



February 26, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
WT Docket No. 02-55; ET Docket Nos. 00-258 and 95-18

Dear Ms. Dortch:

New ICO Satellite Services G.P. (“ICO”) submits this letter to (1) advise the Commission of discussions recently held among stakeholders in the above-referenced proceedings; (2) clarify the request for relief set forth in ICO’s comments regarding the broadcast auxiliary service (“BAS”) relocation proposal jointly filed in the above-referenced proceeding by Sprint Nextel Corporation (“Sprint”), the Association for Maximum Service Television, the National Association of Broadcasters, and the Society of Broadcast Engineers (collectively, the “Sprint/BAS Parties”); and (3) respond to the Sprint/BAS Parties’ reply comments filed on January 4, 2008.¹

I. INTRODUCTION

In recent weeks, 2 GHz MSS operators have met with the Sprint/BAS Parties to explore ways to share use of the spectrum before completion of the BAS transition under the Sprint/BAS Parties’ “Consensus” plan. ICO believes that MSS operators and the Sprint/BAS Parties have made progress in addressing the use of 2 GHz spectrum during 2 GHz MSS satellite testing and system trials in 2008.

As a result, 2 GHz MSS operators have been concentrating efforts on coming to an understanding with the Sprint/BAS Parties with respect to operations in 2009. The Sprint/BAS Parties indicate in their January 4, 2008 comments that the “Consensus Plan” framework will enable MSS to operate after January 1, 2009 in cleared markets without any impact on BAS incumbents. As nationwide service providers, 2 GHz MSS operators are seeking to reach full consensus on the ability of MSS to commence nationwide service. Building on the January 1, 2009 date, 2 GHz MSS operators sought to reach

¹ See Reply Comments of Sprint/BAS Parties, WT Dkt. No. 02-55, *et al.* (Jan. 4, 2008) (“Sprint/BAS Reply Comments”).

agreement on ways to work with BAS licensees to minimize interference at a point that Sprint/BAS Parties expect that markets covering at least 50 percent of the U.S. population will be cleared.² 2 GHz MSS operators see much room for compromise here – specifically because clearing will continue after January 1, 2009 through the projected completion date in August 2009, with the number of uncleared markets steadily decreasing. In light of the considerable delays in spectrum clearing, ICO expects to remain in test and trial modes in 2008 and ramp into commercial operations in 2009, such that nationwide MSS operations would result in minimal overlap with uncleared BAS operations. Under the circumstances, interference to BAS during this period is both unlikely and avoidable. Although ICO has been in substantive and productive discussions with the Sprint/BAS Parties, ICO as of yet has been unable to obtain the Sprint/BAS Parties’ agreement to measures that would facilitate entrance of nationwide MSS operations in 2009.

Although ICO expects to continue to work with the Sprint/BAS Parties to minimize interference issues during the BAS transition, ICO files these additional comments in the event that the Sprint/BAS Parties and 2 GHz MSS operators cannot reach agreement before the March 4, 2008 expiration of the current 30-day extension period.

ICO does not oppose grant of the Sprint/BAS Parties’ waiver request to extend the existing Sprint/BAS relocation deadline, provided that appropriate conditions are adopted to ensure compliance with the revised Sprint/BAS relocation schedule and mitigate the impact of any further relocation delays on 2 GHz MSS providers and their future subscribers. These waiver conditions should be designed to provide for the following: (1) assurances that 2 GHz MSS testing in early 2008 and system trials in mid-2008 can be conducted (which the parties appear to have agreement on); (2) certainty that MSS operators can begin commercial service by January 2009; (3) strict Commission oversight to ensure that there will not be further delays in BAS relocation; and (4) equitable measures to account for delays in MSS access to spectrum.

