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

REPLY COMMENTS OF TERRESTAR NETWORKS INC.

Douglas I. Brandon
Vice President, Regulatory Affairs
TerreStar Networks Inc.
12010 Sunset Hills Road
Reston, VA 20191
(703) 483−7800

OF COUNSEL:
Joseph A. Godles
GOLDBERG, GODLES, WIENER
& WRIGHT
1229 Nineteenth Street, N.W.
Washington, DC 20036
(202) 429-4900
Counsel for TerreStar Networks Inc.

May 30, 2008

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY.....1

II. THE RECORD SUPPORTS ELIMINATION OF THE TOP 30/FIXED LINKS RULE. 5

A. The Technical Evidence Supporting Sharing is Uncontested.....5

B. Changed Circumstances Favor Elimination of the Top 30/Fixed Links Rule. 8

III. SPRINT'S AND MSTV/NAB'S ASSERTIONS CONCERNING MSS RESPONSIBILITIES FOR BAS RELOCATION ARE IRRELEVANT AND ERRONEOUS.....9

IV. SPRINT'S ASSERTIONS CONCERNING REIMBURSEMENT OF BAS RELOCATION EXPENSES ARE IRRELEVANT AND ERRONEOUS. 12

A. Sprint Must Pay Upfront the Cost of BAS Relocation.....13

B. The Conditions Under Which TerreStar Would Have to Reimburse Sprint for BAS Relocation Expenses Do Not Exist.....15

C. Sprint's Suggestions for Changing the Conditions Under Which TerreStar Would Have to Reimburse Sprint for BAS Relocation Expenses Are Beyond the Scope of the NPRM and Misguided.....17

CONCLUSION.....19

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

REPLY COMMENTS OF TERRESTAR NETWORKS INC.

TerreStar Networks Inc. ("TerreStar") hereby files reply comments in response to the comments that were filed addressing the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

The FNPRM is part of an item released in March that also included a Memorandum Opinion and Order ("MO&O"). In the MO&O, in response to a Joint Petition filed by Sprint Nextel Corporation ("Sprint"), the Association for Maximum

[1] FCC 08-73 (March 5, 2008).

Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), and the Society of Broadcast Engineers (collectively, the "Joint Parties"), the Commission extended through March 5, 2009, the deadline by which Sprint is required to complete relocation of broadcast auxiliary service ("BAS") stations from the 2 GHz band.[2] A portion of this BAS band will be used by 2 GHz mobile satellite service ("MSS") licensees.

In the FNPRM, the Commission sought comment on how, in light of the extension of the Sprint deadline, it could best balance the needs of 2 GHz MSS licensees to introduce their service and the requirements of BAS licensees to operate free of harmful interference. The Commission proposed to eliminate, effective January 1, 2009, the rule requiring that 2 GHz MSS systems not begin operating until BAS relocation has been completed in the top 30 markets and fixed BAS links have been relocated in all markets (the "Top 30/Fixed Links Rule").[3] Under this proposal, 2 GHz MSS stations would be permitted to operate on a secondary basis in top 30 markets, and in markets with fixed links, prior to completion of BAS relocation in the markets.

TerreStar filed comments supporting the Commission's proposal,[4] as did New ICO Satellite Services G.P. ("ICO").[5] In these reply comments, TerreStar responds to

---

[2] The Joint Parties had sought a twenty nine month extension, through February 7, 2010.
[3] FNPRM, ¶ 2.
[4] Comments of TerreStar Networks Inc. (Apr. 30, 2008).
[5] Comments of New ICO Satellite Services G.P. (Apr. 30, 2008).

comments filed by MSTV/NAB[6] and Sprint[7] that opposed elimination of the Top 30/Fixed Links Rule. In particular, TerreStar addresses those parties' arguments concerning interference potential, BAS relocation responsibilities, and reimbursement of BAS relocation expenses.

