

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 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
	)	

**COMMENTS OF NEW ICO SATELLITE SERVICES G.P.**

NEW ICO SATELLITE SERVICES G.P.

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**COMMENTS OF NEW ICO SATELLITE SERVICES G.P.**

**I. INTRODUCTION AND SUMMARY**

New ICO Satellite Services G.P. (“ICO”) submits these comments in response to the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking<sup>1</sup> in the above-captioned proceeding. ICO supports the Commission’s proposal to eliminate, as of January 1, 2009, the rule prohibiting 2 GHz mobile satellite service (“MSS”) operators from commencing

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<sup>1</sup> *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 4393 (2008) (“Order and FNPRM”).

operation until broadcast auxiliary service (“BAS”)<sup>2</sup> licensees in the thirty largest markets and fixed BAS links in all markets have been relocated (“top 30 market rule”). Eliminating the top 30 market rule in its entirety will serve the public interest by allowing new MSS and ancillary terrestrial component (“ATC”) services to be deployed in a timely manner without disruption to BAS operations.

Technical studies demonstrate that MSS operations can commence on January 1, 2009, in uncleared BAS markets without causing harmful interference to unrelocated BAS equipment. To further mitigate the potential for harmful interference, 2 GHz MSS operators can refrain from operating ATC facilities and marketing MSS/ATC user terminals in uncleared markets until those markets are required to be cleared. Accordingly, the Commission should eliminate the top 30 market rule and allow 2 GHz MSS operators to commence MSS nationwide as of January 1, 2009.

Any approach short of eliminating the top 30 market rule in its entirety unnecessarily would delay 2 GHz MSS entry without significantly improving the interference environment for BAS operations. Specifically, retaining a fixed BAS relocation requirement could substantially delay 2 GHz MSS commencement until the end of 2009 or later, and is unnecessary to protect BAS operations from harmful interference. Additionally, a market-by-market approach would be imprecise and unnecessarily burdensome.

Finally, the Commission should revise its rules to allow 2 GHz MSS to become primary immediately following the Sprint-BAS relocation deadline, but no later than September 1, 2009.

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<sup>2</sup> The band is also authorized for use by the Cable Television Relay Service (CARS) and the Local Television Transmission Service (LTTS). For purposes of this proceeding, the Commission refers to all three of these services under the collective term “BAS.”

## **II. BACKGROUND**

ICO is authorized to provide MSS in 20 MHz of spectrum in the 2000-2020 MHz and 2180-2200 MHz bands (collectively, “2 GHz band”).<sup>3</sup> ICO’s satellite (ICO G1) will provide advanced communications and public safety services throughout all 50 states, Puerto Rico, and the U.S. Virgin Islands. ICO G1 satellite was launched successfully at 4:12 pm Eastern (US) time on April 14, 2008, and ICO filed its certification of completion of the launch milestone on April 18, 2008. ICO expects to complete its final milestone by certifying that its entire system is operational by May 15, 2008. Additionally, ICO has applied to integrate ATC into its 2 GHz MSS system. ICO is in the process of building out and testing its ATC facilities. ICO has also contracted with vendors to supply various MSS and MSS/ATC user terminals that will be tested in the 2 GHz band during trials throughout 2008.

## **III. ELIMINATING THE TOP 30 MARKET RULE WILL PERMIT TIMELY INTRODUCTION OF 2 GHz MSS TO CONSUMERS, IS CONSISTENT WITH THE RELOCATION PROCESS NOW UNDERWAY, AND SERVES THE PUBLIC INTEREST**

ICO appreciates the Commission’s careful and detailed approach to the situation at hand. As the Commission stated, because of the delay in the relocation of BAS incumbents, a new and significant element of this proceeding is the balancing of the public interest in the introduction of new 2 GHz MSS offerings as soon as January 1, 2009, against the needs of some BAS operators that have not completed relocation by that date.<sup>4</sup> This balance can best be achieved by eliminating the top 30 market rule.<sup>5</sup> In various filings made in connection with the Sprint-BAS

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<sup>3</sup> See *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, 20 FCC Rcd 19696 (2005).

