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October 10, 2008

By Electronic Filing

Ms. Marlene H. Dortch  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: TerreStar Networks Inc.  
WT Docket No. 02-55  
ET Docket Nos. 00- 258 & 95-18  
SAT-MOD-20080516-00106  
Notification of Ex Parte Presentation**

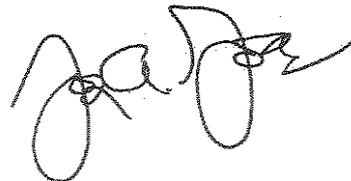
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Dear Ms. Dortch:

On October 9, 2008, Douglas Brandon, Vice President - Regulatory Affairs, of TerreStar Networks Inc. ("TerreStar"), met with Charles Mathias, Legal Advisor to Chairman Martin, to discuss with Mr. Mathias the matters addressed in the two documents attached hereto.

Please direct questions concerning this matter to the undersigned.

Sincerely,



Joseph A. Godles  
*Attorney for TerreStar Networks Inc.*

Attachments:  
cc: Charles Mathias

TerreStar Networks Ex Parte  
In Re: Globalstar Licensee LLC  
SAT-MOD-20080516-00106

- While TerreStar takes no position with respect to Globalstar's specific application, TerreStar requests that the FCC affirm that MSS/ ATC operators have flexibility in designing and deploying their MSS/ ATC systems, consistent with the FCC's policies underlying the ATC rules.
- The FCC's rules permit efficient internal allocation of spectrum between MSS and ATC operations --
  - In the ATC orders, the FCC specifically addressed the issue of band segmentation and declined to impose any restrictions on how MSS/ ATC operators could allocate spectrum between MSS and ATC.
    - "The 'separate-band, separate-operator' approach, however, would, in essence, reallocate spectrum from MSS to other uses. We believe that reconsideration of the spectrum-management decision to allocate resources to MSS is unreasonable and unwarranted."<sup>1</sup>
    - "Imposition of a rigid percentage of MSS/ ATC capacity that must be reserved for MSS would not be conducive to either business success or providing the best possible service to the public."<sup>2</sup>
  - In establishing the ATC rules, the FCC recognized that artificial regulatory constraints would impair MSS/ ATC operators' ability to deploy and operate systems in an operationally and spectrum-efficient manner.
    - To establish a single, fixed percentage of capacity that must be reserved for MSS "would substantially negate the value of dynamic frequency assignment in improving spectrum efficiency."<sup>3</sup>

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<sup>1</sup> *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962, 1996 (2003) ("ATC Order").

<sup>2</sup> *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616, 4625 (2005) ("ATC Reconsideration Order").

<sup>3</sup> *ATC Reconsideration Order* at 4625.

TerreStar Networks Ex Parte  
Globalstar Licensee LLC  
SAT-MOD-20080516-00106

- “Any ‘satellite first-look’ requirement . . . would increase the cost of providing service, hinder call completion, and ultimately reduce system efficiency. . . . We find no significant public interest benefit to offset these serious disadvantages.”<sup>4</sup>
- “We can see no reason why an MSS/ ATC operator would install ATC base stations in any area where customer demand can be adequately accommodated by the operator's satellite system. . . . We therefore decline to add an artificial and spectrally inefficient requirement to the MSS/ ATC rules.”<sup>5</sup>
- The FCC’s policies underlying the ATC rules support the provision of “different” services on the MSS and ATC components of a system --
  - Satellite and terrestrial architectures are different and each component of the system will have different transmission rates, latency, supported protocols, development cycles, and advantages/disadvantages.
- The *ATC Order* makes clear that the FCC expected that MSS/ ATC operators might lease some or all of their spectrum to a terrestrial partner.
  - “For example, even if an MSS licensee were to enter an agreement to lease some or all of the access to its authorized MSS spectrum to a terrestrial licensee, such spectrum could only be used if its usage met the requirements to ensure it remained ancillary to MSS and were used in conjunction with MSS operations, i.e., that it met all of our gating requirements.”<sup>6</sup>
- The FCC’s rules do not require “in-call hand-off” between MSS mode and ATC mode
  - The FCC’s rules require only that an applicant demonstrate that its MSS and ATC services are integrated.

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<sup>4</sup> *Id.*

<sup>5</sup> *ATC Reconsideration Order* at 4626.

<sup>6</sup> *ATC Order* at ¶ 3 n.5.