Interference potential. Although MSTV/NAB objects to elimination of the Top 30/Fixed Links Rule on interference grounds, it offers no support for its objection, and TerreStar and ICO have filed uncontested technical studies demonstrating that it is technically feasible for 2 GHz MSS systems and BAS stations to share spectrum during the completion of the BAS relocation process. In light of these uncontested technical studies, permitting secondary MSS operations during the completion of the BAS relocation process is a reasonable response to changed circumstances and tempers the impact of the substantial delay in BAS relocation on the initiation of 2 GHz MSS services.

BAS relocation responsibilities. Sprint and MSTV/NAB assert that the 2 GHz MSS licensees have been shirking obligations to relocate 2 GHz BAS stations. This assertion, which has no bearing on the issues raised in the FNPRM, is demonstrably false. The Commission's orders place the responsibility to relocate 2 GHz BAS stations on Sprint, and Sprint actively sought that responsibility as an inducement for the

---

[6] Comments of the Association for Maximum Service Television, Inc. (Apr. 30, 2008) and the National Association of Broadcasters (Apr. 30, 2008).
[7] Comments of Sprint Nextel Corporation (Apr. 30, 2008).

Commission to approve a plan that gives Sprint access to additional spectrum worth billions of dollars.

Although the Commission has left in place an independent obligation for 2 GHz MSS entrants to relocate BAS licensees, it did so for the limited purpose of giving the MSS licensees the ability to invoke involuntary relocation procedures should they wish to begin operation before Sprint had relocated licensees in the top 30 markets. The Commission did not intend that the MSS licensees engage in nationwide relocation activities duplicating what was required of Sprint. It is also telling that Sprint expressed no concern with TerreStar's role in the BAS relocation process until after Sprint fell behind schedule and its BAS relocation efforts came under scrutiny.

Reimbursement of BAS relocation expenses. Sprint asserts that TerreStar is required to reimburse Sprint for a *pro rata* share of BAS relocation expenses. The Commission has not requested comment in the FNPRM on this issue, and even if it had, there is no merit to Sprint's assertion.

The Commission's orders obligate Sprint to pay the upfront cost of BAS relocation, and (as in the case of BAS relocation responsibilities) Sprint actively sought that obligation as an inducement for the Commission to approve Sprint's plan giving it access to additional spectrum. Under the Commission's policies, Sprint would not eligible for reimbursement of BAS relocation expenses from TerreStar unless TerreStar "entered" the 2 GHz band on or before June 26, 2008, and TerreStar will not even have launched its satellite by that date. Sprint claims that a letter filed by TerreStar is

evidence of testing in the band, but in fact the letter only states that TerreStar may test in the 2 GHz band in the future, and all testing involving RF transmissions has been in other bands and will continue to be through June 26 and beyond. In any event, testing does not amount to entering the band for reimbursement purposes.

Sprint's suggestion that the Commission revisit its reimbursement policy, which has implications for both the 800 MHz band and the 2 GHz band, is beyond the scope of the FNPRM and would require a rulemaking. Moreover, in all of the time that the policy has been in effect, TerreStar's milestone for initiating operations has always been after the "enter the band" date, so Sprint could have had no expectation of reimbursement from TerreStar and TerreStar had a reasonable expectation of not having to reimburse Sprint. Changing the "enter the band" date would disturb these settled expectations and reward Sprint for not completing 800 MHz realignment within the 36 month transition period established by the Commission.

