

**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

COMMENTS OF SPRINT NEXTEL CORPORATION

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Summary

In its *BAS Extension Order and Further Notice*, the Federal Communications Commission (the Commission) sought comment on whether to permit the 2 GHz Mobile-Satellite Service (MSS) licensees to begin commercial service in spectrum currently occupied by broadcast auxiliary service (BAS) operations that the MSS licensees have failed to clear more than seven years after the Commission first ordered them to do so. The Commission should not permit New ICO Satellite Services G.P (ICO) and TerreStar Networks Inc. (TerreStar) to operate nationally until they fulfill their respective obligations to clear the BAS band of its affected incumbents or, alternatively, reimburse Sprint Nextel for their *pro rata* shares of eligible BAS relocation expenses that Sprint Nextel is incurring on their behalf.

Since 2001, the MSS licensees have had an independent obligation to relocate BAS licensees from the spectrum that they intend to use. Despite this obligation, ICO and TerreStar have done nothing to relocate BAS – not a single relocation agreement signed, not a single piece of equipment ordered, not a single BAS licensee relocated. In contrast, Sprint Nextel has spent enormous resources developing and implementing the BAS relocation process. Under the Commission's rules, ICO's and TerreStar's license conditions, and the bedrock principle that new entrants into reallocated spectrum must share the costs of relocating incumbents, ICO and TerreStar must each pay their fair share of these BAS relocation costs.

ICO and TerreStar, however, have sought to avoid their cost-sharing obligations. Their refusal to pay defies common sense, flouts years of Commission decisions, and works an injustice on the public. Incredibly, the MSS licensees assert that a rule designed to ensure that Sprint Nextel does not collect twice for the same relocation expenses somehow precludes Sprint Nextel from collecting even *once* on those expenses. Stripped of all pretense, the MSS licensees

simply do not want to either undertake or fund BAS incumbent relocation for the spectrum they intend to occupy.

Accordingly, the Commission should retain its Top 30 MSS market-entry limitation, preserve the BAS *fixed*-link market entry rule, and maintain the primary status of BAS licensees until the BAS relocation is complete or these rules sunset. The MSS market-entry limitations are inextricably linked with the MSS licensee reimbursement obligations; these market-entry restrictions ensure that the MSS licensees pay their fair share of transition expenses and do not disrupt electronic newsgathering activities across the country.

The Commission should not diminish, alter, or remove the MSS licensees' longstanding obligation and equitable imperative to reimburse Sprint Nextel for a *pro rata* portion of the enormous financial and sweat equity that Sprint Nextel and its employees have expended in relocating BAS incumbents. Sprint Nextel will occupy only one-fourth of the cleared BAS spectrum that ICO and TerreStar will occupy, yet Sprint has and continues to carry out its Commission-mandated responsibility to retune BAS incumbents. Adopting the MSS licensees' alternative result would allow them to "thumb their noses" at the Commission's regulatory requirements while pocketing millions of dollars worth of benefits for their investors.

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I. INTRODUCTION

In its *BAS Extension Order and Further Notice*, the Commission sought comment on whether to permit the 2 GHz Mobile-Satellite Service (MSS) licensees to begin commercial service in spectrum currently occupied by broadcast auxiliary service (BAS) operations that the MSS licensees have failed to clear more than seven years after the Commission first ordered them to do so.¹ The Commission should not permit New ICO Satellite Services G.P (ICO) and

¹ See *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 and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 4393 (2008) (FCC 08-73) (*BAS Extension Order and Further Notice*).

TerreStar Networks Inc. (TerreStar) to operate nationally until these licensees fulfill their respective obligations to clear the BAS band of its incumbents or, alternatively, to reimburse Sprint Nextel for the *pro rata* share of eligible BAS relocation expenses that Sprint Nextel is incurring on their behalf.

Since 2001, the MSS licensees have had an independent obligation to relocate BAS licensees from the spectrum that they intend to use.² ICO and TerreStar, however, now claim that their years-long delay in implementing their respective satellite systems somehow exempts them from either relocating BAS themselves, or reimbursing Sprint Nextel for their *pro rata* shares of eligible expenses. Incredibly, the MSS licensees assert that a rule designed to ensure that Sprint Nextel did not collect *twice* for the same relocation expenses somehow precludes Sprint Nextel from collecting even *once* on those expenses. The MSS licensees' position defies common sense, regulatory precedent, and fundamental fairness. The Commission should not permit either MSS licensee to commence commercial nationwide service without complying with their band-clearing obligations.