<sup>4</sup> Order and FNPRM ¶ 34.

<sup>5</sup> *Id.* ¶¶ 2, 52.

Parties' request for waiver of the BAS relocation deadline, ICO urged the Commission 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.<sup>6</sup> ICO is working hard to commence operations and provide benefits to the public through its advanced communication and safety services.<sup>7</sup> To do so, like any wireless business, ICO needs certainty and timely access to spectrum. Elimination of the top 30 market rule will ensure timely introduction of 2 GHz MSS to consumers, is consistent with the Sprint-BAS relocation process now underway, and will permit nationwide introduction of 2 GHz MSS without disruption to BAS operations. Under the circumstances, elimination of the top 30 market rule is warranted and is in the public interest.

**A. Eliminating The Top 30 Market Rule Will Permit Timely Introduction Of 2 GHz MSS To Consumers Through Nationwide Access To The 2 GHz Band**

Eliminating the top 30 market rule will serve the public interest by allowing 2 GHz MSS operators to begin offering MSS and ATC services nationwide as soon as possible.<sup>8</sup> The Commission has acknowledged that under the revised Sprint-BAS relocation plan, approximately half of the top 30 markets would be completed by January 2009, when at least one

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<sup>6</sup> See ICO Comments on Sprint-BAS Relocation Proposal, WT Dkt. No. 02-55, et al. (Dec. 19, 2007); Letter from Suzanne H. Malloy, Sr. Vice President, Regulatory Affairs, ICO, to Marlene H. Dortch, Secretary, FCC, WT Dkt. No. 02-55, et al. (Feb. 26, 2008) ("February Letter").

<sup>7</sup> As ICO has stated previously, "the need for MSS operators to relocate fixed service ("FS") microwave links will not delay the ability to initiate nationwide commercial service.... 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, and is well on its way to be completed." February Letter.

<sup>8</sup> Order and FNPRM ¶ 52.

of the 2 GHz MSS systems should already be operational.<sup>9</sup> ICO supports the Commission proposal that “even in the absence of the top 30 market rule, MSS would be primary in those TV markets where BAS relocation is completed but secondary in those TV markets where BAS is not yet relocated.”<sup>10</sup>

As the Commission correctly noted, “the inability of MSS systems to begin operation under the current rules until the top 30 markets are cleared, the enormous up-front build and launch costs that make rapid initiation of income-producing service vital to the success of a satellite venture, and, in the case of TerreStar, the potential public safety benefits associated with its federal government contract obligations all serve to necessitate a quicker conclusion of the BAS relocation process.”<sup>11</sup> Now that Sprint has been granted an additional 19 months to complete relocation of BAS incumbents, the proposed rule revision would ensure efficient, effective, and timely use of 2 GHz spectrum for MSS.

BAS relocation appears to be proceeding as anticipated under the revised Sprint-BAS relocation plan. Under the plan, Sprint and the broadcast community are transitioning all BAS equipment, mobile and fixed, on a market-by-market basis for each broadcast designated market area (“DMA”). With the Commission’s March 2009 extension date, ICO expects that Sprint and BAS will work to accelerate clearing in all markets. As discussed further below, ICO intends to employ the bi-monthly Sprint/BAS clearing reports as a guide to direct its marketing of MSS/ATC user terminals and to deploy ATC only in cleared markets beginning in January, 2009.

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<sup>9</sup> As noted above, ICO expects to certify that its entire system is operational by May 15, 2008.

<sup>10</sup> Order and FNPRM ¶ 52.

<sup>11</sup> *Id.* ¶ 32.