II. THE RECORD SUPPORTS ELIMINATION OF THE TOP 30/FIXED LINKS RULE.

A. The Technical Evidence Supporting Sharing is Uncontested.

TerreStar has filed detailed technical information in this proceeding demonstrating that it is technically feasible for 2 GHz MSS systems and BAS stations to share spectrum during the completion of the BAS relocation process. TerreStar filed a technical study, prepared by TerreStar's independent technical consultant based on field tests and bench tests, showing that sharing between MSS systems and BAS stations

is technically feasible because mobile earth terminal ("MET")-to-satellite transmissions have little impact on BAS operations.[8] In conjunction with this technical study, TerreStar provided the results of a simulation predicting that there would at most be an MSS/BSS interference event every 2.29 years for MSS Band A and every 1.06 years for MSS Band B.[9] TerreStar also filed a second study prepared by TerreStar's independent technical consultant demonstrating that sharing between 2 GHz MSS systems and fixed BAS links is technically feasible, and that because of the characteristics of fixed BAS links, the potential for interference from METs to those fixed links is even less than the already-minimal potential for interference from METs to mobile and portable BAS links.[10]

ICO also has filed technical information evidencing how 2 GHz MSS stations and BAS stations may share spectrum. ICO's technical consultant made a thorough review of "laboratory and field measurements and theoretical modeling"[11] and determined that "ICO's initial operations will not cause interference to BAS receivers."[12]

---

[8] *See* du Treil, Lundin & Rackley, "Predicted Impact To 2 GHz Broadcast Auxiliary Operations From Proposed Handset To Satellite Emissions, TerreStar Networks" (Jan. 30, 2008) ("dLR Study"), attached to a letter from Joseph A. Godles, counsel to TerreStar, to Marlene H. Dortch, FCC (Jan. 30, 2008) ("dLR Study Cover Letter"). The dLR Study does not address the potential impact on BAS of transmissions with ancillary terrestrial component ("ATC") base stations. TerreStar has represented, however, that absent coordination it will not conduct ATC operations in non-relocated markets. *See* TerreStar Comments at 4 n. 9, 5.
[9] dLR Study Cover Letter at 2.
[10] du Treil, Lundin & Rackley, "Case Study, Predicted Impact To 2 GHz Fixed-Link System Broadcast Auxiliary Operation From Proposed Handset To Satellite Emissions, Terrestar Networks" (Apr. 30, 2008) (filed as an exhibit to TerreStar's Comments).
[11] ICO Comments at 9.
[12] ICO Comments at 9.

These technical showings are uncontested. The only two filers that object to eliminating the Top 30/Fixed Links Rule, Sprint and MSTV/NAB, offer no technical analysis in support of their position. Apart from a passing reference to interference in a single sentence,[13] Sprint does not even address the issue of whether it is technically feasible for MSS and BAS to share 2 GHz spectrum.[14] Similarly, although MSTV/NAB makes conclusory statements concerning the potential for interference, it provides no support for its conclusions.[15] In fact, MSTV/NAB implies that it would be amenable to sharing spectrum with 2 GHz MSS stations operating on a secondary basis,[16] and secondary status for MSS is all that TerreStar is seeking for operations in non-relocated markets prior to the BAS relocation deadline.[17]

---

[13] *See* Sprint Comments at 8.

[14] In a reply filed in another proceeding, Sprint stated that "TerreStar's own study demonstrates that its MSS system can cause harmful interference to BAS facilities that rely on analog equipment that has not yet been retuned." *See* Reply of Sprint Nextel Corporation, File Nos. SES-AMD-20070907-01253 and SES-AMD-20070723-00978 (May 20, 2008) at 4. Sprint's statement is technically true but highly misleading. In fact, TerreStar's study concluded that, in light of the inordinate power disparity between a BAS signal and a TerreStar handset, harmful interference is a possibility only in well-defined circumstances that require a "perfect storm" of factors coinciding. *See* Comments of TerreStar in this proceeding (Dec. 18, 2007) at 7-8. Sprint, moreover, provided no technical analysis of its own and offered no response to TerreStar's simulation predicting that any interference events would be years apart. Given these deficiencies, Sprint's argument, to the extent it is considered in this proceeding, should be rejected.

[15] MSTV/NAB asserts that it needs more detail to analyze the technical showings the MSS licensees have made, but has not sought any additional information from TerreStar or its consultants despite numerous offers to discuss this issue. This is not surprising because the TerreStar technical studies are complete and thoroughly documented.