TerreStar Networks Ex Parte  
Globalstar Licensee LLC  
SAT-MOD-20080516-00106

- Globalstar's original ATC application, which the International Bureau approved in 2006, specifically indicated that its system would not "allow for in-call switching from MSS mode to ATC mode or vice versa."<sup>7</sup>

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<sup>7</sup> *In the Matter of Globalstar LLC*, File No. SAT-MOD-20050301-00054, Exhibit B-1 at p. 2 (filed March 1, 2005); *see also* Exhibit B-4 at p. 2 ("At the moment, the Globalstar ATC system does not contemplate in-call hand off between the MSS mode and the ATC mode.").



**Douglas Brandon**  
**Vice President -- Regulatory Affairs**

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September 8, 2008

EX PARTE

FILED ELECTRONICALLY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St., S.W.  
Washington, DC 20554

**Re: WT Docket No. 02-55, ET Docket No. 00-258, and ET Docket No. 95-18**

Dear Ms. Dortch:

TerreStar Networks Inc. ("TerreStar") hereby comments on a letter that Sprint Nextel Corporation ("Sprint") filed on June 25, 2008, in the above-referenced proceeding. For reasons that are discussed below, TerreStar respectfully requests that the Commission, if it grants any part of the relief requested by Sprint, clarify that June 26, 2008, remains the date on which the reimbursement obligations of mobile satellite service ("MSS") licensees sunset if the MSS licensees had not entered the 2 GHz band.

#### **Significance of June 26**

The Commission previously established June 26, 2008, as a date of significance for the following four purposes relating to reconfiguration of the 800 MHz band and relocation of broadcast auxiliary service ("BAS") stations from a portion of the 2 GHz band:

- June 26 was the final day of the 36 month period during which Sprint was required to complete reconfiguration of 800 MHz systems in non-border areas.
- June 26 marked the beginning of a six month true up period. Sprint is required to make an anti-windfall payment to the U.S. Treasury by the end of this six month period if the value of certain spectrum Sprint has been awarded, which is approximately \$4.8 billion, exceeds the value of spectrum Sprint is vacating, pegged at approximately \$2 billion, plus certain costs to be incurred by Sprint, to the extent not reimbursed, in connection with reconfiguring the 800 MHz band and relocating BAS stations and stations in the 1910-1915 MHz band.
- Sprint only can claim credit in the true up process for 800 MHz reconfiguration and BAS relocation expenses it incurred on or before June 26.
- June 26 is the sunset date for the reimbursement obligations of 2 GHz MSS licensees. If an MSS licensee entered the 2 GHz band on or before June 26, then Sprint could seek reimbursement from the licensee for a *pro rata* share of eligible BAS relocation expenses. If the MSS licensee did not enter the 2 GHz band on or before June 26, Sprint cannot seek reimbursement from the licensee.

### Sprint Letter

One day prior to June 26, Sprint filed the letter that TerreStar addresses herein.<sup>1</sup> In its letter, Sprint asks that the Commission use a date later than June 26, 2008, as the relevant date for the first three of the four purposes identified above. Sprint characterizes these changes as “housekeeping” related to waivers the Commission has granted to public safety licensees of the deadline for reconfiguring their 800 MHz systems and an extension the Commission has granted of the deadline for completing

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<sup>1</sup> Letter, WT Docket No. 02-55, from Lawrence R. Krevor, Vice President – Spectrum, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC.

BAS relocation.<sup>2</sup> TerreStar takes no position concerning Sprint's request that the June 26 date be modified for these three purposes.

Although Sprint's letter is not free from ambiguity, TerreStar does not read the letter as asking the Commission to revisit the fourth purpose identified above for which June 26 is significant, *i.e.*, the sunset date for MSS reimbursement obligations. Needless to say, revisiting that date would be more than a matter of "housekeeping."

Sprint appears to disclaim any intention of asking the Commission to revisit the sunset date. In a footnote to its letter, Sprint acknowledges that "both MSS licenses [*i.e.*, TerreStar and ICO] have privately disputed certain aspects of their reimbursement obligation" and states that "such disputes are unrelated to and outside the scope" of its letter.<sup>3</sup> Changing the sunset date would be directly related to these disputes, not unrelated to them, because the date by which the MSS licensees had to enter the 2 GHz band to trigger a reimbursement obligation, and whether the MSS licenses entered the band by that date, is the central focus of the disputes. Accordingly, it appears that Sprint, consistent with the position it took in a recent lawsuit,<sup>4</sup> acknowledges that the MSS reimbursement sunset date has come and gone.<sup>5</sup>

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<sup>2</sup> Sprint letter at 1.

<sup>3</sup> Sprint letter at n. 27.