To accomplish these objectives, ICO urges the Commission to adopt the following specific waiver conditions: (1) certain limited geographic areas (including South Easton, Massachusetts; Brewster, Washington; and Ellenwood, Georgia) will be cleared or coordinated to allow ICO to begin system testing by April 2008; (2) certain limited geographic areas, including Las Vegas (already cleared) and a Raleigh-Durham market cluster, will be cleared or coordinated to allow ICO to begin alpha trials of its service by June 2008; (3) 2 GHz MSS providers may access their spectrum nationwide by January 2009; (4) Sprint must file monthly status reports; and (5) the Commission should provide strict oversight to ensure the Sprint/BAS Parties meet the extended deadlines set

² “If MSS licensees begin operations before all BAS incumbents are relocated, we expect that MSS and BAS licensees will work together to minimize interference; however, MSS licensees would have to accept interference from the remaining BAS users until they are relocated.” *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 270 (2004) (“800 MHz Order”).

forth in their proposed relocation schedule. Additionally, to the extent required, ICO urges the Commission to waive Section 74.690(e)(1)(i) of the Commission's rules to allow 2 GHz MSS licensees to commence operations by January 1, 2009, regardless of whether BAS licensees in the top 30 markets and fixed BAS licensees have been relocated.³

With its satellite launch scheduled in April, ICO is working hard to commence operations and provide benefits to the public through its advanced communication and public safety services. To do so, like any wireless business, ICO needs certainty and timely access to spectrum.

II. ANY WAIVER TO EXTEND BAS RELOCATION MUST ENSURE THAT 2 GHz MSS OPERATORS CAN PROVIDE NATIONWIDE COMMERCIAL SERVICE IN A TIMELY MANNER

Any order extending Sprint's obligations to clear BAS incumbents for a period of time must take account of the reasonable and substantial business interests of 2 GHz MSS operators, and include adequate conditions designed to avoid further delays, while addressing the continued need of BAS operators to carry out their important news gathering operations.

First, any waiver grant must ensure that ICO can conduct initial testing of its systems by April 2008. This can be accomplished by adopting the condition that certain limited geographic areas (including South Easton, Massachusetts; Brewster, Washington; and Ellenwood, Georgia) will be cleared or coordinated to allow ICO to begin system testing by April 2008. By June 2008, ICO's two initial trial markets must be cleared or coordinated to support ICO's test of its network. Even if these areas cannot be cleared by the noted time, they certainly can be coordinated to permit MSS testing and trials. ICO believes that in this regard it is in substantial agreement with the Sprint/BAS Parties.

Second, any waiver grant must ensure that 2 GHz MSS operators can commence nationwide service in a timely manner by allowing them access to their spectrum in 2009, subject to different conditions in particular markets based upon BAS clearing in those markets. In the first instance, MSS licensees could commence operations immediately after January 1, 2009, in those markets where BAS operations have been cleared. In the second instance, in those markets where BAS continues to operate, MSS licensees could operate from January 1, 2009 until August 31, 2009, while avoiding causing interference to BAS operations. In adopting the existing Sprint-BAS relocation plan, the Commission stated that "[i]f MSS licensees begin operations before all BAS incumbents are relocated, we expect that MSS and BAS licensees will work together to minimize interference; however, MSS licensees would have to accept interference from the remaining BAS

³ 47 C.F.R. § 74.690(e)(1)(i) reads, in relevant part, "MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, and all fixed stations operating in the 1990–2025 MHz band on a primary basis, prior to beginning operations...."

users until they are relocated.”⁴ Thus, the Commission expressly contemplated that 2 GHz MSS and BAS licensees could co-exist even if all markets have not been cleared.⁵ ICO’s proposed waiver condition would be fully consistent with the Commission’s policy goal of “strik[ing] the appropriate balance that is ‘not unreasonably burdensome upon MSS, while also fair to the incumbents.’”⁶ ICO stands ready to meet the spirit and letter of the Commission’s statements, and accepts the obligation to minimize interference and work cooperatively with BAS operators.

January 2009 is already a year and half beyond Sprint’s current relocation deadline and more than eight months after ICO’s planned launch of its satellite. Furthermore, the eight-month gap between the MSS operators’ compromise proposal of January 2009 and Sprint’s proposed August 2009 deadline is no “mere” thing, as the Sprint/BAS Parties state. Each day that 2 GHz MSS providers are forced to delay their service launch is an additional day of lost revenues for 2 GHz MSS providers, which are carrying substantial costs, including salaries, infrastructure, and the costs of equity and borrowed capital.⁷ ICO’s proposed waiver condition therefore strikes a reasoned balance between no additional markets made available to MSS licensees during 2009 and a

⁴ *800 MHz Order* ¶ 270.

⁵ In the event that there are “stragglers” that prevent the transition of all BAS markets by August 31, 2009, ICO would remain committed to working with broadcasters to minimize interference, but would expect that these outlying BAS entities would accept interference after that deadline.