[16] *See* MSTV/NAB Comments at 8 ("If the Commission decides to begin operations before relocation of BAS, such MSS operations should be strictly on a secondary basis to primary BAS operations … ."); *id.* at 9 ("as a secondary user, MSS should be required to cease operations until the cause of interference is identified and resolved"); *id.* ("all MSS operations should be secondary in a market-by-market approach").

[17] *See* TerreStar Comments at 8-9.

B. Changed Circumstances Favor Elimination of the Top 30/Fixed Links Rule.

In requesting comment on eliminating the Top 30/Fixed Links Rule, the Commission sought to "explore how to balance the needs of incumbent BAS licensees to provide service without suffering harmful interference during the transition and the introduction of new 2 GHz Mobile-Satellite Service (MSS) in a timely manner." MSTV/NAB's comments, however, focus exclusively on the needs of incumbent BAS licensees, and pay no attention to the other side of the equation. In particular, there is no recognition in the MSTV/NAB comments of the fact that a substantial delay in BAS relocation, regardless of the reason for that delay, jeopardizes the initiation of 2 GHz MSS services.

When the Commission adopted a Sprint-BAS relocation plan in 2004, it was believed that Sprint would "likely relocate most BAS licensees before MSS licensees begin operations under their milestone requirements."[18] In those circumstances, there was no need to entertain the possibility of MSS operations in BAS markets that had not been relocated.

Now that relocation has been delayed by at least 18 months[19], however, it is necessary and appropriate that the balance between the needs of BAS incumbents and MSS licensees be reexamined. Permitting MSS stations to operate on a secondary basis

---

[18] *See Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 270 (2004).
[19] Sprint, in its most recent progress report, shows August 2009 (*i.e.,* twenty three months beyond the previous deadline of September 2007) as the month when the BAS relocation process will be completed. *See ex parte* letter from Trey Hanbury, Sprint, to Marlene H. Dortch, FCC, WT Docket No. 02-55, ET Docket No. 00-258, and ET Docket No. 95-18, Appendix B (Apr. 1, 2008).

in non-relocated markets prior to the new relocation deadline will diminish the impact of the delay in BAS relocation on the initiation of MSS service. In the face of uncontested technical evidence showing that sharing between MSS stations and non-relocated BAS stations is possible, permitting secondary MSS operations is a reasonable response to changed circumstances and strikes a fair balance between the needs of all concerned parties. Accordingly, the Commission should affirm its tentative conclusion and eliminate the Top 30/Fixed Links Rule.

III. SPRINT'S AND MSTV/NAB'S ASSERTIONS CONCERNING MSS RESPONSIBILITIES FOR BAS RELOCATION ARE IRRELEVANT AND ERRONEOUS.

Sprint's comments and MSTV/NAB's comments assert that the 2 GHz MSS licensees have been shirking obligations to relocate 2 GHz BAS stations. Nothing could be further from the truth.

As an initial matter, TerreStar notes that the Sprint and MSTV/NAB assertions are strictly gratuitous. The FNPRM seeks comment on a single issue: whether the Top 30/Fixed Links Rule should be eliminated. The extent to which 2 GHz MSS licensees engaged in BAS relocation activities has no bearing on this issue.

The Sprint and MSTV/NAB assertions, moreover, are baseless. Sprint is required to relocate 2 GHz BAS stations as part of an unprecedented arrangement it sought under which Sprint was given access to additional spectrum worth billions of dollars. In order to secure approval of this arrangement, among other things Sprint

"undertook … [a] commitment to relocate the BAS licensees."[20] In reliance on this commitment, the Commission "established specific relocation obligations for Sprint" based, "in large part, on a joint proposal of Sprint, … MSTV, and the NAB."[21] In particular, the Commission "required Sprint … to relocate all BAS licensees in the 1990-2110 MHz band within 30 months of the effective date of the *800 MHz &O*."[22] Sprint's authority to use the 1990-1995 MHz band was expressly conditioned on Sprint completing relocation within this 30-month period.[23] Sprint also was required to file a "BAS relocation schedule and implementation plan," as well as "status reports 12 and 24 months into the relocation process."[24] In short, all parties understood that Sprint would be responsible for BAS relocation.

