As TerreStar acknowledges in its comments, the Consensus Plan “resolve[s] BAS clearing issues” for the testing and trial market phases of its MSS service deployment.⁸

The Consensus Plan also projects that BAS relocation can be completed by August 2009 barring unforeseen obstacles, providing ICO and TerreStar nationwide access to the 2000-2020 MHz band five months earlier than initially requested in the Joint Parties’ waiver request — all without advance contribution to the relocation costs of clearing the band. Although some markets will not be fully cleared by the January 2009 date mentioned in the TerreStar and ICO comments, the MSS licensees will nevertheless enjoy significant and timely access by that date.⁹ According to the projected schedule, Sprint Nextel and BAS licensees should have cleared more than 100 markets by that date, providing MSS licensees with unfettered access to 50 percent of

⁷ TerreStar Comments at 2.

⁸ *Id.* at 5.

⁹ Consensus Plan at 10-16.

the U.S. population, including a number of large markets. Only six months later, by June 2009, relocation should be completed in 169 markets under the projected schedule, giving ICO and TerreStar unfettered access to 88 percent of the population. By August 2009, all relocation should be completed upon the successful implementation of the Consensus Plan, providing MSS licensees with complete nationwide access only eight months after their requested launch-of-service date.

The Plan thus should provide ICO and TerreStar a springboard to initiate their nascent service by January 2009. New entrants typically need access to only a small portion of the market in initially launching their service given the extensive time it takes to ramp up operations, market their services, and gain consumer acceptance. The market-by-market transition schedule set forth in the Consensus Plan will help ICO and TerreStar plan their marketing and operational schedules as they rollout their services.

There is a mere eight-month gap between the MSS request for clear nationwide access in January 2009 and the August 2009 projected completion of the remaining uncleared markets. This is a small period of time relative to the eighty-nine months that have transpired since the Commission first established rules to allow MSS licensees to clear the 2 GHz band in June 2000.¹⁰ Since 2000, the MSS industry has made no progress in relocating BAS licensees and has encountered financial difficulties, bankruptcies, restructuring, and numerous construction and launch delays. For example, as noted below, ICO has sought to extend its milestones a number of times, including a very recent request for more time that remains pending at the Commission.¹¹ And the number of MSS licensees in the 2 GHz band has dwindled from eight to

¹⁰ 2000 MSS MO&O ¶¶ 17-74.

¹¹ New ICO Satellite Services G.P. Application to Extend Milestones, *Memorandum Opinion and Order*, 22 FCC Rcd 2229 (2007) (“ICO 2007 Milestone Extension Grant”) (granting request

two. There is no guarantee that MSS licensees will not encounter further delays in their satellite planning, in which case any concerns they have about the pace of BAS relocation would be obviated.

The Commission should also bear in mind that ICO and TerreStar cannot initiate nationwide service until they have cleared their downlink band at 2180 – 2200 MHz, which is currently occupied by fixed service (FS) microwave licensees.¹² The Commission established rules for MSS licensees to clear the presumably vast percentage of FS licensees that would receive interference upon an MSS system launch. While TerreStar reportedly hired a consulting firm to assist it in relocating FS incumbents, ICO has been noticeably silent on its relocation obligations. In its most recent annual report, ICO merely stated that it had “begun the implementation planning” for the FS relocation process, which it acknowledged to be a “complex undertaking with the potential to delay the launch of commercial MSS operations.”¹³

In any event, little progress appears to have been made in FS relocation by any MSS licensee. According to the Commission’s Universal Licensing System, as of November 2007 there were more than 2300 fixed service licensees active in the 2180 – 2200 MHz band, with only 184 licenses having been deleted from the band between 2005 and 2007. MSS licensees

to extend four milestones, including launch milestone by five months and operational milestone by more than four months); Public Notice, Report No. SAT-00466, 2007 FCC LEXIS 5992 (Aug. 17, 2007) (“ICO Aug. 2007 Milestone Extension Request”) (pending request by ICO to extend its launch and operational milestones by a month and a half); Public Notice, Report No. SAT-00483, 2007 FCC LEXIS 8818 (Nov. 23, 2007) (“ICO Nov. 2007 Milestone Extension Request”) (amending pending request to seek an additional three months to meet milestones).