⁶ *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service*, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd 23638, ¶ 35 (2003) (“*2 GHz Relocation Third R&O*”). In advancing this objective, the Commission, at BAS licensees’ request, modified the prior MSS-BAS relocation plan to provide for a single-phase (rather than two-phase) relocation approach. *Id.* ¶¶ 35-44. The Commission initially required all BAS licensees in the 2 GHz MSS uplink band, even in markets that have not been cleared, to cease operations in the band at the time that 2 GHz MSS providers commence operations. The Commission later eliminated this requirement when it adopted the Sprint/BAS relocation plan, but only on the assumption that most, if not all, BAS licensees would be relocated before 2 GHz MSS providers commence operations under their milestone requirements. *800 MHz Order* ¶¶ 57, 251-257.

⁷ The need for MSS operators to relocate fixed service (“FS”) microwave links will not delay the ability to initiate nationwide commercial service, as the Sprint/BAS Parties suggest. Only those FS links deemed affected by MSS operations upon technical analysis under Commission rules must be relocated, and that analysis indicates that only a tiny fraction of the FS links in the database are affected. ICO has contracted for all required studies, assessments, audits and clearing activities for completing FS downlink relocation required by Commission rules.

requirement that all markets be made available to MSS operators commencing on January 1, 2009.

Third, the Commission should apply oversight to make sure that any extended deadline is met by the Sprint/BAS Parties.⁸ The Sprint/BAS Parties state that they “should” conclude relocation by August 2009 and that additional “unforeseen circumstances” may further extend the BAS relocation period.⁹ ICO therefore urges the Commission to adopt the appropriate safeguards to ensure that the Sprint/BAS Parties meet any extended deadline, as well as the intermediate deadlines set forth in the Sprint/BAS Parties’ proposed relocation schedule, including requiring the Sprint/BAS Parties to file monthly status reports.¹⁰

III. THE COMMISSION HAS AUTHORITY TO ADOPT APPROPRIATE WAIVER CONDITIONS AND TO WAIVE ANY APPLICABLE MSS-BAS RELOCATION RULES

The Commission has full authority to adopt the proposed conditions discussed above as part of any order granting the Sprint/BAS Parties’ waiver request. These waiver conditions are consistent with the Commission’s practice of adopting appropriate safeguards designed to ensure a licensee’s compliance with licensing requirements and to mitigate any adverse impact on other licensees.¹¹

These waiver conditions also will not require modification of any Commission rules adopted under the MSS-BAS relocation plan. When the Commission adopted the existing Sprint-BAS relocation plan, it expressly provided for two different paths to relocating BAS licensees. Specifically, the Commission decided to “retain[] the existing MSS relocation rules but also overlay[] procedures by which [Sprint] may relocate BAS

⁸ As of August 7, 2007, the Sprint /BAS Parties completed only 5 percent of equipment installations, up from 3 percent in March.

⁹ Consensus Plan of Sprint Nextel Corp., et al. at 2, WT Dkt. No. 02-55, *et al.* (Dec. 6, 2007) (“Sprint/BAS Consensus Plan”); *see also* Joint Petition of Sprint Nextel Corp., et al., WT Dkt. No. 02-55, *et al.* (Sept. 4, 2007).

¹⁰ The Sprint/BAS Parties are incorrect in comparing the Sprint/BAS Parties’ extension request to MSS requests for milestone extensions or for regulatory flexibility in other contexts. *See* Sprint/BAS Reply Comments at 10-11. Unlike 2 GHz MSS milestone extension requests, grant of the Sprint/BAS Parties’ extension request will have a direct negative impact on other service providers.

¹¹ *See, e.g., ICO Satellite Services G.P.*, 20 FCC Rcd 9797, ¶¶ 27, 38-39 (IB 2005) (imposing intermediate milestone deadlines and reporting requirements in connection with grant of revised milestone schedule).

incumbents.”¹² The Commission stated that “MSS licensees will continue to follow the [MSS-BAS relocation plan] *when relocating BAS incumbents*.”¹³ Notably, the Commission granted 2 GHz MSS providers the *option* of refraining from triggering involuntary relocation and allowing Sprint to “proceed under its plan to relocate BAS incumbents.”¹⁴ ICO exercised the option granted by the Commission to allow Sprint to proceed under its relocation plan, rather than initiating MSS-BAS relocation procedures themselves, and ICO did so for very good reasons. Sprint had decided to clear *all* markets and had committed to the Commission that it would complete relocation on time. For ICO (or any other MSS entrant) to proceed with clearing BAS incumbents under the time consuming and complex process (e.g., conducting inventories, contract negotiations, etc.) at the same time Sprint was doing so would have been grossly inefficient and counterproductive.