II. DISCUSSION

Lifting the restrictions on MSS market entry without reaffirming the MSS licensees' obligation to pay their fair share of the BAS relocation expenses eliminates what little incentive MSS licensees have left to comply with the Commission's rules by either participating in the

² See *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 (2000) (*2 GHz Allocation 2000 R&O*); *ICO Services Limited*, Order, 16 FCC Rcd. 13762, ¶ 8 n.31 (Int'l Bur. & OET 2001) (*ICO MSS Authorization Order*) (granting ICO an MSS license and stating that ICO's system "must be implemented" in accordance with the *2 GHz Allocation 2000 R&O* establishing BAS relocation and cost-sharing policies); *TMI Communications and Company, Limited Partnership*, Order, 16 FCC Rcd. 13808, ¶ 7 n.23 (Int'l Bur. 2001) (*TMI MSS Authorization Order*) (granting MSS license now held by TerreStar and stating that TerreStar's system "must be implemented" in accordance with the *2 GHz Allocation 2000 R&O* establishing BAS relocation and cost-sharing policies).

transition or paying Sprint Nextel to conduct the transition on their behalf. Nothing in this proceeding should in any way diminish, alter, or remove the MSS licensees' longstanding obligation and equitable imperative to reimburse Sprint Nextel for a *pro rata* portion of the enormous financial and sweat equity that Sprint Nextel and its employees have expended in the BAS relocation process.

A. The 2 GHz MSS Licensees Have Done Nothing to Relocate BAS Despite a Commission-Mandated Relocation Obligation That Has Applied to Them Since 2001.

The Commission has repeatedly held that the two 2 GHz MSS licensees have an obligation to relocate BAS licensees independent of Sprint Nextel's 800 MHz commitment to relocate BAS. According to the Commission, "[b]oth Sprint Nextel and 2 GHz MSS licensees have equal obligations to relocate the 1.9 GHz BAS incumbents."³ The Commission has also affirmed that, notwithstanding Sprint Nextel's leadership role in implementing the BAS transition, "the underlying relocation rules . . . established for MSS entrants to undertake the relocation of BAS incumbents" remain unchanged.⁴ To the extent the MSS licensees do not complete their relocation obligation directly and instead rely on Sprint Nextel to perform the work of relocation on their behalf, the Commission directed them to reimburse Sprint Nextel for

³ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Order, 23 FCC Rcd. 2423, ¶ 2 (2008).

⁴ *BAS Extension Order and Further Notice*, FCC 08-73, ¶ 39. Prior to beginning operations, ICO must relocate (i) the BAS incumbents in the top thirty markets and (ii) all fixed BAS links, regardless of market size. 47 C.F.R. § 74.690(e)(1)(i). The Commission recently stated that, "[a]s we noted in the *800 MHz R&O*, 'except as discussed below, those rules will remain in effect.' At no place in our rules, the *800 MHz R&O*, or subsequent orders have we stated that MSS was no longer obligated to relocate BAS in the top 30 markets and all fixed BAS prior to beginning operations." *BAS Extension Order and Further Notice*, FCC 08-73, ¶ 39 n.118 (citations omitted).

their *pro rata* share of eligible expenses that Sprint Nextel Corporation incurs in relocating BAS licensees to spectrum above 2025 MHz.⁵

Though Sprint Nextel will occupy only *one-fourth* as much of the cleared BAS spectrum as will ICO and TerreStar, Sprint Nextel and its employees have spent an enormous amount of time and energy developing a BAS relocation process, pre-stocking BAS equipment, conducting inventory, verifying inventory, negotiating contracts, building supply-chain management systems, coordinating manufacturing, integration, and installation schedules, accounting for expenditures, and relocating markets.⁶ ICO and TerreStar, by contrast, have done nothing to relocate BAS – not a single relocation agreement signed, not a single piece of equipment