It is true that the Commission, when it adopted the requirement for Sprint to relocate BAS licensees, "did not remove the obligation of the MSS entrants to relocate the BAS licensees" and "the procedures that had already been put in place for doing so."[25] The Commission did not, however, leave these mechanisms in place in the expectation that MSS licensees would engage in nationwide relocation activities duplicating what was required of Sprint. Rather, the Commission was giving MSS licensees the ability to invoke involuntary relocation procedures in recognition of the

---

[20] MO&O, ¶ 13.
[21] MO&O, ¶ 12.
[22] MO&O, ¶ 12.
[23] *See Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 33 (2004) ("we make the band [1990-1995 MHz] available to Nextel subject to the condition that it relocate incumbent BAS licensees in the 1990-2025 MHz band within thirty months). *See also id.* at ¶ 270 ("Nextel has agreed to clear BAS nationwide within thirty months.").
[24] MO&O, ¶ 12.
[25] MO&O, ¶ 13.

fact that some "MSS systems might wish to begin operation before Sprint … had relocated licensees in the top 30 markets."[26]

To accommodate MSS systems seeking such early entry, "the Commission required Sprint … to file a plan within 30 days of the issuance of the *800 MHz R&O* stating which markets it would relocate in stage one (*i.e.* within eighteen months)."[27] "The MSS entrants then had 30 days to review this plan and identify which of the top 30 markets they intended to invoke involuntary relocations."[28] As it turned out, "no MSS entrant opted to invoke its [involuntary relocation] right."[29] The Commission had envisioned this possibility, providing that if "MSS licensees choose not to trigger involuntary relocation," then Sprint "will proceed under its plan to relocate BAS incumbents."[30]

The way the relocation process unfolded confirms that all parties understood that Sprint is expected to relocate the BAS incumbents. Sprint has willingly contacted the licensees of all affected BAS stations, made proposals to them, and executed relocation contracts with virtually every one of the stations. Sprint filed with the Commission a BAS implementation plan,[31] a 12 month status report,[32] and a 24 month

---

[26] MO&O, ¶ 13.
[27] MO&O, ¶ 13.
[28] MO&O, ¶ 13.
[29] MO&O, ¶ 13.
[30] *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 257 (2004).
[31] In the Matter of Improving Public Safety Communications in the 800 MHz Band, BAS Relocation Schedule and Implementation Plan, WT Docket No. 02-55 (April 6, 2005).
[32] In the Matter of Improving Public Safety Communications in the 800 MHz Band, BAS Relocation Status Report, WT Docket No. 02-55 (March 8, 2006).

status report,[33] and it expressed no concern in any of those filings with TerreStar's role in the relocation process.[34] Rather, the first time Sprint registered a complaint was after it disclosed in its 24 month status report that a delay of 12-24 months was possible and its BAS relocation efforts came under scrutiny.

It is unfortunate that Sprint and MSTV/NAB have chosen to engage in finger pointing just as the efforts of those parties and the MSS licensees to address BAS relocation issues are bearing fruit. As a result of compromises on all sides, understandings have been arrived at under which the MSS licensees can launch their satellites, conduct in-orbit testing, and engage in limited market tests without disrupting BAS operations.[35] It would be better for all concerned if Sprint and MSTV/NAB, instead of making accusations that are both irrelevant and erroneous, were to refocus their attentions on working with the MSS licensees to resolve the BAS relocation issues that remain.