Although Section 74.690 of the Commission’s rules sets forth detailed requirements and procedures governing MSS-BAS relocation, most of these requirements are expressly predicated on the condition that involuntary relocation has been initiated by the MSS entrant if the parties are unable to reach a negotiated relocation agreement.¹⁵ Thus, Section 74.690 should not apply to 2 GHz MSS licensees that properly have chosen to refrain from initiating involuntary relocation and to proceed under the separate Sprint-BAS relocation plan.

To the extent, however, that the Commission’s MSS-BAS relocation rules under Section 74.690 are deemed to be applicable, ICO requests a waiver of Section 74.690(e)(1)(i) to allow 2 GHz MSS licensees to commence operations by January 1, 2009, regardless of whether BAS licensees in the top 30 markets and fixed BAS licensees have been relocated.¹⁶ The Commission may waive its rules upon a showing of “good cause.”¹⁷ Specifically, the Commission may waive a rule in a particular case if the relief

¹² *800 MHz Order* ¶ 250. It is important to note that when the Commission adopted the Sprint-BAS relocation plan, it removed a valuable component of the MSS-BAS relocation plan—the requirement that BAS licensees outside of the top 30 markets cease operations on BAS channels 1 and 2 once 2 GHz MSS licensees commence operations.

¹³ *Id.*

¹⁴ *Id.* ¶ 257.

¹⁵ *See* 47 C.F.R. 74.690(e)(1)(i).

¹⁶ *See id.* (“MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1-30, as such DMAs existed on September 6, 2000, and all fixed stations operating in the 1990-2025 MHz band on a primary basis, prior to beginning operations, except those Existing Licensees that decline relocation.”).

¹⁷ 47 C.F.R. § 1.3.

requested would not undermine the policy objective of the rule and otherwise would serve the public interest.¹⁸

In adopting Section 74.690(e)(1)(i), the Commission intended to “strike[] the appropriate balance that is ‘not unreasonably burdensome upon MSS, while also fair to the incumbents.’”¹⁹ Accordingly, the Commission established relocation procedures that would “give new ... entrants a realistic opportunity to seek early use of the band ... while minimizing the disruption to BAS incumbents to the extent possible.”²⁰ When the Commission later adopted the Sprint-BAS relocation plan, it contemplated that Sprint “will likely relocate most BAS licensees before MSS licensees begin operations under their milestone requirements.”²¹ The Commission thus intended to allow 2 GHz MSS providers to commence operations in a timely manner while also providing for relocation of BAS licensees in substantial portions of the United States prior to commencement of MSS operations.

To the extent the Commission determines one is necessary, grant of a waiver to allow 2 GHz MSS providers to begin operations nationwide by January 1, 2009, will advance the Commission’s policy objective of striking an appropriate balance between MSS and BAS interests. Specifically, 2 GHz MSS providers will be able to commence operations as quickly as possible, while BAS licensees that have not been relocated will continue to be protected from harmful interference through the coordination process contemplated by the Commission. Moreover, BAS operations in substantial portions of the United States will be completely unaffected because, under the Sprint/BAS Parties’ proposed relocation schedule, more than 100 markets, representing approximately 50 percent of the U.S. population (including apparently 16 of the top 30 markets) will be cleared by January 1, 2009.²²

IV. THE COMMISSION SHOULD ADDRESS ICO’S REQUEST FOR RELIEF AND THE SPRINT/BAS WAIVER PETITION IN A UNIFIED MANNER

Both ICO’s request for relief and the Sprint/BAS waiver petition raise issues (*i.e.*, MSS spectrum access and extension of BAS relocation) that are integrally related and therefore should be addressed in a unified manner through an adjudicatory waiver proceeding rather than a rulemaking. The issues at hand are limited to the following: (1) whether and how long Sprint’s BAS relocation deadline should be extended; and (2) what

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹⁹ *See 2 GHz Relocation Third R&O* ¶ 35.

²⁰ *Id.* ¶ 29.

²¹ *800 MHz Order* ¶ 270.