## **B. The Top 30 Market Rule No Longer Serves The Public Interest**

The purpose of the top 30 market rule is no longer served by delaying commencement of nationwide MSS operations — and is therefore best served by elimination of this rule. In adopting the top 30 market rule, the Commission intended to “strike[] the appropriate balance that is ‘not unreasonably burdensome upon MSS, while also fair to the incumbents.’”<sup>12</sup> Accordingly, the Commission established MSS-BAS relocation rules, including the top 30 market rule, which 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.”<sup>13</sup> When the Commission adopted the original Sprint-BAS relocation plan in 2004, it contemplated that Sprint “will likely relocate most BAS licensees before MSS licensees begin operations under their milestone requirements.”<sup>14</sup> The Commission thus intended to allow 2 GHz MSS operators to provide service shortly after launch of their satellites, while also providing for relocation of BAS licensees in substantial portions of the United States prior to commencement of MSS operations.

Now that the Commission has granted a 19-month extension of the Sprint-BAS clearing deadline, certain provisions of the Commission’s rules for BAS relocation, including the top 30 market rule, have become obsolete. An initial transition of the top 30 markets is out of step with the original Sprint-BAS relocation plan as well as the revised Sprint-BAS relocation plan because these plans prioritize clearing by market-based clusters, rather than by the top 30 markets. The result of this approach, which has been underway for nearly four years, is that by

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<sup>12</sup> 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).

<sup>13</sup> *Id.* ¶ 29.

<sup>14</sup> See *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 270 (2004).

January 1, 2009, clearing will be completed in market-based clusters that do not include all of the top 30 markets. However, by that date, clusters of BAS markets covering 50 percent of the U.S. population will be cleared.<sup>15</sup> Thus, allowing 2 GHz MSS operators to launch nationwide service by that date would be consistent with the Commission's purpose of ensuring BAS clearing in substantial portions of the country prior to MSS commencement.

The appropriate balance that the Commission sought to strike between MSS and BAS interests when it adopted the top 30 market rule would be negated if the Commission retains the top 30 market rule. Given the substantial delay in the relocation of BAS incumbents, it is no longer reasonable to require 2 GHz MSS operators to delay commencement of operations until BAS licensees in the top 30 markets and all fixed BAS licensees are relocated. It would be unfair and inconsistent with the public interest to deny the public the right to receive, and MSS operators the right to provide, new services in a timely manner.

A decision to retain the top 30 market rule would also be inconsistent with the Commission's order extending the Sprint-BAS relocation deadline. As the Commission correctly noted, continued adherence to the top 30 market rule would delay the introduction of new 2 GHz MSS offerings until September 2009, almost a year-and-a-half after ICO is required to certify its system operational—if relocation follows the Sprint-BAS schedule.<sup>16</sup> The Commission has already determined that it is in the public interest to avoid delays in introducing 2 GHz MSS to consumers until September 2009 when it denied the Sprint-BAS parties'

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<sup>15</sup> Consensus Plan of Sprint Nextel Corporation, the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Society of Broadcast Engineers, at 12-13, WT Dkt. No. 02-55, et al. (Dec. 6, 2007) ("Sprint/BAS Consensus Plan"). Even after the substantial delay in the clearing of BAS, the BAS industry supported the Sprint/BAS Consensus Plan as the "best way forward to accelerate the transition of [BAS]." Sprint/BAS Reply Comments at 1, WT Dkt. No. 02-55, et al. (Jan. 4, 2008).

<sup>16</sup> See Order and FNPRM ¶ 52.

requested extension until that date.<sup>17</sup> Therefore, a failure to eliminate the top 30 rule would be contrary to the Commission's public interest determination.