<sup>4</sup> On the same day Sprint submitted its letter to the Commission, it filed a lawsuit seeking to recover certain of its current and expected BAS relocation costs from TerreStar and ICO. *Sprint Nextel Corporation v. New ICO Satellite Services G.P. and TerreStar Networks Inc.*, Civil Action No. 1:08cv651-LMB/TRJ (ED Va.). In its complaint and briefs in that lawsuit, Sprint contended that TerreStar and ICO had entered the band before June 26, which it treated as the pertinent "enter the band" date. *See* Complaint to Enforce Orders of the Federal Communications Commission (June 25, 2008) at ¶¶ 16-19, 26-36, 42-56; Sprint Nextel's Brief in Opposition to Defendant TerreStar Networks Inc.'s Motion To Dismiss at 1. The Court granted TerreStar's motion to stay the matter, based on the doctrine of primary jurisdiction, pending FCC action. *See* Order (Aug. 29, 2008).

<sup>5</sup> Sprint states in its letter that the 800 MHz R&O "contains references" to June 26 in connection with its discussion of the MSS licensees' reimbursement obligations. Sprint letter at 8. Sprint asks that the Commission "harmonize these references" with "the postponed true-up" requested in the letter because otherwise "the postponed true-up may not capture all of the costs and reimbursements required by" the 800 MHz R&O. *Id.* A plausible reading of this passage, particularly given the disclaimer in n. 27 of the letter, is that if an MSS licensee has entered the 2 GHz band prior to the June 26 sunset date for reimbursement obligations, Sprint would like the right to seek reimbursement from the licensee of eligible BAS relocation expenses even if the expenses have been incurred between June 26, 2008, and the commencement of the proposed new start date for the true-up period.

Assuming the Commission agrees with TerreStar's interpretation of Sprint's letter, it is important that the Commission provide one clarification. If the Commission grants Sprint's request to change the June 26 date for purposes of the 800 MHz reconfiguration deadline and true-up accounting, it should state explicitly that it is not revisiting the establishment of that date as the MSS reimbursement sunset date. Absent this clarification, persons could be left with the mistaken impression that the sunset date also had been changed.<sup>6</sup>

There is no reason, moreover, to revisit the reimbursement sunset date. As TerreStar has previously shown,<sup>7</sup> Sprint could have had no reasonable expectation of recouping BAS relocation expenses from TerreStar, and TerreStar had a justifiable expectation that it would not be required to reimburse Sprint for these relocation expenses. When the Commission adopted the 800 MHz R&O in 2004, TerreStar was not required to bring its 2 GHz MSS system into operation until November 2008, which is months after the deadline of June 26, 2008, for triggering a reimbursement obligation. If the "enter the band" sunset date were to be extended at this late juncture, it would disturb these settled expectations; reward Sprint for not completing 800 MHz realignment within the 36 month transition period it had agreed to; and jeopardize the initiation of service on TerreStar's innovative integrated satellite/terrestrial network, which is optimized for public safety and rural broadband use.

The ground rules for MSS reimbursement, including the sunset date, strike an "appropriate balance" that the Commission found is "not unreasonably burdensome on [Sprint] Nextel or MSS licensees."<sup>8</sup> The sunset date takes into account, among other things, the fact that Sprint volunteered to fund the cost of BAS relocation as a *quid pro quo* for securing access to additional spectrum worth billions of dollars. The sunset date also reflects the need for the MSS licensees, both of which are start-up companies, to have certainty as to the circumstances under which they would be subject to reimbursement obligations that would have a major impact on their budgets. The fact that Sprint has been untimely in its implementation of the obligations it undertook to

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<sup>6</sup> If the Commission, notwithstanding the above, concludes Sprint is seeking to revisit the MSS reimbursement sunset date, then TerreStar respectfully requests that the Commission provide notice of its determination and give TerreStar and other interested parties an opportunity to comment on the reimbursement issue through a rulemaking. See Reply Comments of TerreStar Networks Inc., WT Docket No. 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 (May 30, 2008) at 17-18.

<sup>7</sup> See Reply Comments of TerreStar Networks Inc., WT Docket No. 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 (May 30, 2008) at 18.

<sup>8</sup> 800 MHz R&O, ¶ 261.

reconfigure the 800 MHz band and relocate BAS stations is no reason to disturb the balance that the Commission has struck.

Conclusion

For the reasons stated herein, if the Commission grants any part of the relief requested by Sprint, it should clarify that June 26, 2008, remains the date on which the reimbursement obligations of MSS licensees sunset if the MSS licensees had not entered the 2 GHz band.

Sincerely,

/s/ Douglas Brandon  
Douglas Brandon

cc: Julius Knapp, FCC  
Geraldine Matise, FCC  
Jamison Prime, FCC  
Nicholas Oros, FCC  
John Giusti, FCC  
Howard Griboff, FCC  
Paul Locke, FCC  
David Furth, FCC  
Lawrence Krevor, Sprint  
Suzanne Hutchings Malloy, ICO