¹² See, e.g., 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, *Ninth Report and Order*, 21 FCC Rcd 4473, 4520 ¶ 87 (2006) (“MSS (space-to-Earth) must clear all incumbent FS operations in the 2180-2200 MHz band within the satellite service area if interference will occur”).

¹³ ICO Global Communications (Holding) Limited, Form 10-K Annual Report for the fiscal year ended Dec. 31, 2006, at 8 (filed April 2, 2007) (“ICO 2007 Annual Report”).

consequently have a considerable amount of work to do in clearing their downlink band before they can claim that the Consensus Plan will impede the initiation of their service. ICO and TerreStar should thus focus on making their systems operational and allow the Joint Parties to work toward achieving the goals set forth in the Consensus Plan.

II. THE COMMISSION SHOULD REJECT ICO'S ARBITRARY REQUESTS

In its comments, ICO acknowledges the complexity of BAS relocation and “applauds the recent efforts of the Sprint/BAS Parties to accelerate the BAS relocation process.”¹⁴ ICO nonetheless makes a series of arbitrary requests that have no support in the record, particularly in light of ICO’s longstanding record of inaction in the BAS relocation. Ignoring the right and obligation it has had to relocate BAS incumbents over the past seven years, ICO claims that “it has become effectively impossible for MSS licensees to attempt to accelerate the BAS transition,” and argues that (i) Sprint Nextel should invoke involuntary relocation procedures and somehow relocate BAS licensees without negotiating with them; (ii) MSS licensees should “obtain primary use of their assigned 2 GHz MSS spectrum ... no later than January 1, 2009, regardless of whether BAS relocation has been completed by then”; and (iii) the Commission should impose “specific penalties” for failure to meet relocation benchmarks.¹⁵ As discussed below, the Commission should reject such requests.

The Joint Parties appreciate the desire by MSS licensees to expedite BAS relocation. The Joint Parties also have a strong incentive to complete relocation as soon as possible, and are committed to working in good faith with MSS licensees and other parties to find ways to accelerate the process. ICO’s disingenuous arguments, however, do not help. ICO’s claim that

¹⁴ ICO Comments at 7.

¹⁵ *Id.* at 6, 8-10.

it has become impossible for it to help accelerate relocation ignores its own independent obligation to clear BAS licensees, an obligation that predates Sprint Nextel's relocation obligations by five years.¹⁶ As Sprint Nextel has previously explained, ICO failed to take any significant steps during those five years to relocate BAS licensees.¹⁷ Nearly two months ago, Sprint Nextel offered ICO a proposed contractual agreement that would allow ICO to directly participate in the extensive BAS relocation framework that Sprint Nextel has constructed over the last three years. ICO has not responded. Given the opportunity, ICO simply chose not to participate in the BAS relocation. Its intransigence continued throughout 2007, despite ICO's acknowledgement to investors nearly nine months ago that the process was delayed.¹⁸

In addition to ignoring the state of the record, ICO overlooks the substantial damage that its commencement of primary operation in January 2009 "regardless of whether BAS relocation has been completed" could cause to local viewers.¹⁹ As the Commission has explained, the 2 GHz BAS is "a critical part of the broadcasting system by which information and entertainment is provided to the American public."²⁰ Broadcasters intensively use the full seven 2 GHz BAS

¹⁶ The Commission has 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." *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, ¶ 257 (2004). The Commission has also required MSS licensees to reimburse Sprint Nextel for their *pro rata* share of BAS relocation costs incurred prior to the 800 MHz "true up." *Id.* ¶ 261.

¹⁷ Sprint Nextel Opposition to New ICO Comments and Request for Expedited Relief, WT Docket No. 02-55, at 4-8 (April 26, 2007).

¹⁸ See ICO 2007 Annual Report at 8 (stating that "[t]he FCC's rules require new entrants to the 2 GHz band, including 2 GHz MSS licensees, to relocate incumbent BAS users" and acknowledging reports of delay in that relocation).

