

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 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

April 30, 2008

**COMMENTS OF THE ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC. AND THE NATIONAL ASSOCIATION OF
BROADCASTERS**

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EXECUTIVE SUMMARY

In the *Further Notice of Proposed Rule Making*, the Commission tentatively concludes to eliminate, starting January 1, 2009, the “Top 30 Market Rule,” which provides that 2 GHz Mobile Satellite Service (“MSS”) systems may not begin operation until the relocation of all 2 GHz Broadcast Auxiliary Service (“BAS”) systems in markets 1-30 is complete. The Commission also seeks comment on the potential for interference that may occur if the 2 GHz MSS entrants begin operations prior to the completed relocation of the BAS incumbents.

BAS systems allow broadcasters to provide important news gathering and other services to the American public. Because entry of MSS operations into the spectrum before BAS relocation is completed would cause harmful interference to the incumbent operations in the 2 GHz band, MSTV and NAB respectfully argue that the Commission should maintain its current rules governing BAS relocation and spectrum allocation. In the eight years since the Commission first established procedures for the relocation of the 2 GHz BAS band, MSS has taken no steps to assist the relocation process despite having the responsibility to do so. MSS should not now be permitted to enter into the band to begin interfering operations, which would prove detrimental to the various public needs served by BAS incumbents. MSTV and NAB therefore urge the Commission to:

1. *Retain the Top 30 Market Rule.* Sharing of the 2 GHz spectrum is not technically feasible without harmful interference occurring and MSS has offered no evidence to the contrary. Retaining the Top 30 Market Rule will ensure that MSS does not begin operations until BAS relocation is substantially completed and the potential for interference between BAS and MSS is eliminated.

2. *Reaffirm MSS operators' responsibility for BAS relocation and compensation.* MSS operators, like other licensees that have been given access to spectrum, have the responsibility to relocate incumbent users or reimburse those who would provide such relocation. This policy has served the public interest well and the Commission should not change this long-standing policy in this case. We note that the fact that MSS entrants have recently applied for authority to begin Ancillary Terrestrial Component (“ATC”) operations precludes their arguing that they are unable to afford BAS relocation procedures.
3. *Clarify that any MSS operations permitted before BAS is relocated are on a strictly secondary basis.* If the Commission permits MSS to operate prior to BAS relocation, such operations must be subject to the requirement that MSS not cause interference and must accept any interference from incumbent BAS operations.
4. *Require that MSS continue to be responsible for relocation of all fixed BAS operations in the 1990 to 2025 MHz band.* The requirement to relocate all fixed links has been in place for almost 8 years. Although MSS operators have argued that relocation of mobile BAS has been difficult because of the lack of availability of equipment, this is not the case with point-to-point fixed equipment. There is no rationale or reason at this late date to amend this long-standing requirement.

Although MSTV and NAB respectfully request that the Commission make the above findings, they also pledge to continue to work with MSS operators to facilitate the testing of their satellite systems and the initiation of their services provided that it is done in a manner that protects incumbent BAS operations.

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SERVICE TELEVISION, INC. AND THE NATIONAL ASSOCIATION OF
BROADCASTERS**

The Association for Maximum Service Television, Inc. ("MSTV")¹ and the
National Association of Broadcasters ("NAB")² hereby comment on the Commission's recent

¹ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

² NAB is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks.

Memorandum Opinion and Order (“Order”) and Further Notice of Proposed Rulemaking (“Further Notice”) in the above captioned proceedings.³

I. BACKGROUND.

A. **MSS Operators’ Historical Failure to Participate in the BAS Relocation and the Potential for Interference from MSS to BAS Operations Precludes their Entry into the 2 GHz Band Before Relocation is Complete.**

Before addressing the many reasons why the Commission should not adopt the rules it proposes in the *Further Notice*, the current issue must be placed in historical context. As the Commission notes in the *Order* granting Sprint Nextel an extension of time in which to relocate BAS incumbents, the digital conversion of BAS operations is a far more complicated and complex task than originally envisioned.⁴ In addition, as a technical matter, BAS and MSS operations are incompatible; BAS operations need to be relocated out of the 2 GHz band before MSS systems are allowed to operate there.⁵ For this reason, in 2000 the Commission established a plan for this conversion, under which MSS entrants were required, before they could begin to operate, to relocate all BAS operations in the top 30 markets and all fixed BAS operations throughout the country.⁶ MSS operators implemented no such relocation measures, however. As the Commission noted in 2004, after almost four years “no BAS licensees had been relocated

³ *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, In the Matter of Improving Public Safety Communications in the 800 MHz Band . . . , WT Docket 02-55, ET Docket No. 00-258, ET Docket No. 95-18 (rel. March 5, 2008).

