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November 20, 2008

Notice of Oral *Ex Parte* Communication

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. Room TW-A325  
Washington, DC 20554

Re: *Improving Public Safety Communications in the 800 MHz Band, et seq.*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18

Dear Ms. Dortch:

On behalf of Sprint Nextel Corporation, Lawrence Krevor, Charles Logan, and I met yesterday with Charles Mathias of the Office of Chairman Kevin Martin. We reviewed the attached presentation. If you have any questions concerning this submission, please contact me.

Sincerely,

Trey Hanbury, Esq.  
Director, Sprint Nextel Corporation



# ***BAS Relocation Cost Recovery***

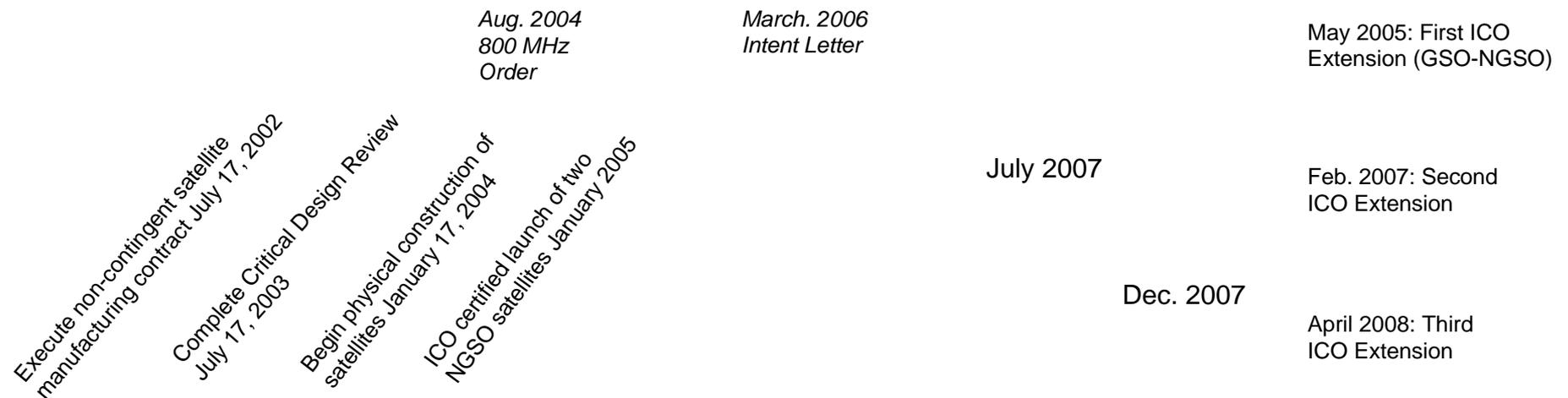
*November 2008*

# BAS Relocation Obligations

- *The 2 GHz MSS licensees – ICO Communications and Terrestar Networks – have an equal, independent and so-far unmet obligation to relocate the 1.9 GHz BAS incumbents.*
  - *In 2000, the FCC ordered MSS licensees to relocate BAS and pay a proportional share of the BAS clearing costs.*
  - *The FCC held that “[a]ll MSS licensees who benefit from relocation of BAS are responsible for contributing, as a condition of their licenses.”*
- *The Commission has repeatedly reaffirmed MSS licensees’ BAS relocation obligations and required MSS licensees to reimburse Sprint to prevent the MSS licensees from receiving a windfall at the expense of American taxpayers, Sprint, or both.*
  - *FCC 2004: “the first entrant may seek reimbursement from subsequently entering licensees for a proportional share of the first entrant’s costs in clearing BAS spectrum, on a pro rata basis according to the amount of spectrum each licensee is assigned.”*
  - *FCC 2004: “licensees that ultimately benefit from the spectrum cleared by the first entrant shall bear the cost of reimbursing the first entrant for the accrual of that benefit.”*
  - *FCC 2008: “[b]ecause there are two authorized MSS systems in the 2000-2020 MHz MSS band, each MSS operator is assigned 10 MHz of spectrum. ... The pro rata share of each MSS operator will be 2/7 of the total 35 megahertz of spectrum.”*
- *More than eight years after the FCC adopted the MSS-BAS relocation rules, ICO and Terrestar have never relocated a single BAS licensee and now refuse to reimburse Sprint Nextel for any portion of the hundreds of millions of dollars it has incurred clearing spectrum that the MSS licensees occupy.*
  - *The MSS licensees long ago entered the 2 GHz band.*
  - *The true-up date was designed to prevent double recovery under accounting rules, not to overrule twenty years of precedent and provide MSS with a free-ride at taxpayers’ or Sprint Nextel’s expense.*