IV. SPRINT'S ASSERTIONS CONCERNING REIMBURSEMENT OF BAS RELOCATION EXPENSES ARE IRRELEVANT AND ERRONEOUS.

Sprint asserts that "ICO and TerreStar … have sought to avoid their cost-sharing obligations" for BAS relocation expenses,[36] and it characterizes ICO and TerreStar as claiming that they are "exempt[] … from … reimbursing Sprint … for their *pro rata*

---

[33] In the Matter of Improving Public Safety Communications in the 800 MHz Band, BAS Relocation Status Report, WT Docket No. 02-55 (March 7, 2007).
[34] In fact, in the 24 month status report (p. 22) Sprint stated that it had "been working with MSS satellite operators, such as TerreStar, to assist in accelerating the transition," and it touted the fact that "representatives of TerreStar and Sprint Nextel meet every two to three weeks."
[35] *See* MO&O, ¶¶ 26-27, 45-46.
[36] Sprint Comments at i.

shares of eligible expenses."[37] Sprint's claim, like its argument concerning who is responsible for negotiating with broadcasters to relocate BAS stations, is not germane because the Commission has not requested comment in the FNPRM on reimbursement of relocation expenses.

In addition, Sprint's assertion concerning reimbursement is baseless. As discussed below, Sprint is required to pay upfront the cost of BAS relocation; the conditions under which TerreStar would have to reimburse Sprint for BAS relocation expenses do not exist; and Sprint's suggestions for changing the conditions under which TerreStar would have to reimburse Sprint for BAS relocation expenses are both beyond the scope of the FNPRM and misguided.

A. Sprint Must Pay Upfront the Cost of BAS Relocation.

The ground rules for payment of BAS relocation expenses are well established. Under these rules, Sprint is obligated to pay upfront for all BAS relocation expenses.

The idea for this payment obligation originated with Sprint. In connection with Sprint's proposal to reconfigure the 800 MHz and 2 GHz bands and give Sprint access to additional spectrum, MSTV, NAB, and Sprint submitted a plan under which Sprint "would commit to funding the entire cost of relocating all BAS incumbents nationwide

[37] Sprint Comments at 1.

from the 1990-2025 MHz band."[38] The Commission adopted this plan, and in doing so reiterated that Sprint had "agreed to … pay the upfront costs for BAS relocation."[39]

As a *quid pro quo* for its BAS relocation commitment, Sprint asked that "that the Commission assign … it replacement spectrum in the 1910-1915/1990-1995 MHz bands" and that it "receive credit for BAS relocation costs."[40] Both requests were granted. The Commission modified Sprint's licenses to "to provide Nextel with nationwide authority to operate in ten megahertz of spectrum at 1910-1915 MHz/1990-1995 MHz,"[41] and it established an accounting mechanism under which Sprint is credited for BAS relocation expenses.[42] As the Commission has explained:

> [T]o ensure that Sprint Nextel did not receive an undeserved windfall by receiving the 1990-1995 MHz spectrum (as well as the paired 1910-1915 MHz band), Sprint Nextel was required to make a "windfall" payment to the U.S. Treasury if the fair value of the spectrum it received, as determined by the Commission ($4.86 billion), exceeded the total of (i) the value the Commission attributed to the 800 MHz spectrum Sprint Nextel was vacating ($1.607 billion); (ii) the costs paid by Sprint to realign the 800 MHz band; and (iii) the costs paid by Sprint to clear incumbent users from the BAS spectrum (as well as the paired 1910-1915 MHz band).[43]

---

[38] *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 251 (2004). *See also id.* at ¶ 256 (under the relocation plan, Sprint "offers to pay the upfront BAS relocation costs").
[39] *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 270 (2004).
[40] *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, n. 610 (2004).
[41] *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 12 (2004).
[42] *See* MO&O, ¶ 15.
[43] MO&O, ¶ 15.