⁴ *Further Notice* at ¶¶ 17-22 (noting that “circumstances beyond the control of Sprint Nextel and the BAS licensees have delayed the relocation process in ways that could not have reasonably been anticipated,” and that the record contains significant support for the contention that the BAS relocation has been “considerably more difficult than had first been anticipated”). *See also id.* at ¶ 31 (“[W]e conclude that the record illustrates many valid reasons why Sprint Nextel was unable to achieve timely relocation of the BAS incumbents.”).

⁵ *Id.* at ¶ 50 (“Because these MSS facilities are licensed in the same spectrum as existing BAS operations, the Commission has had to adopt policies, such as the top 30 market rule, that take into account the likelihood of MSS and BAS interference.”).

⁶ *Id.* at ¶¶ 7-8.

and there was no evidence that any meaningful relocation negotiations had taken place between BAS licensees and MSS entrants.”⁷

As a result, Sprint Nextel picked up the mantle to work with broadcasters and others to engineer the challenging task of relocating the incumbent BAS licensees.⁸ Nevertheless, the Commission properly did not remove the obligation of MSS entrants to relocate BAS licensees,⁹ or the procedures that had already been put in place for doing so:

In 2004 when the Commission established BAS relocation obligations for Sprint Nextel, we did not alter “the underlying relocation rules that we established for MSS entrants to undertake the relocation of BAS incumbents[.]” Our rules clearly require the 2 GHz MSS entrants to relocate the BAS incumbents in the top thirty markets and all fixed BAS links prior to beginning operations. This obligation is not changed by the fact that another party, Sprint Nextel, has also undertaken the obligation to relocate the BAS licensees.¹⁰

The Commission also concluded that, because MSS entrants could not begin operations until BAS relocation had been completed, it would allow MSS entrants to invoke involuntary relocation procedures for those BAS incumbents in the top 30 markets where the Sprint Nextel/broadcaster relocation process had not run its course. Despite this option, however, “no MSS entrant opted to invoke its right to relocate BAS licensees in any of the top 30 markets.”¹¹

This pattern of MSS inactivity has continued. It has now been eight years since MSS operators agreed to relocate BAS incumbents from the 2 GHz band, and yet no MSS entrant has taken any action to relocate a single BAS licensee or engage in any meaningful negotiations to do so. Sprint Nextel and broadcasters have carried the full burden of BAS relocation while overcoming numerous challenges, and MSS now seeks to take advantage of the

⁷ *Id.* at ¶ 11.

⁸ *Id.* at ¶ 12.

⁹ *Id.* at ¶ 13.

¹⁰ *Id.* at ¶ 39.

¹¹ *Id.* at ¶ 13.

conversion even before it is fully completed, to the detriment of BAS incumbents who are not to blame for the relocation delay.

B. BAS Services Provide Important Public Interest Benefits.

BAS systems provide numerous public interest benefits that would be compromised if the Commission allowed MSS operators to enter the 2 GHz band before the relocation process is fully complete. Broadcasters utilize BAS systems on the 2 GHz band extensively for electronic news gathering (ENG) purposes. ENG services provide important on-the-scene news coverage of “late-breaking” events such as severe weather, traffic accidents, natural disasters, terrorist attacks, and other emergencies or breaking news events. The Commission itself has stated that 2 GHz BAS operations are “a critical part of the broadcasting system by which information and entertainment is provided to the American public.”¹² Broadcasters use the full seven 2 GHz BAS channels consistently to provide spot news reports, special events coverage, emergency information, and to relay programming to translator stations that serve rural and remote communities. If the Commission permits MSS operators to enter the band before BAS incumbents have been relocated, significant interference could occur, causing significant damage to the public interest.¹³

MSS interference to BAS operations also would be difficult to police, to the detriment of critical public services. ENG services often broadcast breaking news or emergency information where a window of just a few minutes can literally save lives. If MSS interference were to occur, however, it could take hours to determine the source of the harmful interference,

¹² See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969, ¶ 250 (2004).