⁵ *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, ¶ 261 (2004) (*800 MHz R&O*), as amended by Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd. 19651 (2004) (subsequent history omitted); *accord*, *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 111 (2005), as amended by Erratum, 20 FCC Rcd. 18970 (2005) (“*800 MHz MO&O*”) (“Nextel, as the first entrant, is entitled to seek *pro rata* reimbursement of eligible clearing costs from subsequent entrants, including MSS licensees.”). Consistent with the Commission’s *800 MHz R&O*, the 2 GHz MSS licensees must reimburse Sprint Nextel for their *pro rata* share of the costs associated with relocating (i) all fixed BAS operations nationwide and (ii) all fixed and mobile BAS operations in the nation’s top-thirty broadcast television markets. *800 MHz R&O*, 19 FCC Rcd. 14969, ¶ 261. As contemplated under the *800 MHz R&O*, Sprint Nextel provided notice of its intent to seek this reimbursement from the 2 GHz MSS licensees on March 7, 2006. See Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, FCC Secretary, WT Docket No. 02-55, at 1 (March 7, 2006) (providing notice of Sprint Nextel’s intent to seek reimbursement to the Commission and to representatives of both MSS licensees).

⁶ See, e.g., Letter from Trey Hanbury, Sprint Nextel Corporation, to Marlene H. Dortch, FCC Secretary, WT Docket No. 02-55 (Apr. 1, 2008) (April 1 BAS Progress Report) (describing how market kickoffs, inventory submissions, and inventory verifications are substantially complete, and explaining how hundreds of parties have finalized deal packages, signed contracts, ordered, installed or tested equipment, or coordinated the final cut-over to the new band plan with other broadcasters); Joint Petition for Waiver, WT Docket No. 02-55 (Sep. 4, 2007) (describing how Sprint Nextel and broadcasters have collectively spent hundreds of millions of dollars to anticipate, plan for and address the legal, technical, and logistical challenges inherent in the transition).

ordered, not a single BAS licensee relocated. Sprint Nextel has offered the MSS licensees numerous ways in which they could participate in the BAS relocation already underway; however, the MSS licensees have refused. Most recently, Sprint Nextel proposed to enter a contractual agreement with ICO that would have allowed the company to directly participate in the BAS relocation framework that Sprint Nextel established. ICO has not responded.

B. Despite the 2 GHz MSS Licensees' Inaction, Sprint Nextel Continues to Transition BAS Licensees and Has Accommodated MSS Market-Prioritization Requests.

Even as the 2 GHz MSS licensees appear to have no intention of performing *any* portion of the work associated with BAS relocation, Sprint Nextel has continued to press forward with the transition.⁷ Indeed, Sprint Nextel has not only developed, funded, and implemented the BAS relocation process, but also has gone to considerable lengths to accommodate MSS market-prioritization preferences. At the insistence of the two MSS licensees, for instance, Sprint Nextel accelerated the transition of *twenty-five* designated market areas (DMAs) that cover *more than 40 million Americans* because the MSS licensees identified these areas as high priorities for MSS operations.⁸ In consultation with its BAS partners, Sprint Nextel accelerated the MSS-priority

⁷ Paul Kirby, *BAS Transition Completed in Four More Markets*, TELECOMMUNICATIONS REPORTS DAILY (April 25, 2008) (reporting successful relocation of BAS licensees in four additional top 50 markets – Houston, TX; Phoenix, AZ; Orlando, FL; and Norfolk, VA, and noting that “[t]he transition has now been completed for 67 stations in 19 markets”); *2 GHz BAS Relocation Gains Momentum*, BROADCAST ENGINEERING (Apr. 4, 2008), *available at*: <http://broadcastengineering.com/newsrooms/2ghz_bas_relocation_momentum_0404/index.html> (reporting that the BAS transition achieved “impressive gains in key benchmarks, including broadcasters submitting quote packages, executed frequency relocation agreements and fulfilled equipment orders”); *see also* April 1 BAS Progress Report (reporting how since March 2007, “the number of broadcasters submitting quote packages has increased by more than 120%; the number of frequency relocation agreements executed has increased by more than 240%; and the number of equipment orders fulfilled has soared by more than 250%”).

