**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 |

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

New ICO Satellite Services G.P. ("ICO") submits these reply comments regarding the Further Notice of Proposed Rulemaking ("FNPRM")[1] in the above-captioned proceeding. As ICO discusses below, the record in this proceeding supports the Commission's proposal to eliminate, as of January 1, 2009, the rule prohibiting 2 GHz mobile satellite service ("MSS") operators from commencing operation until broadcast auxiliary service ("BAS")[2] licensees in the

[1] *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*").

[2] The band is also authorized for use by the Cable Television Relay Service and the Local Television Transmission Service, in addition to BAS. For purposes of this proceeding, the Commission refers to all three of these services under the collective term "BAS."

thirty largest markets and all fixed BAS links have been relocated ("top 30 market rule"). In addition, the record shows that permitting MSS operations on a primary basis in cleared markets and on a secondary basis in uncleared markets strikes the appropriate balance that enables MSS operators to provide valuable nationwide services, while avoiding disruption to BAS operations. Finally, the public interest is best served by allowing MSS operations on a primary basis in all markets as soon as possible.

## I. THE RECORD SHOWS THAT ELIMINATING THE TOP 30 MARKET RULE BEST SERVES THE PUBLIC INTEREST

The record in this proceeding supports the Commission's tentative conclusion that the top 30 market rule should be eliminated in its entirety as of January 1, 2009. In fact, retaining the rule no longer serves the Commission's underlying policy objective of "strik[ing] the appropriate balance that is 'not unreasonably burdensome upon MSS, while also fair to the incumbents.'"[3] As the Commission stated, "[b]ecause of the delay in the relocation of BAS, 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.[4] Now that the Commission has granted Sprint and the broadcasters an 18-month extension of the September 7, 2007 relocation deadline, retaining the top 30 market rule would impose an unreasonable burden upon MSS operators by preventing them from commencing service for a much longer period than the Commission previously anticipated.

---

[3] *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service*, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd 23638, ¶ 35 (2003) ("*2 GHz Relocation Third R&O*").

[4] *Order and FNPRM* ¶ 34

Sprint and the broadcasters repeatedly have sought and successfully obtained certain regulatory modifications that serve their interests while imposing additional burdens upon MSS operators. For example, at BAS licensees' request, the Commission eliminated the requirement that all BAS licensees outside the top 30 markets cease operations in the 2 GHz MSS uplink band once the top 30 markets have been cleared and MSS operators have commenced operations.[5] MSS operators thus effectively lost the right to operate nationwide on a primary basis immediately upon commencement of service. In eliminating that requirement, the Commission assumed that most, if not all, BAS licensees would be relocated before MSS providers commence operations under their milestone requirements.[6]

More recently, Sprint and the broadcasters obtained an 18-month extension of the September 7, 2007 relocation deadline.[7] Despite the substantial length of that extension period and the resulting impact on MSS operators and their subscribers, Sprint and the broadcasters now oppose any regulatory modifications that would ease the additional burdens placed upon MSS operators.

On May 9, 2008, ICO certified that its 2 GHz MSS system is operational.[8] Even with the proposed elimination of the top 30 market rule, ICO will be unable to commence service for nearly eight months as a result of the BAS relocation delays. Requiring ICO to delay service for

---

[5] *See Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 270 (2004).

[6] *Id.* Also at the BAS licensees' request, the Commission dropped plans to allow MSS operators to clear BAS Channel 1 and then BAS Channel 2 in separate stages in favor of a modified single-phase relocation plan. *See 2 GHz Relocation Third R&O* ¶¶ 35-44.

[7] *See Order and FNPRM* ¶ 1.

[8] *See* Letter from Suzanne H. Malloy, Sr. V.P. Regulatory Affairs, ICO to Marlene H. Dortch, Secretary, FCC (May 9, 2008).

an even longer period (or possibly indefinitely if Sprint and the broadcasters seek further extensions of the BAS relocation deadline) without any opportunity to derive service revenues to cover construction and operational costs would be grossly inequitable. Moreover, both ICO and TerreStar have provided technical studies demonstrating that they can provide nationwide MSS in the 2000-2020 MHz band without causing interference to BAS operations.[9]

In contrast, the Association for Maximum Service Television, Inc., the National Association of Broadcasters (collectively "MSTV/NAB"), and Sprint offer no reasoned basis or technical support for retaining the top 30 market rule. MSTV/NAB merely speculate that MSS will cause interference to BAS operations, but provide no interference analysis to substantiate their claims.[10] They also do not explain how allowing MSS operations on a primary basis in cleared markets would cause harmful interference to BAS operations in uncleared markets.