¹⁹ ICO Comments at 10.

²⁰ *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, 19 FCC Rcd 14969, 15095 ¶ 250 (2004).

channels all over the country and at all hours on a shared, coordinated basis to cover breaking news events, including natural and mandate disasters. By interfering with nearly one third of the 2 GHz BAS channels in uncleared markets for the eight months prior to the projected conclusion of the transition, ICO threatens to cut off breaking news coverage in many markets. Moreover, the full extent of that interference is unknown, as ICO has failed to provide any technical data concerning the subscription, mobile video system it reportedly intends to deploy.²¹ The Commission should not allow ICO to launch its service at the expense of local news coverage, which local households expect and rely on to stay informed.

ICO's proposal that Sprint Nextel invoke involuntary relocation procedures similarly lacks credibility. The Commission designed these procedures for the much simpler task of relocating fixed microwave links. Involuntary relocation procedures are wholly unrealistic in the vast majority of BAS relocations. Without negotiating with BAS licensees, there is no way to determine their equipment inventory and system needs, gain access to their facilities, and coordinate their relocation with their programming requirements and other system relocations in the same market. MSS licensees have had the theoretical opportunity to invoke involuntary relocation procedures since December 2004,²² before Sprint Nextel's relocation obligations even became effective, yet no MSS licensee has invoked these procedures. Of course, it would likely be difficult for ICO to invoke these procedures when it appears to have never attempted to

²¹ See, e.g., *ICO Asks for ATC Authorization*, Satellite Week, Dec. 10, 2007 (quoting ICO CEO Timothy Bryan as describing "backseat video" to be the "core product" of ICO's Mobile Interactive Media product).

²² 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, n. 287 (2005).

engage in any substantive negotiations with BAS licensees during its mandatory negotiation period.²³

The Commission should also reject ICO's proposals to impose "specific penalties" on the Joint Parties. ICO provides no basis for these requests other than its own self interest. It would be arbitrary and capricious for the Commission to impose these punitive measures on Sprint Nextel or the broadcast industry when the record shows that the delays in BAS relocation are the result of factors beyond the control of these parties. It would also be arbitrary for the Commission to take action against Sprint Nextel and broadcasters while ignoring ICO's complete failure to carry out its own independent relocation obligations over the past seven years.

ICO's lack of cooperation in the BAS relocation is particularly inappropriate in light of the significant flexibility it has been accorded by the Commission. It has already received two milestone extension requests; if ICO's latest extension request is granted, it will have been allowed to delay satellite launch by well over three years.²⁴ The Commission should not allow ICO to disrupt local newsgathering under the guise of "fairness"²⁵ when that company has itself been the beneficiary of so much regulatory flexibility.

²³ 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) (stating that, almost two years into MSS-BAS relocation process, "there have been no substantive relocation negotiations undertaken by any MSS licensee").

²⁴ See ICO Nov. 2007 Milestone Extension Request (requesting extension of launch milestone until April 15, 2008); ICO Services Ltd., Order, 16 FCC Rcd 13762, ¶¶ 1, 34 (Int'l Bur. 2001) (reserving 2 GHz MSS spectrum for ICO and setting launch milestone of Jan. 17, 2005).

²⁵ ICO Comments at 11 (urging the Commission to accelerate the BAS transition "so as to ensure fairness").

For the Commission's reference, the following chart outlines ICO's longstanding enjoyment of regulatory flexibility and pending requests for yet more relief.