⁸ The DMAs accelerated to meet *MSS* market-entry preference are: Las Vegas, NV; Charlotte, NC; Raleigh-Durham, NC; Greensboro-High Point-Winston-Salem, NC; Wilmington, NC; Columbia, SC; Charleston, SC; Greenville-North Bern-Washington, SC; Florence-Myrtle Beach,

markets that span in excess of 13% of the total United States population even though doing so imposed burdens on all parties involved in the transition and skewed the allocation of BAS transition resources.⁹ Accommodating the MSS licensees' market-prioritization demands means that some BAS licensees submitting purchase orders are forced to wait while the limited base of BAS equipment manufacturers process orders in the MSS licensees' selected markets. Therefore, but for the MSS licensees' priority demands, manufacturers would have the flexibility to devote resources to other markets, allowing for faster transition of those areas.¹⁰

C. Premature Lifting of MSS Market-Entry Limitations Will Impede the BAS Transition.

The Commission should retain its MSS market-entry limitations unless and until the 2 GHz MSS licensees commit to reimburse Sprint Nextel the roughly \$200 million that Sprint

SC; Salt Lake City, UT; Washington, DC; Baltimore, MD; Norfolk-Portsmouth-Newport News, VA; Richmond-Petersburg, VA; Harrisonburg, VA; Charlottesville, VA; Houston, TX; San Antonio, TX; Austin, TX; Harlingen-Brownsville, TX; Corpus Christi, TX; Beaumont-Port Arthur, TX; Lake Charles, TX; Laredo, TX; and Victoria, TX.

⁹ Based on commercially-available 2007 population data, the DMAs that Sprint Nextel and the broadcast community accelerated to meet the MSS licensees' market-priority demands have a total population of 41,014,970, or 13.6% of the total population of the United States. Despite the magnitude of this challenge, Sprint Nextel and the broadcast community have made good on accommodating the MSS licensees' demands. With four months remaining prior to the September 2008 target date, Sprint Nextel and the broadcast community have *already* cleared ten of the twenty-five MSS-priority DMAs, including Las Vegas, NV; Charlottesville, VA; Harrisonburg, VA; Beaumont-Port Arthur, TX; Houston, TX; Laredo, TX; Victoria, TX; Norfolk-Portsmouth-Newport News, VA; Richmond-Petersburg, VA; and Charlotte, NC. Together, these DMAs have a population of more than 14 million Americans.

¹⁰ Ordinarily, the prioritization of BAS market transition is determined by assessing a variety of factors, including the progress local broadcasters have made in specific markets; the progress of surrounding Nielsen designated market areas (DMAs) that are located in the same or nearby clusters with the identified DMA; regional synergies from having teams already "on the ground" in nearby areas; restrictions on BAS equipment configuration and installation due to weather conditions in certain climate zones; installation constraints during broadcast sweeps months; and the fulfillment and installation capabilities of specific BAS manufacturers.

Nextel is incurring on behalf of ICO and TerreStar.¹¹ In its *BAS Extension Order and Further Notice*, the Commission tentatively concluded that it would eliminate as of January 1, 2009, the limitation that prevents 2 GHz MSS systems from operating in the 2000-2020 MHz spectrum until the relocation of BAS in markets 1-30 and fixed BAS links in all markets is complete.¹² The market-entry limitation, however, reflects a careful balance between allowing MSS licensees to provide commercial service and the imperative that BAS licensees first be relocated to prevent interference to broadcaster news-gathering operations.¹³ To achieve this imperative, MSS licensees must either relocate BAS licensees themselves – which they have made no effort to do – or reimburse Sprint Nextel for their *pro rata* share of eligible BAS relocation expenses. The MSS market-entry limitations are inextricably linked with MSS licensee reimbursement obligations; accordingly, the MSS licensees deserve no relief from their market-entry conditions so long as they continue to thumb their noses at the Commission’s BAS clearing obligations.

Repeal of the existing Top 30 market-entry provision upends much of the balance reflected in the Commission’s rules to achieve an effective and equitable BAS relocation process. The Commission should preserve the Top 30 rule. The Commission should also preserve the BAS *fixed-link* market entry rule and maintain the primary status of BAS licensees until the BAS relocation is complete or the rules sunset on December 13, 2013, whichever is earlier. Like the Top 30 market rule, the fixed-link market-entry restriction prohibits MSS

¹¹ Because ICO and TerreStar will each occupy 10 megahertz of the 35 megahertz of cleared BAS spectrum, they each are liable for a *pro rata*, two-sevenths share or 28.57% (10 MHz/35 MHz) of Sprint Nextel’s eligible BAS relocation costs. *See, e.g., 800 MHz MO&O*, 20 FCC Rcd. 16015, ¶ 111. Sprint Nextel projects that the total, cumulative BAS reimbursement obligation for ICO and TerreStar will be approximately \$100 million each.