²² *See Sprint/BAS Consensus Plan* at 13; *Sprint/BAS Reply Comments* at 4-5

measures should be adopted to accelerate BAS relocation and to mitigate the impact of BAS relocation delays on 2 GHz MSS providers and their future subscribers. Bifurcating these issues into separate adjudicatory and rulemaking proceedings now would remove incentives for the parties to continue working together to reach a mutually acceptable solution. In fact, the Commission recognized the inextricable interconnection of these issues when it promoted the very negotiations that are the subject of this filing: “Because any action we take with respect to the Joint Petition has the potential to affect the interests of multiple parties, we conclude that it serves the public interest to promote further discussions with the anticipation that doing so will result in a consensus plan or specific proposals that allow the MSS licensees to initiate service in the band while avoiding MSS-BAS interference and continuing the BAS transition.”²³

Moreover, these issues are better suited for adjudication than for rulemaking. The courts have found adjudication to be more appropriate than rulemaking under certain circumstances. For example, “the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule.”²⁴ Under those circumstances, the Commission “must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective.”²⁵ Additionally, because the circumstances giving rise to the rules and regulations at issue have changed significantly and may continue to change, it is impractical, if not impossible, to continue addressing these issues through a general rulemaking.

Furthermore, the possibility that the Commission’s action could have prospective effect or could affect numerous parties does not compel a rulemaking.²⁶ *In fact, granting*

²³ *Improving Public Safety Communications in the 800 MHz Band*, 22 FCC Rcd 19730, ¶ 5 (2007) (“November Extension Order”).

²⁴ *SEC v. Chenery Corp.*, 332 U.S. 194, 202-203 (1947); *see also Pfaff v. U.S. Dep’t of Housing and Urban Development*, 88 F.3d 739, 478 n.4 (9th Cir. 1996) (“Adjudication has distinct advantages over rulemaking when the agency lacks sufficient experience with a particular problem to warrant ossifying a tentative judgment into a black letter rule; other problems are so specialized and variable as to defy accommodation in a rule.”)

²⁵ *Id.*

²⁶ *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 216-17 (1988) (Scalia, J., concurring) (“Adjudication ... has future as well as past legal consequences, since the principles announced in an adjudication cannot be departed from in future adjudications without reason.”); *Goodman v. FCC*, 182 F.3d 987, 994 (D.C. Cir. 1999) (“The nature of adjudication is that similarly situated non-parties may be affected by the policy or precedent applied, or even merely announced in dicta, to those before the tribunal.”); *Verizon Telephone Cos. v. FCC*, 269 F.3d 1098, 1109 (D.C. Cir. 2001) (rejecting argument that FCC decisions “were somehow ‘legislative’ merely because they interpreted a rulemaking or because they had some future impact”)

the Sprint/BAS waiver petition would be no more limited in effect or scope than granting ICO's request for relief. Granting the Sprint/BAS waiver petition would affect a number of parties, including quite dramatically ICO, and it would of course have future effect. As the Commission has acknowledged, “any action we take with respect to the [Sprint-BAS waiver petition] has the potential to affect the interests of multiple parties.”²⁷

Although “the choice between rulemaking and adjudication lies in the first instance within the [agency’s] discretion,”²⁸ an agency can abuse its discretion if it fails “to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”²⁹ Moreover, it is well-established that an “agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve [waiver] procedure for consideration of an application for exemption based on special circumstances.”³⁰ The Commission is obligated to consider both the Sprint/BAS waiver petition and ICO’s waiver request in light of these requirements.

V. THE COMMISSION SHOULD NOT LOSE FOCUS ON THE OBLIGATIONS THAT THE SPRINT/BAS PARTIES ACCEPTED IN THE JOINT RELOCATION PROPOSALS

ICO respectfully urges the Commission to give careful consideration to its request because a grant of Sprint’s waiver petition without sufficient mitigating conditions would be harmful to MSS entrants, including ICO. MSS entrants have reasonably relied on Sprint to clear the BAS incumbents, as provided for under Commission rules. Sprint willingly assumed the obligation to clear BAS in exchange for very substantial spectrum benefits, and the Commission approved the plan that awarded Sprint this spectrum based in part on the benefits of this clearing obligation.