¹³ One can imagine the myriad harms to viewers whose ability to receive ENG services would be prevented by MSS interference, including property damage caused by natural disasters, personal harm caused by dangerous emergencies, or lost opportunities to attend unique local events.

identify and contact the person with the authority and expertise required to shut down the interfering system, successfully shut down the system, and reestablish the ENG link to the station to renew the broadcast. In addition, it would be particularly inappropriate to authorize MSS operators to interfere in the 2 GHz band before BAS incumbents are relocated precisely because local stations are devoting significant resources to the BAS conversion efforts. As previously noted, this process is occurring under an “aggressive schedule” that could easily be disrupted.¹⁴ Allowing MSS entrants to begin operations before the BAS conversion is complete would disrupt and further prolong the relocation efforts.

II. THE COMMISSION SHOULD RETAIN THE TOP 30 MARKET RULE.

By eliminating the Top 30 Market Rule, the Commission would in effect punish broadcasters for a complex relocation process that has been delayed by events beyond broadcasters’ control. Despite these numerous technical and procedural roadblocks, broadcasters have continued to make extensive accommodations to implement the transition as smoothly as possible. Throughout this challenging transition, broadcasters have done what they could to help allow MSS systems to enter the market to conduct testing and other non-interfering preliminary procedures. Broadcasters are willing to continue facilitating the transition to help MSS entrants begin operations, but not at the cost of interference to their BAS systems.

A. Without the Top 30 Market Rule, Significant Interference Would Occur.

The Top 30 Market Rule remains necessary to ensure that MSS entrants do not interfere with broadcasters’ valuable BAS operations. MSTV, NAB, and broadcasters do not object to permitting MSS operations to begin on a secondary, non-interfering basis. But the Commission should not eliminate the Top 30 Market Rule and grant MSS entrants unfettered

¹⁴ Glen Dickson, *Digital Shift Anything but a Sprint*, Broadcasting and Cable, at 20 (Feb. 13, 2006) (also noting that “live remotes” are the “lifeblood” of local newscasts).

access – in which MSS entrants would gain primary status, would have no obligation to avoid interfering with incumbents, and would escape their long-established obligation to compensate incumbents for their relocation to the 2 GHz spectrum. The result would be harmful interference to broadcasters' BAS services to the detriment of their viewers.

Broadcasters continue to work diligently to permit MSS entrants to conduct early operational testing in available markets, and have never objected to such testing. MSTV, BAS operators and others met with the MSS entrants (ICO and TerreStar) in late 2007 to create the Consensus Plan, which takes into account MSS systems' highest priority market access needs as well as their needs for satellite calibration testing.¹⁵ Broadcasters are committed to continuing to work with MSS operators to assist their system implementation – provided that they do not cause interference to broadcasters' BAS operations.

However, at this time MSS operators have failed to disclose the technical parameters of their operation in sufficient detail to allow broadcasters to complete technical and interference analyses. In particular, ICO has filed a request that the Commission waive the Top 30 Market Rule to allow it to begin operations in January 2009 regardless of whether the BAS licensees in the top 30 markets and all fixed BAS licensees have been relocated.¹⁶ But ICO has not provided sufficient technical information about its ability to coexist with unrelocated BAS licensees without causing disruptive interference. For example, ICO has failed to disclose any of the technical details of its earth stations – thus making it impossible to fully assess the potential for interference from these operations to incumbent BAS operations. Blindly eliminating the Top 30 Market Rule could cause substantial interference to broadcasters' valued BAS operations. There is no valid justification for eliminating the Rule.

¹⁵ *Further Notice* at ¶ 26.

¹⁶ ICO *ex parte* in WT Docket No. 02-55, filed Feb. 26, 2008.

Finally, retaining the Top 30 Market Rule would not altogether prevent MSS entrants from beginning operations because the Commission has established rule interpretations allowing certain MSS operations during the complex 2 GHz conversion process without serious risk of their causing interference. For instance, the Commission now permits MSS entrants to conduct satellite system testing before relocation of BAS has been completed, as well as to “certify” that their satellite systems are in operation without requiring commencement of full commercial operations.¹⁷ MSTV and NAB have no quarrel with MSS entrants conducting system testing and/or certifying operations in the 2 GHz band, so long as the Commission does not permit interfering operations to the detriment of BAS operations.