¹² *BAS Extension Order and Further Notice*, FCC 08-73, ¶ 49; 47 C.F.R. § 74.690(e)(1)(i).

¹³ Under the current rules, BAS licensees maintain primary status in the 1990-2025 MHz band until relocation or December 13, 2013, which is sooner. 47 C.F.R. §§ 74.690(b), (e)(6).

operations from commencing MSS operations until all fixed BAS links in all markets are relocated.¹⁴ By requiring the MSS licensees to pay their fair share of transition expenses, these rules prevent the MSS licensees from causing harmful interference to electronic newsgathering activities across the country and from disrupting the orderly and timely transition of these newsgathering facilities to bands where harmful interference is less likely to occur.

The MSS market-entry limitations are critical gating factors for enforcing MSS licensees' obligation to pay their share of BAS relocation costs. This obligation is based on the bedrock principle that new entrants into reallocated spectrum must share the cost of relocating incumbent licensees.¹⁵ The reimbursement obligation is also a condition of ICO's and TerreStar's MSS licenses. In a 2000 order, the Commission stated that "[a]ll MSS licensees who benefit from relocation of BAS are responsible for contributing [to BAS relocation], *as a condition of their licenses,*" and indicated further that "[s]ubsequently entering MSS licensees in Phase I spectrum will, *as a condition of their licenses,* compensate the first entrant on a *pro rata* basis, according to the amount of spectrum the subsequently entering licensees are authorized to use."¹⁶ This

¹⁴ See 47 C.F.R. § 74.690(e).

¹⁵ See *800 MHz MO&O*, 20 FCC Rcd. 16015, ¶ 111; *800 MHz R&O*, 19 FCC Rcd. 14969, ¶ 261; *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd. 6886, ¶ 24 (1992); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589, ¶ 2 (1993); Memorandum Opinion and Order, 9 FCC Rcd. 1943, ¶ 3 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797, ¶ 4 (1994), *aff'd sub nom. Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (*Emerging Technologies* proceeding).

¹⁶ *2 GHz Allocation 2000 R&O*, 15 FCC Rcd. 12315, ¶¶ 69, 71 (emphasis added); see also *ICO MSS Authorization Order*, 16 FCC Rcd. 13762, ¶ 8 n.31 (granting ICO an MSS license and stating that ICO's system "must be implemented" in accordance with the *2 GHz Allocation 2000 R&O* establishing BAS relocation and cost-sharing policies); *TMI MSS Authorization Order*, 16 FCC Rcd. 13808, ¶ 7 n.23 (granting MSS license now held by TerreStar and stating that TerreStar's system "must be implemented" in accordance with the *2 GHz Allocation 2000 R&O* establishing BAS relocation and cost-sharing policies). The Commission's 2000 order referred to cost-sharing among MSS licensees because the Commission did not contemplate Sprint

MSS license condition is still in full force. Indeed, the Commission earlier this year affirmed that “the underlying relocation rules . . . established for MSS entrants to undertake the relocation of BAS incumbents” remain unchanged.¹⁷

Stripped of all pretense, the MSS licensees simply do not want to participate in conducting or funding the relocation effort for the spectrum they intend to occupy.¹⁸ MSS licensees, however, enjoy no special exception from their BAS relocation obligations. Both TerreStar and ICO have already triggered their reimbursement obligation by engaging in construction and operation of their Ancillary Terrestrial Component operations.¹⁹ ICO also has triggered its reimbursement obligation by operating its MSS system following its recent satellite launch.²⁰ Equally important, the Commission established a June 26, 2008 date for settlement of

Nextel’s involvement in BAS relocation until 2004. As the first entrant, Sprint Nextel benefits from the same cost-sharing principles and license conditions as any other first entrant would.

¹⁷ *BAS Extension Order and Further Notice*, FCC 08-73, ¶ 39, citing *800 MHz R&O*, 19 FCC Rcd. 14969, ¶ 250.