Furthermore, eliminating the top 30 market rule will have little or no impact on BAS operations. As discussed in Section III(C) below, harmful interference from MSS to BAS is both unlikely and avoidable. Moreover, BAS operations in substantial portions of the United States will be completely unaffected because, under the Sprint-BAS relocation schedule, more than 100 markets (including more than half of the top 30 markets), representing approximately 50 percent of the U.S. population, will be cleared by January 1, 2009.<sup>18</sup>

**C. Eliminating The Top 30 Market Rule Will Not Disrupt Unrelocated BAS Operations**

Eliminating the top 30 market rule will allow 2 GHz MSS to commence nationwide operations as soon as January 1, 2009, without disrupting unrelocated BAS operations. As demonstrated in the attached Annex A, in areas where BAS operations have not been relocated, the potential for harmful interference is extremely unlikely due to the number of initial MSS/ATC user terminals roaming into those uncleared areas as well as due to the operational characteristics of ICO's initial MSS/ATC user terminals as they relate to BAS equipment. Under the circumstances, interference to BAS after January 1, 2009, is both unlikely and avoidable.

ICO is willing to refrain from operating ATC facilities and marketing MSS/ATC user terminals in uncleared DMAs prior to the Sprint-BAS relocation deadline. This would provide broadcasters with comfort that the number of potential MSS/ATC devices operating in uncleared areas will be extremely limited. Moreover, 2 GHz MSS operators can work to coordinate with BAS licensees in uncleared markets to avoid unique interference scenarios, or situations that

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<sup>17</sup> *Id.*

<sup>18</sup> *See* Sprint/BAS Consensus Plan at 13; Sprint/BAS Reply Comments at 4-5.

might arise unexpectedly.<sup>19</sup>

ICO commissioned the engineering consulting firm, Wireless Strategy, to conduct a study of the impact of ICO's initial deployment in the band during the BAS relocation period.<sup>20</sup>

The study assumes that BAS transmissions operate on a continuous basis, all BAS operations occupy the 15 MHz analog channel, and that ICO's devices deployed in cleared markets will roam into uncleared markets. Through analysis of laboratory and field measurements and theoretical modeling, the study concludes that ICO's initial operations will not cause interference to BAS receivers. In addition, the study assesses the likelihood of elevated signals arriving at the BAS receiver and determines the probability to be extremely low. The study demonstrates that ICO nationwide MSS operations beginning January 1, 2009 will not disrupt BAS communications.

#### **IV. THE FIXED BAS RELOCATION REQUIREMENT SHOULD BE ELIMINATED CONSISTENT WITH TOP 30 MARKET RULE AND THE SPRINT-BAS RELOCATION PLAN NOW UNDERWAY**

The Commission should eliminate the top 30 market rule in its entirety and should reject as obsolete and counterproductive any exception that would require fixed BAS links in all markets to be relocated before MSS can commence operations.<sup>21</sup> Retaining a fixed BAS

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<sup>19</sup> Furthermore, in the highly unlikely event that an MSS uplink communication causes documented interference to unrellocated BAS operations, the interference could be avoided or corrected through appropriate coordination with the affected BAS licensee.

<sup>20</sup> Although the Commission extended Sprint's clearing deadline from September 7, 2007 to March 5, 2009, the Sprint-BAS parties have not updated their relocation schedule to provide for completion of BAS relocation by March 5, 2009. To be conservative, ICO's study assumes that BAS relocation will not be completed until August 31, 2009. Should the clearing pace become accelerated so that markets are cleared by the Commission's deadline of March 5, 2009, the interference analysis becomes more favorable to MSS operations in the band.

<sup>21</sup> The top 30 market rule set forth in Section 74.690(e)(1)(i) of the Commission's rules states that "MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas

relocation requirement is not consistent with the Commission's tentative conclusion that the top 30 market rule should be eliminated. Therefore, elimination of the top 30 market rule would and should eliminate the fixed link requirement as well.

Moreover, requiring the relocation of fixed BAS links on a separate track would be disruptive and would only serve to delay MSS entry and BAS clearing. Both the original and revised Sprint-BAS relocation plans proceed on a market-by-market basis for all BAS equipment, including fixed links. Therefore, failure to eliminate the fixed link requirement as part of the top 30 rule would either (i) require the Sprint-BAS parties to fundamentally alter their already delayed relocation efforts,<sup>22</sup> or (ii) repeal any benefits gained by elimination of the rest of the top 30 rule since all the fixed links will not be cleared by January 1, 2009 — and may not be cleared until the latter part of 2009 or later. Finally, as discussed in Section III(C) above, requiring fixed BAS links to be cleared before MSS can commence operations is unnecessary to protect BAS from interference.