B. Sharing of the Spectrum is Not Possible.

The Commission seeks comment on the likelihood and extent of interference between MSS and BAS, suggesting that “MSS operators may be able to share spectrum with BAS licensees that are not relocated if the 2 GHz MSS operators were to begin offering nationwide service by January 1, 2009.”¹⁸ However, MSS will not be able to share spectrum with BAS in markets that are not relocated. Operations within the same frequency band and within the same geographic area are not technically feasible because of the interference that will occur. Indeed, the Commission’s original concept underlying the Top 30 Market Rule was to move all broadcasters in the top 30 to free up the spectrum for MSS entrants, with the intent that there would be no BAS operations on the same frequencies as MSS because operation on the

¹⁷ *Further Notice* at ¶¶ 45-48. *See also id.* at ¶ 48 (“This certification can be based upon transmissions limited so as to avoid interference to yet-to-be relocated BAS and fixed stations, and does not require commencement of full commercial operations.”).

¹⁸ *Id.* at ¶ 55.

same frequencies could cause interference.¹⁹ The record contains no evidence refuting this original conviction that BAS and MSS could not share the spectrum without interference occurring. Contrary to *ex parte* submissions filed by MSS operators claiming that BAS could facilitate sharing by operating with reduced bandwidth using digital equipment,²⁰ there has been no testing or analysis to suggest that MSS operation in the “narrow swaths of spectrum between BAS” would not result in interference to BAS receivers.

Furthermore, as either a secondary operation or a co-primary operation that enters the band later in time, MSS has the responsibility to avoid interference to incumbent BAS operations. BAS licensees should not be required to reduce bandwidth or make other adjustments that reduce their ability to operate their systems in service to the public with the best quality possible. If the Commission decides to permit MSS to begin operations before relocation of BAS, such MSS operations should be strictly on a secondary basis to primary BAS operations until all BAS relocation has been completed. Although broadcasters have worked with MSS operators to facilitate testing and limited operation of their systems and will continue to do so, BAS licensees should not be *required* to make adjustments to their operations, incur unnecessary expenses, or be subject to interference merely to permit MSS operations prior to BAS relocation.

The Commission also seeks comment on how, “if MSS was secondary to BAS in a market, MSS could avoid or correct interference that might occur.”²¹ Although MSTV, NAB, and broadcasters will continue to work with MSS operators to facilitate their transition, the only effective mechanism to prevent interference at the present time is to prohibit MSS operations in

¹⁹ *Id.* at ¶ 50 (“Because these MSS facilities are licensed in the same spectrum as existing BAS operations, the Commission has had to adopt policies, such as the top 30 market rule, that take into account the likelihood of MSS and BAS interference.”).

²⁰ *Id.*; *id.* at n. 149.

²¹ *Id.* at ¶ 55.

those areas where BAS operations have not yet been relocated. This can be accomplished fairly easily by including geolocation and database capability in MSS terminals that prohibit those terminals from operating in areas where BAS has not been relocated and would be subject to interference. In particular, MSTV, NAB, and broadcasters also are concerned with MSS operations in adjacent markets in which BAS operations have not been cleared. MSS should coordinate with broadcasters in adjacent markets to ensure that MSS operations would not cause interference to BAS, and establish a contact person that would resolve any interference immediately should it occur. Finally, as a secondary user, MSS should be required to cease operations until the cause of interference is identified and resolved.

C. All MSS Operations Should be Secondary in a Market-by-Market Approach.

The *Further Notice* also seeks comment on a market-by-market alternative to the Top 30 Market Rule. Under this alternative, MSS would begin providing service in a market once all BAS operations – including fixed links – in that market have been relocated, with MSS deployment incrementally tied to BAS relocation, rather than as part of a nationwide cut-over at a specific date.²² The Commission, however, notes, “although the footprint of a spot beam may not exactly match a TV market, many of the BAS operations are being relocated in market clusters according to the Sprint Nextel *et al.* plan [such that] BAS relocation will be occurring in large regional areas of the country, which should allow the satellites’ spot beams to provide service in many places while effectively avoiding BAS operations that are not yet relocated.”²³

²² *Id.* at ¶ 56. The Commission further states that “this approach may be feasible because ICO’s and TerreStar’s satellites are designed with multiple spot beams that can operate independently of each other. Each spot beam can concentrate the signals from the satellite to an area on the ground with a radius of several hundred miles.”