¹⁸ In a letter to Sprint Nextel, TerreStar has claimed that it is not required to pay its share of BAS relocation costs because it allegedly will not enter the 2 GHz band by June 26, 2008, the previously projected date for the end of 800 MHz band reconfiguration and the commencement of the 800 MHz true-up process. ICO, which has already launched its satellite, simply claims it is “impossible to know” when or whether it will owe Sprint Nextel its fair share of BAS expenses.

¹⁹ See Letter from Suzanne Hutchings Malloy, New ICO Satellite Services G.P., to Marlene H. Dortch, FCC Secretary, File Nos. SAT-LOI-19970926-00163 & SAT-MOD-20070806-00110 (Aug. 24, 2007) (notice of ATC testing); Letter from Joseph Godles, Counsel for TerreStar Networks Inc., to Marlene H. Dortch, FCC Secretary, File Nos. SAT-LOI-19970926-00161, SAT-ASG-20021211-00238, SAT-AMD-20061127-00143, & SAT-MOD-20070529-00075 (Sep. 7, 2007) (same); see also *ICO Launches New Era in Mobile Television*, ICO News Release, ICO Global Communications (Holdings) Limited (Apr. 14, 2008) (stating that ICO has been conducting mobile television operations in Las Vegas, Nevada, including a demonstration of the DVB-SH standard in conjunction with the National Association of Broadcasters convention on April 16-17, 2008).

²⁰ See Letter from Suzanne Hutchings Malloy, New ICO Satellite Services G.P., to Marlene H. Dortch, FCC Secretary, Call Sign S2651 (Corrected Version), and attached Certification (April 25, 2008).

MSS reimbursement obligations *not* to award a \$200 million windfall to the 2 GHz MSS licensees, but to promote “administrative efficiency” related to the true-up “accounting process” and avoid any possible double-counting of reimbursement payments.²¹ Adhering to a June 26, 2008 cut-off date when circumstances have changed would violate the Commission’s well-settled cost sharing principles and arbitrarily grant TerreStar and ICO a windfall at Sprint Nextel’s expense. In the *BAS Extension Order and Further Notice*, the Commission found that the BAS relocation will take longer than expected due to circumstances beyond Sprint Nextel’s control.²² It would be arbitrary for the Commission to extend the BAS relocation deadline into 2009, but deny Sprint Nextel the right to *pro rata* reimbursement for the large portion of BAS relocation costs that will be incurred after June 2008 consistent with the Commission’s *BAS Extension Order*.

ICO and TerreStar, of course, urge exactly this result. Though both ICO and TerreStar have benefited immensely as the Commission repeatedly extended their mandatory satellite construction, launch, and operational milestones long after their original deadlines,²³ ICO and TerreStar now seek to use their years-long MSS delays to avoid ever having to do or pay

²¹ *800 MHz MO&O*, 20 FCC Rcd. 16015, ¶ 113.

²² The Commission found that one reason BAS relocation took longer than expected is that, with MSS licensees having done virtually nothing to advance relocation since 2000, Sprint Nextel had to start from scratch when it began implementing the joint BAS-Sprint Nextel relocation plan in 2005. *BAS Extension Order and Further Notice*, FCC 08-73, ¶ 31.

²³ See Olga Kharif, *Satellite Is Sexy Again: Many of the Satellite Communications Outfits that Ended Up in Bankruptcy Have Reemerged and Are Drawing the Interest of Private Equity*, BUSINESS WEEK (April 28, 2008), available at: <http://www.businessweek.com/print/technology/content/apr2008/tc20080427_919917.htm> (noting the private investments of \$300 million dollars into TerreStar earlier this year and discussing the prospects for merger between ICO and TerreStar).

anything to clear the BAS spectrum that they will occupy.²⁴ Even as ICO and TerreStar solicit and accept extensions of their satellite implementation milestones, they urge iron-clad observation of an arbitrary accounting date for Sprint Nextel. ICO and TerreStar urge this result even though the accounting date *cannot be met* for reasons beyond Sprint Nextel's control and even though the double-dipping windfall that the accounting date was designed to prevent *cannot happen* because no accounting will have been made. If necessary, the Commission can and should adjust the current 800 MHz/BAS retuning true-up and reimbursement schedule to be consistent with the *BAS Extension Order and Further Notice* as well as developments in the 800 MHz reconfiguration process.²⁵ Adopting the satellite licensees' preferred result, by comparison,