---

[9] *See* MSS-BAS Spectrum Sharing Analysis (prepared by Wireless Strategy, Apr. 30, 2008) attached as Annex A to Comments of New ICO Satellite Services G.P., WT Dkt. No. 02-55, ET Dkt. Nos. 00-258 & 95-18 (Apr. 30, 2008) ("ICO Comments"). ICO's study conclusively shows that there will be no effect on BAS communications from ICO device transmissions during the BAS clearing period. In addition, the study shows that the circumstances necessary to create even the opportunity for an MSS transmission to affect BAS are extremely improbable. All comments referenced in this document were filed on April 30, 2008, in Docket Nos. 02-55, 00-258 and 95-18, and will be short cited.

[10] MSTV/NAB are incorrect that ICO has not provided sufficient technical information about its ability to coexist with BAS. MSTV/NAB Comments at 6. All relevant earth station information has been on file since December 2007, including applications for uplink stations in South Easton, MA and Ellenwood, GA (Call Sign E070291, File No. SES-LIC-20071221-01753, Granted April 2, 2008, by Public Notice, Rpt. No. SES-01023, dated April 9, 2008), and applications for all planned ICO user devices (Call Sign E070272, File Nos. SES-LIC-20071203-01646, SES-AMD-20080219-00172). In addition, ICO has offered to discuss more detailed technical parameters, and has met with broadcasters in person and by phone to explain the nature of specific ICO services to be provided during the remainder of the BAS transition period.

Although MSTV/NAB do not object to allowing MSS operations on a secondary basis, they argue that MSS and BAS operators will be unable to share spectrum in uncleared markets.[11] Both ICO and TerreStar studies, however, show that secondary MSS operations in uncleared markets beginning in January 2009 would not disrupt BAS operations.

Furthermore, Sprint offers no reasoned basis for retaining the top 30 market rule, but rather introduces new and baseless arguments on a topic for which the Commission did not even seek comment. The Commission's regulations already provide detailed rules regarding reimbursement by MSS entrants. Sprint, which notably did not request any change in these rules when it was seeking an extension of the September 7, 2007 relocation deadline, has provided no reason to modify the reimbursement requirements now.

ICO agrees with MSTV/NAB and TerreStar that MSS coordination with the broadcasters to date has enabled MSS operators to proceed with plans for testing their satellite systems after launch and for conducting market trials in limited geographic areas. ICO is committed to continued coordination with broadcasters and their representatives on any issues related to the BAS transition. Although ICO has shown that its MSS operations will not cause harmful interference to BAS operations, ICO agrees with TerreStar that effective coordination requires that the parties work cooperatively. ICO also does not oppose the MSTV/NAB proposal that the Commission require MSS operators to establish a coordinator to be contacted in case of interference in adjacent uncleared markets.

---

[11] *See* MSTV/NAB Comments at 5, 7. MSTV/NAB do not oppose allowing MSS entry on a market-by- market basis provided that interference protections are maintained. As part of this support, however, MSTV/NAB request that the FCC withhold permission to deploy ATC until all BAS operations have been relocated. *See id.* at 10. MSTV/NAB do not provide a clear rationale for this request. ICO opposes this request, but in any event has committed to operating ATC only in cleared areas. *See* ICO Comments at 5, 8.

## II. A FIXED BAS RULE WOULD NOT BE CONSISTENT WITH THE COMMISSION'S GOALS AND SHOULD BE ELIMINATED

Requiring all fixed BAS links to be cleared before MSS operators can begin operations ("fixed BAS rule") would not advance the Commission's goals of ensuring timely MSS entry and minimizing disruption to BAS operations. In fact, the requirement would serve merely to delay MSS entry, without any measurable public interest benefit. At this very late date, with ICO's satellite in orbit and certified operational, and TerreStar's satellite scheduled to be launched later this year, delaying MSS operations until all fixed BAS links are relocated would not serve the public interest. Sprint and MSTV have not provided reasonable solutions for completing relocation of fixed BAS links by January 1, 2009.[12] In any event, MSS operators have demonstrated that their operations will not interfere with BAS operations, whether fixed or mobile.