²³ *Id.*

Although MSTV and NAB believe that the retention of the current Top 30 Market rule is preferable to a market-by-market approach, we do not oppose such an approach provided that incumbent BAS operations are fully protected and relocation of BAS is not delayed or impeded. The Commission should not adopt a market-by-market approach unless all BAS operations within that market and in adjacent markets where interference could occur have been fully relocated.²⁴ At a minimum, the Commission should not permit any MSS operation in areas where the satellite footprint extends outside of cleared BAS markets and where interference can occur to BAS operations not yet relocated.²⁵ Further, the Commission should reemphasize the guiding principle that no interference should be permitted to first-in-time primary BAS operations.

Although a market-to-market approach may provide MSS operators with some additional flexibility to initiate operations, it also must include some requirements or incentives to ensure that MSS operators do not interfere with BAS and retain the responsibility to relocate BAS operations. For this reason, MSTV and NAB urge that if a market-by-market approach is adopted and MSS is permitted to operate in a market, such authority should not include permission to offer ATC operations in that market. ATC operations should continue to be conditioned on relocation of all BAS operations. This approach provides MSS with additional flexibility to initiate satellite-based MSS operations but ensures that they have a continuing incentive and responsibility to facilitate relocation of BAS operations.

²⁴ MSS uplink transmissions – particularly transmissions from mobile vehicles where higher powers are likely (compared to handset operation) – are likely to have potential interference distances greater than BAS service areas. It is highly likely that, to avoid interference, multiple contiguous BAS markets (especially in the East) will have to be cleared before MSS can begin operations without causing interference

²⁵ *Further Notice* at ¶ 56 and n. 151 (noting that interference could occur from BAS and MSS transmitters located within the spot beam, but just outside the relocated area).

D. MSS Operators Must Retain the Responsibility for BAS Relocation.

Whether the Commission decides to eliminate the Top 30 Market Rule or adopt a market-by-market approach, it should nonetheless ensure that MSS operators continue to have the responsibility to relocate incumbent BAS operations or reimburse those entities that do so. Although the *Order* stresses that the Top 30 Market Rule “clearly require[s] the 2 GHz MSS entrants to relocate the BAS incumbents in the top 30 markets and all fixed BAS links prior to beginning operations,”²⁶ the *Further Notice* does not clarify what responsibilities MSS entrants will retain if the Commission eliminates the Rule. In addition, the Commission’s proposed elimination of the Top 30 Market Rule does not specify what effect this would have on Sprint Nextel’s responsibilities. The Commission should not erode either Sprint Nextel’s or MSS’s responsibility for relocating all BAS operations in the top 30 markets and all fixed link operations in all markets before MSS entrants begin operations.

Although MSTV and NAB believe that the Top 30 Market Rule should not be eliminated at all, if the Commission chooses to do so, it must at the least guarantee that MSS operators will be responsible for relocating those BAS incumbents that remain or for reimbursing those entities, i.e. Sprint Nextel, that do so. If the Commission eliminates the Top 30 Market Rule beginning January 1, 2009, 14 of the top 30 markets would still be uncleared pursuant to Sprint Nextel’s relocation plan.²⁷ Without the Top 30 Market Rule, the BAS incumbents in these markets could remain un-relocated for an indeterminate period of time while MSS entrants begin conducting interfering operations. If the Commission is to allow MSS to enter the spectrum before BAS systems have been relocated, it must condition such entry on MSS operators’

²⁶ *Id.* at ¶ 39.

²⁷ See <http://www.2ghzrelocation.com/plugin/article/broadcast/1723/---/Sprint%20Relocation%20Schedule.pdf> (providing a schedule of Sprint Nextel’s proposed BAS relocation, by market).

continuing duty to relocate BAS incumbents and to avoid interference to all remaining BAS operations. It is no excuse for MSS to argue that it does not have the ways or means to facilitate BAS relocation. Both ICO and TerreStar have recently filed applications to begin conducting ATC operations on the 2 GHz band.²⁸ If MSS entrants can afford to implement expensive ATC systems, they should not be relieved of their long known and long-standing responsibility to relocate BAS.