Regulatory Flexibility Sought by ICO	Date of ICO Request	Status
Revise MSS rules to allow ancillary terrestrial service	Oct. 2001	GRANTED ²⁶
Delay launch schedule by over 18 months, to July 2007	Jan. 2005	GRANTED ²⁷
Increase ICO's spectrum allocation from 8 to 20 MHz	June 2005	GRANTED ²⁸
Delay construction, launch, and operational milestones; new final milestone of Dec. 31, 2007	Nov. 2006	GRANTED ²⁹
Further delay launch and operational milestones; new final milestone of mid-February 2008	Aug. 2007	PENDING ³⁰
Amend pending further milestone extension request; new final milestone of May 15, 2008	Nov. 2007	PENDING ³¹
Waiver of 11 separate ATC rules	Nov. 2007	PENDING ³²

III. ACTION ON TERRESTAR'S SPECTRUM-SHARING PROPOSAL WOULD BE PREMATURE

The Joint Parties appreciate TerreStar's constructive comments concerning the Consensus Plan, including its inclusion of a summary, Interim Report on the prospect of

²⁶ See Flexibility for Delivery of Communications by MSS Providers, *Report and Order*, 18 FCC Rcd 1962 (2003).

²⁷ See ICO Satellite Services Application for Modification of 2 GHz LOI Authorization and Petition for Declaratory Ruling or Waiver, *Memorandum Opinion and Order*, 20 FCC Rcd 9797 (Int'l Bur. 2005).

²⁸ See Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands, *Order*, 20 FCC Rcd 19696 (2005).

²⁹ See ICO 2007 Milestone Extension Grant.

³⁰ See ICO Aug. 2007 Milestone Extension Request.

³¹ See ICO Nov. 2007 Milestone Extension Request.

³² New ICO ATC-LOI Modification Application, SAT-MOD-20071130-00167 (filed Nov. 30, 2007).

interference between TerreStar's MSS component and BAS facilities.³³ The Joint Parties, however, cannot complete assessment of TerreStar's proposals at this time. The Interim Report raises the potential of interference to BAS equipment, and full study data has yet to be provided. For example, the Interim Report reports that a TerreStar handset transmitting in a satellite mode "may cause interference to ENG analog operations occurring on BAS channels 1 and 2 using the normal BAS receiver I.F. bandwidth selection."³⁴ Of course, in markets that have not been cleared, stations will be using precisely this type of analog BAS system; thus, additional information concerning this interference potential is essential. The Joint Parties also await the results of tests concerning TerreStar operation in MSS Band B, which the Interim Report suggests will be conducted in the future.³⁵

An Interim Report, by definition, is incomplete. The Joint Parties recognize that TerreStar intends to conduct further research, and look forward to receiving the resulting data. Given the incomplete state of the record, however, action on TerreStar's proposal to share BAS channels 1 and 2 beginning in January 2009 would be premature.

³³ See Terrestrial Comments, BAS Impact from TerreStar Handset Satellite Emissions, Interim Report.

³⁴ *Id.* at 3.

³⁵ *Id.* at 13 ("The above tests were for a TerreStar device [sic] operating in MSS Band A. Further tests are being considered for TerreStar operation in MSS Band B").

CONCLUSION

The Consensus Plan provides the best means of expediting BAS relocation and accommodating the needs of the many parties involved, including ICO and TerreStar. The Commission has traditionally avoided micromanaging the relocation process, recognizing that new entrants and incumbents need flexibility to address the specific circumstances of each relocation.³⁶ With this flexibility, as well as their own strong incentives to expedite the process, Sprint Nextel and broadcasters can complete BAS relocation as quickly as possible consistent with the detailed market-by-market schedule previously provided to the Commission.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

Lawrence R. Krevor,
Vice President, Spectrum
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

**NATIONAL ASSOCIATION OF
BROADCASTERS**

Marsha McBride
*Executive Vice President, Legal and
Regulatory Affairs*
National Association of Broadcasters
1771 N St., NW
Washington, DC 20036

**ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.**

David L. Donovan
President
Association for Maximum Service
Television, Inc.
4100 Wisconsin Avenue, N.W.
Washington, DC 20016

**SOCIETY OF BROADCAST
ENGINEERS**

Barry Thomas,
President
Society of Broadcast Engineers
9102 North Meridian Street
Suite 150
Indianapolis, IN 46260

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³⁶ 2000 MSS MO&O ¶ 42 (“The parties involved are better informed than the Commission as to their needs and the nature of the markets for their services and the equipment and facilities they need for their systems.”).