**V. A MARKET-BY-MARKET APPROACH WOULD DELAY NATIONWIDE MSS AND WOULD NOT IMPROVE INTERFERENCE AVOIDANCE**

The Commission should reject a market-by-market approach that would allow 2 GHz MSS operators to provide satellite and ATC services only in markets that have been cleared.

As ICO stated in a prior filing, 2 GHz MSS operators employ satellite systems that are specifically designed to cover the entire United States.<sup>23</sup> Although the ICO G1 satellite is

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(DMAs) 1–30 ... and all fixed stations operating in the 1990–2025 MHz band on a primary basis, prior to beginning operations....” 47 C.F.R. § 74.690(e)(1)(i).

<sup>22</sup> Sprint's deadline to clear all fixed links was in September 2007. Order and FNPRM ¶ 12. It is not clear whether Sprint has asked for relief of this license condition.

<sup>23</sup> ICO Comments and Request for Expedited Relief at 7, WT Dkt. No. 02-55, et al. (Apr. 13, 2007).

designed with multiple spot beams covering different areas of the country, the spot beams cannot be adjusted to precisely cover only those DMAs that have been cleared.

Furthermore, limiting uplink transmissions to areas exclusively within selected spot beams will severely limit ICO's ability to provide emergency and other public safety services nationwide. Because these services rely on uplink communications to the satellite, ICO will need to ensure that customers are aware that these services will not be available in undefined areas outside of those spot beams.<sup>24</sup> Further, consumers expect full mobility when purchasing mobile satellite services and may be unwilling to subscribe to a satellite service that does not operate in selected portions of the United States. It would be highly burdensome to require 2 GHz MSS operators to implement a complex and costly beam re-forming process that will also deprive them of revenues from subscribers demanding nationwide coverage.

**VI. MSS SHOULD BECOME PRIMARY IMMEDIATELY FOLLOWING THE SPRINT-BAS RELOCATION DEADLINE, BUT NO LATER THAN SEPTEMBER 1, 2009**

The Commission should revise Section 74.690(b) of its rules to allow MSS to become primary in the 2000-2020 MHz band immediately following the Sprint-BAS relocation deadline, but no later than September 1, 2009. ICO previously requested that after August 31, 2009, any unrelocated BAS licensees should be required to accept interference from 2 GHz MSS operators.<sup>25</sup> Simply extending all deadlines further would be grossly inequitable if Sprint's failure to complete BAS relocation within the anticipated timeframe causes further delay in

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<sup>24</sup> More importantly, the availability of these services to the customer would depend on a number of factors, including where the user device is located within the permitted spot beam contour. The imprecise nature of these contours will not permit customers to know in advance whether services are available in a given location.

<sup>25</sup> February Letter at 4 n.5.

ICO's launch of services and hinders ICO's ability to maximize the capabilities of its MSS/ATC system.

ICO therefore reiterates its request that MSS be permitted to operate nationwide on a primary basis in the 2 GHz band immediately after the Commission's BAS clearing deadline, and in any event no later than September 1, 2009. If there are major markets left uncleared, ICO will take precautions not to disrupt critical communications. However, at that point, BAS licensees should be obligated to make efforts to avoid operating on BAS channels 1 and 2 and should assume responsibility for avoiding interference.

## VII. CONCLUSION

Based upon the foregoing, ICO urges the Commission to revise its rules to (1) eliminate the top 30 market rule in its entirety and (2) allow 2 GHz MSS to become primary immediately after the Sprint-BAS relocation deadline, but no later than September 1, 2009.

Respectfully submitted,

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