In addition, if the Commission does eliminate the Top 30 Market Rule, MSS operators should continue to be required to relocate all fixed BAS links in all markets – even after relocating BAS operations from the top 30 markets. As the Commission has noted, “the current rules provide that BAS licensees maintain primary status in the 1990-2025 MHz band until they are relocated by a new entrant; they decline relocation by a new entrant; or the BAS relocation rules sunset on December 13, 2013.”²⁹ That Sprint Nextel is working to relocate BAS operations does not exempt MSS operators from their parallel responsibility to clear incumbent licensees. If the Top 30 Market Rule is eliminated, not only must MSS retain the responsibility to relocate BAS operations in the top 30 markets, but the Commission must also make clear that MSS continues to have such an obligation to protect incumbent BAS operations after they are transitioned to adjacent spectrum.

III. THE COMMISSION SHOULD RETAIN ITS CURRENT FIXED SERVICE AND INTERFERENCE REQUIREMENTS.

In the *Further Notice*, the Commission also seeks comment on whether to require only fixed BAS links in the MSS band (2000-2020 MHz) in all markets to be relocated before MSS

²⁸ See TerreStar Networks Inc. Application to Amend its Mobile Earth Terminal Application to Request Authority to Operate an Ancillary Terrestrial Component in Connection with its 2 GHz Mobile Satellite Service System, File Number SES-AMD-20070907-01253 (filed Sept. 7, 2007); ICO Application for Earth Station Authorizations, File No. SES-LIC-INTR2007-02866 (filed Dec. 3, 2007).

²⁹ *Further Notice* at ¶ 40.

can begin operations, as opposed to the current requirement that covers all fixed BAS links (1990-2025 MHz) in all markets.³⁰ MSTV and NAB urge that the requirement to relocate all fixed links in the 1990-2025 MHz band be retained. Retaining the requirement to relocate all fixed links in the 1990-2025 MHz band also will ensure that there are no adjacent channel and out-of-band interference issues between fixed BAS and MSS operations. This is particularly important for fixed BAS operations because, as the Commission noted, “(u)nlike mobile BAS stations that can often switch to other available BAS channels, fixed BAS links usually cannot change frequencies,”³¹ and the only reliable mechanism to avoid interference is relocation of BAS fixed operations to new spectrum or technology. Retaining this requirement for the entire 1990-2025 MHz band will ensure interference-free operation for both BAS and MSS and will not place a new burden on MSS.

Furthermore, one rationale for proposing to eliminate the Top 30 Market Rule is the assumption that only Sprint Nextel is capable of timely completing the transition given that it has primary access to most BAS equipment. This assumption would not be the case for fixed BAS links. Although Sprint Nextel does have agreements with most manufacturers of BAS equipment and the number of manufacturers and amount of such equipment is limited, this is not necessarily the case for BAS fixed link equipment. There is a wider variety of manufacturers and solutions available to provide for relocation of point-to-point fixed BAS equipment – e.g., fiber optics and higher frequency bands may also be available to provide comparable and equivalent operations. MSS entrants have free access to these resources, and thus cannot claim an inability to effect the relocation of BAS fixed links. MSS entrants should not be relieved of their responsibility to transition these links before beginning commercial operation.

³⁰ *Id.* at ¶ 53.

³¹ *Id.* at n. 147.

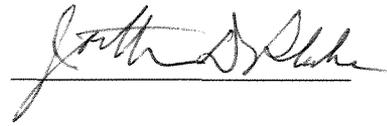
The Commission goes on to note that, if it decides not to modify the BAS fixed link requirements, it seeks comment on whether to maintain its current interference requirements in order to minimize service disruptions.³² For reasons stated throughout these comments, the Commission should maintain its current requirement that (1) MSS not cause interference to BAS in markets where BAS has not yet relocated and (2) MSS accept interference caused by BAS incumbents in markets where they have not yet been relocated.

CONCLUSION

For eight years the Commission has recognized the inability of BAS and MSS operations to share the 2 GHz spectrum without interference occurring, and as such has adopted procedures for the digital conversion of the band. Events beyond the control of BAS incumbents have slowed the relocation procedures, despite the continued hard work of Sprint Nextel and broadcasters alike. Throughout this time, the potential MSS entrants have done nothing to help expedite the relocation process. MSS cannot now rely on unforeseeable circumstances in arguing for the ability to enter the 2 GHz band on an interfering basis, to the detriment of BAS incumbents and their viewers. The Commission should maintain its current rules and procedures for relocating the 2 GHz BAS band.

³² *Id.* at ¶ 53.

Respectfully submitted,



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April 30, 2008

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