# ICO Satellite Milestone Extensions

July 2001   Aug. 2002   Aug. 2003   Aug. 2004   Aug. 2005   Aug. 2006   Aug. 2007   Jun. 2008   Aug. 2009   Aug. 2010



## ICO 2005 Satellite Implementation Milestones

- Commence coordination of the physical operation of the satellite July 17, 2005
- Place order for TWTAs September 15, 2005
- Complete bus wire harness fabrication January 15, 2006
- Start communications panel/payload integration March 1, 2006
- Complete propulsion integration May 1, 2006
- Complete bus integration July 1, 2006
- Complete coordination of the physical operations of the satellite, and file modification applications July 17, 2006
- Complete main body integration October 1, 2006
- Complete reference performance test January 1, 2007
- Complete thermal vacuum test March 1, 2007
- Launch satellite July 1, 2007 \* \* \*
- Certify that satellite is operational July 17, 2007 \* \* \*

*Delayed or subsequently waived milestones are denoted by one asterisk for each delay.*



# Terrestar Satellite Milestone Extensions

July 2001   Aug. 2002   Aug. 2003   Aug. 2004   Aug. 2005   Aug. 2006   Aug. 2007   Jun. 2008   Aug. 2009   Aug. 2010

Aug. 2004: 800 MHz  
Order

March. 2006  
Intent Letter

June 2004:  
MSS LOI  
Reinstatement

Feb. 2003: MSS  
LOI Revocation

July 2007

Oct. 2007:  
First Terrestar  
Extension

Nov. 2008

- Terrestar 2004 Satellite Implementation Milestones
- Complete Critical Design Review
  - Begin physical construction of satellite
  - Launch satellite into assigned orbital location
  - Certify entire system operational

November 2004  
March 2005  
November 2007  
November 2008

Nov. 2008:  
Second  
Terrestar  
Extension

- Terrestar 2007 Implementation Milestones
- Launch satellite into assigned orbital location
  - Certify entire system operational

September 2008\*  
November 2008\*

Nov. 2008

October  
2007

- Terrestar 2008 Implementation Milestones
- Launch satellite into assigned orbital location
  - Certify entire system operational

June 2009\* \*  
August 2009\* \*

Aug. 2009

*Delayed or subsequently waived milestones are denoted by one asterisk for each delay*

# Simple Premise – Compelling Equities

- *Earlier this year, Sprint Nextel filed suit to enforce the BAS relocation obligations of the MSS licensees.*
  - *Terrestar and ICO moved to dismiss the suit.*
  - *The D.C. Circuit denied the motions to dismiss of ICO and Terrestar, but stayed the case pending further FCC action.*
- *In issuing her decision, United States District Judge Leonie M. Brinkema rejected MSS arguments that the Top 30 Markets rule prohibited MSS entry and stated:*
  - *“From a non-legal, just a very simple, old-fashioned approach, putting aside all the requirements and technicalities of the law, if Sprint has paid out hundreds of millions of dollars to clear this bandwidth from which the two defendants will ultimately . . . benefit and if the basic principle within the FCC is that there is a concept of fair reimbursement when subsequent licensees first enter into bandwidth that somebody else has cleared for them, then just from a basic what's fair and what's right standpoint, there ought to be some way of coming to some practical resolution.”*