B. The Conditions Under Which TerreStar Would Have to Reimburse Sprint for BAS Relocation Expenses Do Not Exist.

The ground rules for reimbursement of BAS relocation expenses also are well established. There is a 36 month transition period, ending on June 26, 2008, during which the 800 MHz band is to be realigned.[44] After this transition, there will be a six month "true up" by the end of which Sprint must make the "windfall" payment described above.[45] Prior to the true-up, Sprint may seek reimbursement of a *pro rata* share of "eligible"[46] BAS relocation expenses "from any MSS entrant that enters the [2 GHz] band during the [36 month] transition period."[47] "At the conclusion of the true-up, there is no continuing obligation for MSS operators to reimburse Sprint … for any expenses related to the relocation of BAS incumbents."[48]

Sprint is not entitled to seek reimbursement from TerreStar under these procedures because TerreStar will not have "entered" the 2 GHz band before the end of the 36 month 800 MHz transition period on June 26, 2008. TerreStar will not even have launched its 2 GHz MSS satellite by that date.

In its comments, Sprint asserts that TerreStar has triggered a reimbursement obligation "by engaging in construction and operation of … Ancillary Terrestrial Component operations."[49] In support of this assertion, Sprint cites to a letter sent to the

---

[44] *See* MO&O, n. 34.
[45] *See* MO&O, ¶ 16.
[46] Sprint's reimbursement rights "are limited to the costs of clearing the top thirty markets and all fixed BAS facilities." MO&O, ¶ 16.
[47] MO&O, ¶ 16.
[48] MO&O, ¶ 16.
[49] Sprint Comments at 9.

Commission on September 7, 2008, by TerreStar's counsel.[50] The letter, however, does not make the statements Sprint attributes to it. Rather, the letter simply notifies the Commission of TerreStar's intent to construct ATC facilities, and to engage in pre-operational testing, at some point "on or after September 15, 2007." In fact, while TerreStar has conducted testing of various components of its future network, all RF transmissions have been in adjacent AWS/PCS bands pursuant to an experimental license,[51] and TerreStar has no plans to transmit on 2 GHz MSS frequencies before June 26, 2008. Accordingly, Sprint's claim that TerreStar has triggered a reimbursement obligation is factually inaccurate.

Even if TerreStar had initiated pre-operational testing that included transmissions in the 2 GHz MSS band, moreover, Sprint would have no basis for seeking reimbursement. Pre-operational test transmissions are made on a secondary basis,[52] and it is not necessary for BAS stations to be relocated before such testing may proceed.[53] Tests that can be made in the absence of relocation do not trigger relocation obligations.[54]

---

[50] *See* Sprint Comments at n. 19.
[51] *See* WD2XZV.
[52] *See* Section 25.143(j) of the Commission's rules, which makes pre-operational testing subject to the "no harmful interference" provisions of Sections 5.85(c) and 5.111 of the rules.
[53] *See* MO&O, ¶ 33 ("We do not believe that it is necessary to require Sprint … to complete the BAS relocation before the MSS operators' satellites are launched and need to be tested. ").
[54] *See, e.g., Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, 15 FCC Rcd 16127, ¶ 24 (2000)(the Commission's relocation policy "permits new licensees that can share spectrum with incumbents to do so without incurring relocation obligations").

C. Sprint's Suggestions for Changing the Conditions Under Which TerreStar Would Have to Reimburse Sprint for BAS Relocation Expenses Are Beyond the Scope of the FNPRM and Misguided.

In its comments, Sprint suggests that the 800 MHz/BAS true up and reimbursement schedules should be altered based on the fact that Sprint will not have completed BAS relocation or 800 MHz realignment by the deadlines originally established by the Commission.[55] Several comments are in order with respect to this suggestion.

First, no changes in the 800 MHz/BAS true up and reimbursement schedules have been made to date. In the MO&O, the Commission emphasized that its extension of the BAS relocation deadline "has no impact on any other aspect of the rebanding timetable set forth in the Commission's orders in this proceeding, and in particular does not alter the 36-month timetable for completing rebanding in the 800 MHz band."[56] The Commission also stated unequivocally that it was taking "no action with respect to the true-up date."[57]

Second, Sprint's suggestion for the 800 MHz/BAS true up and reimbursement schedules to be revisited is beyond the scope of the FNPRM, which makes no mention of true up and reimbursement schedules. Because the schedules have implications for both the BAS band and the 800 MHz band, moreover, they cannot be reconsidered without giving notice and an opportunity for comment to 800 MHz stakeholders. If

---

[55] *See* Sprint Comments at 11.
[56] MO&O, ¶ 35.
[57] MO&O, n. 34.