Moreover, neither Sprint nor MSTV/NAB has articulated any reason for adopting a fixed BAS rule. Relocating fixed BAS links has never been prioritized under the joint Sprint/BAS relocation plan and should not now be employed as an obstacle to delay MSS entry into the band. Sprint, as a key proponent of the initial 2004 joint plan and the revised 2007 "consensus plan," has been including fixed links in the cluster-based clearing process (and has never even acknowledged that the Commission placed a condition on its 1.9 spectrum grant requiring all BAS fixed links to be cleared by September 2006). In this context, MSTV/NAB's argument to

[12] Sprint also has repeatedly misrepresented the nature and status of it so-called offer to enter into a contractual agreement to secure ICO's participation in the BAS relocation process. ICO has tried to avoid burdening the Commission with a back-and-forth on this issue, but Sprint continues to inaccurately reference this matter. ICO and Sprint have had a number of discussions in which Sprint confirmed that it would require ICO to execute a patently unreasonable agreement — one that would cause ICO to surrender valuable rights and change the Commission's rules applicable to the parties, contrary to common sense, public policy and FCC process, "in consideration for" Sprint's willingness to allow ICO's participation in the process.

retain a requirement to relocate fixed BAS links should be rejected as inconsistent with their support of both the 2004 joint plan and the revised 2007 consensus plan.

## III. SPRINT'S AND MSTV/NAB'S REQUEST TO MODIFY THE BAS REIMBURSEMENT REQUIREMENT FALLS OUTSIDE THE SCOPE OF THIS PROCEEDING AND SHOULD BE REJECTED

Sprint's and MSTV/NAB's request to categorically require MSS operators to reimburse a *pro rata* share of Sprint's BAS relocation costs falls outside the scope of this proceeding and therefore should be rejected. As an initial matter, Sprint and MSTV/NAB are not requesting that the Commission merely reaffirm MSS operators' existing BAS reimbursement obligation, despite their rhetoric to the contrary. Rather, they are seeking to modify the existing obligation by requiring all 2 GHz MSS operators, without exception, to reimburse a *pro rata* share of Sprint's BAS relocation costs.[13] As the Commission recently reaffirmed, Sprint is entitled to seek a *pro rata* reimbursement of its BAS relocation costs only from "any MSS entrant that enters the band during the [36-month] transition period."[14] Nothing in the FNPRM provides any notice that the Commission would consider modifications to the existing BAS reimbursement requirement. Moreover, contrary to Sprint's claim,[15] the BAS reimbursement requirement is

---

[13] *See* Sprint Comments at 6-7; MSTV/NAB Comments at 11.

[14] *Order and FNPRM* ¶ 16.

[15] *See* Sprint Comments at 7. Sprint's assertion that it is owed money due to the "bedrock principle" of Emerging Technologies ("ET") is also wrong. The Commission clearly stated that the ET process is modified in the case of BAS clearing due to the unique circumstances surrounding the award of BAS spectrum to Nextel. The Commission distinguished its 800 MHz reimbursement scheme from traditional reimbursement due to the "unique circumstances in Nextel's receipt of BAS spectrum." *See Improving Public Safety Communications in the 800 MHz Band*, 20 FCC Rcd 16015, ¶ 113 (2005). Even before it made this determination, the Commission stated that it was not clear if traditional relocation and reimbursement rules would apply should Nextel, Sprint's predecessor-in-interest, be awarded spectrum in connection with its 800 MHz clearing deal. *2 GHz Relocation Third R&O* ¶ 10 ("For example, it is not clear

wholly unrelated to the Commission's proposed elimination of the top 30 market rule or to any other issue raised in the FNPRM. Accordingly, the Commission should dismiss Sprint's and MSTV/NAB's request for modification of the BAS reimbursement requirement as outside the scope of this proceeding.[16]

## IV. CONCLUSION

Based upon the foregoing, ICO urges the Commission, as of January 1, 2009, to (1) eliminate the top 30 market rule; and (2) allow MSS operations on a primary basis in cleared markets and on a secondary basis in uncleared markets. ICO further urges the Commission to allow MSS operations on a primary basis in all markets immediately after the Sprint-BAS relocation deadline, but by no later than September 1, 2009.

Respectfully submitted,

NEW ICO SATELLITE SERVICES G.P.

By: /s/ Suzanne Hutchings Malloy

Suzanne Hutchings Malloy
Senior Vice President, Regulatory Affairs
815 Connecticut Avenue, N.W., Suite 610
Washington, D.C. 20006
(202) 330-4005

May 30, 2008

---

how we would apply our traditional cost-sharing principles were we to use portion of the bands to provide relocation spectrum for Nextel's operations in the 800 MHz band …").

[16] The Commission also should reject Sprint's request to the extent that Sprint seeks a declaration that MSS operators have entered the band and thus have triggered their BAS reimbursement obligations. *See* Sprint Comments at 9. Sprint's argument is wrong on the merits and irrelevant to the issues raised in the FNPRM. It therefore should be dismissed.