ICO has made significant progress with the Sprint/BAS Parties, and appreciates their continued willingness to work on these issues in the many meetings the parties continue to conduct. The filings they have made in the meantime, however, continue to attempt to improperly shift responsibility for the clearing delays. ICO must therefore explain for the record why these statements are incorrect. For example, the Commission should reject the charge that ICO is not entitled to reasonable mitigation for the substantial clearing delays caused by Sprint’s missing its deadlines by at least two years because MSS entrants had “the right and obligation [...] to relocate BAS incumbents over the past seven years.”³¹ Any claim about the period *before* Sprint assumed its BAS

²⁷ *November Extension Order* ¶ 5 (emphasis added).

²⁸ *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974).

²⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁰ *Wait Radio*, 418 F.2d at 1157.

³¹ Sprint/BAS Reply Comments at 7.

relocation obligation in 2004 — years before the MSS was scheduled to be in service — is a red herring.³² In 2004, Sprint volunteered to clear BAS in 2004 in exchange for valuable spectrum it desired, and did *not* complain that MSS licensees had not already cleared the spectrum. To the contrary, clearing BAS allowed Sprint to offer additional consideration for the new spectrum. Sprint “commit[ed] to fund[] the entire cost of relocating all BAS incumbents nationwide from the 1990-2025 MHz band,” and emphasized that “the revised relocation plan would facilitate entry by MSS and terrestrial wireless licensees . . . by accelerating the relocation of BAS incumbents from the entire 1990-2025 MHz band and requiring [Sprint] to pay the upfront costs of clearing BAS incumbents from this spectrum.”³³ Of course, if MSS licensees had already cleared some or all of the spectrum, Sprint could not have offered this bargain to the Commission, which the Commission accepted in exchange for granting valuable spectrum rights to Sprint.

Similarly baseless is the claim that ICO should have cleared BAS incumbents *after* Sprint assumed this obligation in 2004. The Sprint/BAS Parties fail to include in the passage they quote the key language that makes clear that MSS licenses have the option, but not the obligation, to accelerate BAS clearing: “MSS licensees will have thirty days to review the [Sprint] plan and identify to [Sprint] and the Commission which of the top thirty TV markets and fixed BAS operations, *if any*, they intend to invoke involuntary relocation. *If MSS licensees choose not to trigger involuntary relocation, [Sprint] will proceed under its plan to relocate BAS incumbents.*”³⁴

Like the Commission, ICO reasonably relied upon the Sprint-BAS relocation proposal and Sprint’s commitment to complete BAS relocation in a timely manner. Following the Commission’s adoption of the Sprint-BAS relocation plan in July 2004, ICO reasonably concluded that it would be inefficient and counterproductive for ICO to initiate involuntary relocation and undertake duplicative relocation efforts.³⁵

³² It is also factually inaccurate. In fact, 2 GHz MSS providers did not obtain their authorizations until July 2001, and the Commission did not adopt the single-phase MSS-BAS relocation plan until November 2003. Less than six months later, on May 3, 2004, the Sprint/BAS Parties proposed a relocation plan under which Sprint would assume full responsibility for relocating BAS licensees. Two months after that, the Commission adopted the Sprint-BAS Parties’ relocation proposal, and expressly granted 2 GHz MSS providers the option of refraining from initiating involuntary relocation and allowing Sprint to proceed under the Sprint-BAS relocation plan.

³³ *800 MHz Order* ¶ 251; Joint Proposed BAS Relocation Plan at 2-3, WT Dkt. No. 02-55, *et al.* (May 3, 2004).

³⁴ *800 MHz Order* ¶ 257 (emphasis added).

³⁵ See Ex Parte Letter from Suzanne Malloy, Senior Vice President, Regulatory Affairs, New ICO Satellite Services G.P. to Marlene H. Dortch, Secretary, FCC, WT Dkt. No. 02-55, *et al.* (June 14, 2007).

Accordingly, ICO properly exercised this option, as permitted by the Commission. ICO supports reasonable relief in this case, but any waiver concerning Sprint's clearing obligation should be coupled with reasonable relief for MSS entrants, including ICO.

VI. CONCLUSION

Based upon the foregoing, ICO urges the Commission to adopt appropriate measures to ensure the Sprint/BAS Parties' BAS relocation proposal is adhered to and to allow 2 GHz MSS providers to launch commercial, nationwide broadband satellite services to the public as quickly as possible.

Respectfully submitted,

/s/ Suzanne Hutchings Malloy
Suzanne Hutchings Malloy
Senior Vice President, Regulatory Affairs