²⁴ ICO has obtained milestone extensions taking it almost two years beyond the original launch milestone date for geo-stationary (GSO) MSS licensees in the band, and almost one year beyond the operational milestone date for GSO systems. *See ICO MSS Authorization Order*, 16 FCC Rcd. 13762, ¶ 34 (establishing a launch milestone date of January 17, 2005 and an operational milestone date of July 17, 2007 for ICO's then-non-geostationary (NGSO) satellite system); *ICO Satellite Services G.P.*, Memorandum Opinion and Order, 20 FCC Rcd. 9797, ¶ 38 (Int'l Bur. 2005) (approving ICO's request to shift to a GSO architecture and setting a new launch milestone date of July 1, 2007 and an operational milestone date of July 17, 2007); *New ICO Satellite Services G.P. Application to Extend Milestones*, Memorandum Opinion and Order, 22 FCC Rcd. 2229, ¶ 21 (Int'l Bur. 2007) (extending ICO's launch deadline to November 30, 2007 and its operational deadline to December 31, 2007); Attachment to Grant, IBFS File Nos. SAT-MOD-20070806-00110 and SAT-AMD-20071109-00155 (Int'l Bur. Apr. 2, 2008) (extending ICO's launch deadline to April 15, 2008 and its operational deadline to May 15, 2008). TerreStar, meanwhile, has received milestone extensions stretching more than two years beyond its original launch deadline, and more than a year beyond its initial operational deadline. *See TMI MSS Authorization Order*, 16 FCC Rcd. 13808, ¶ 24 (establishing a launch milestone date of July 17, 2006 an operational milestone date of July 17, 2007); *TMI Communications and Company, Limited Partnership*, Memorandum Opinion and Order, 19 FCC Rcd. 12603, ¶¶ 39-52, 59 (2004) (reinstating the MSS license of TMI Communications and Company, L.P. (TMI), and extending TMI's launch deadline to November 30, 2007 and its operational deadline to November 30, 2008); *TerreStar Networks, Inc.; Request for Milestone Extension*, Memorandum Opinion and Order, 22 FCC Rcd. 17698, ¶ 11 (Int'l Bur. 2007) (extending TerreStar's launch deadline to September 30, 2008).

²⁵ In addition, more than five hundred 800 MHz public safety incumbents are seeking waivers of the original June 26, 2008 deadline for completing 800 MHz reconfiguration. Assuming the Commission grants these waiver requests in whole or in part, revision of the true-up process will

contradicts nearly twenty years of precedent under the *Emerging Technologies* proceeding, upends nearly eight years of MSS-specific Commission rulings and license conditions on the BAS transition, and works a substantial injustice on Sprint Nextel, its employees and shareholders.²⁶

Requiring the MSS licensees to participate in funding the relocation effort for the spectrum they intend to occupy is neither unexpected nor unfair. TerreStar's predecessor, TMI, recognized that "equity requires" that entities that benefit from the clearing of BAS licensees "should . . . share in the financial burdens of the relocation of [these] licensees."²⁷ ICO has similarly recognized that requiring the first new entrant to pay "full relocation costs without any reimbursement from later entering MSS providers" would "unfairly punish" the first new entrant.²⁸ Sprint Nextel agrees completely. TerreStar and ICO must reimburse Sprint Nextel for their fair shares of eligible BAS relocation costs.

III. CONCLUSION

Allowing premature MSS market entry would permit the MSS licensees to flout years of Commission orders and conditions, thwart the public interest in protecting electronic newsgathering against harmful interference, and work a \$200 million injustice on the public. Like every other new entrant ever faced with a relocation obligation, MSS licensees must either

be required. Sprint Nextel will file a letter with the Commission describing several adjustments that will need to be made to the true-up and other reconfiguration processes.

²⁶ See *supra* note 15; see also *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd.13999, ¶ 16 (2000) (finding that later entrants that benefit from the clearance of spectrum by a first entrant would receive a "significant competitive advantage" if they were not required to reimburse the first entrant for a share of the relocation costs).

²⁷ Comments of TMI Communications and Company, ET Docket No. 95-18, at 2, 7 (Feb. 3, 1999).

²⁸ Comments of ICO Services Limited, ET Docket No. 95-18, at 14 (Feb. 3, 1999).

participate in the BAS transition, or pay a fair share of the expenses incurred for clearing the spectrum they will use.

Respectfully submitted,

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