Sprint wants the Commission to reconsider the 800 MHz/BAS true up and reimbursement schedules, which were adopted in a rulemaking proceeding, it should file a petition for rulemaking.

Finally, if and when Sprint makes a procedurally proper filing requesting alterations to the 800 MHz/BAS true up and reimbursement schedules, it will face a high hurdle to the extent it wishes to extend the date by which TerreStar triggers reimbursement obligations if it "enters the band." When the Commission approved the Sprint/MSTV/NAB plan for BAS relocation in August 2004,[58] TerreStar was not required to bring its 2 GHz MSS system into operation until November 2008,[59] which is months after the deadline of June 26, 2008, for triggering a reimbursement obligation. Sprint could have had no expectation, therefore, of recouping relocation expenses from TerreStar, and TerreStar had a reasonable expectation that it would not be required to reimburse Sprint for these relocation expenses. If the "enter the band" date were to be extended, it would disturb these settled expectations and reward Sprint for not completing 800 MHz realignment within the 36 month transition period established by the Commission. Such a reward would be particularly inappropriate given that Sprint appears to have conceded that some of the delays in 800 MHz rebanding are due to factors within its control.[60]

---

[58] *See Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969 (2004).
[59] *See TMI Communications and Company, Limited Partnership and TerreStar Networks Inc.*, Memorandum Opinion and Order, FCC 04-144, ¶ 59 (June 29, 2004).
[60] *See Improving Public Safety Communications in the 800 MHz Band,* WT Docket 02-55, Third Memorandum Opinion and Order, FCC 07-167, ¶ 14 (Sept. 12, 2007)("Sprint did not clear all Wave 1 Channel 1-120

CONCLUSION

In sum:

- The uncontested technical record in this proceeding supports elimination of the Top 30/Fixed Links Rule by showing that it is technically feasible for 2 GHz MSS systems and BAS stations to share spectrum during completion of the BAS relocation process.
- The claims of Sprint and MSTV/NAB that TerreStar is not living up to BAS relocation responsibilities are not germane and are contradicted by the Commission's orders assigning those responsibilities to Sprint and Sprint's actions without complaint until Sprint fell behind schedule and its relocation efforts came under scrutiny.
- Sprint's claim that it is entitled to reimbursement of BAS relocation expenses from TerreStar also is not germane and is based on the factually erroneous assumption that TerreStar has "entered" the 2 GHz band.
- If Sprint wishes for the Commission to revisit its reimbursement policy, then Sprint needs to file a petition for rulemaking.

---

incumbents by the eighteen-month date as the Commission required … [and] Sprint has not asserted that all of the delays were beyond its control."), *aff'd sub nom. Sprint Nextel Corporation v. FCC,* No. 07-1416 (D.C. Cir., May 2, 2008).

Accordingly, and for the reasons stated herein and in TerreStar's initial comments, the Commission should eliminate the Top 30/Fixed Links Rule as of January 1, 2009.

Respectfully submitted,

TERRESTAR NETWORKS INC.

By: /s/Douglas I. Brandon

Douglas I. Brandon
Vice President, Regulatory Affairs
TerreStar Networks Inc.
12010 Sunset Hills Road
Reston, VA 20191
(703) 483−7800

OF COUNSEL:
Joseph A. Godles
GOLDBERG, GODLES, WIENER
& WRIGHT
1229 Nineteenth Street, N.W.
Washington, DC 20036
(202) 429-4900
Counsel for TerreStar Networks Inc.

May 30, 2008