

**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
)	

**SUPPLEMENTAL JOINT REQUEST
CONCERNING THE BAS RELOCATION**

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I. INTRODUCTION AND SUMMARY

In a March 2008 order in this proceeding, the Commission granted a waiver request filed by Sprint Nextel Corporation (Sprint Nextel), the Association for Maximum Service Television, Inc. (MSTV), the National Association of Broadcasters (NAB), and the Society of Broadcast Engineers (SBE) (collectively, the Joint Parties) to provide additional time to complete the transition of Broadcast Auxiliary Service (BAS) licensees to the new 2 GHz band plan.¹ The Commission found that numerous complexities beyond the control of Sprint Nextel and BAS licensees prevented completion of the BAS relocation within the Commission's

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) (*Extension Order*).

original timeframe. The Commission extended the deadline until March 5, 2009 and expressly held open “the option of extending this waiver upon further consideration.”² The Commission also held in abeyance the Joint Parties’ waiver request for additional time beyond March 5, 2009 to complete the BAS transition.³ By this filing, the Joint Parties respectfully renew their original request to extend the BAS relocation completion date to February 7, 2010.

Since 2005, Sprint Nextel has funded an increase of at least 1,000 American workers across manufacturers, integration vendors and service providers. These engineers, technicians, tower climbers, machinists, welders, metal workers, laborers and others have made great progress in clearing the 1990-2025 MHz band of incumbent BAS operations.⁴ To date, more than one-third of BAS licensees have completed the transition. The transitioned licensees span 76 television markets that cover approximately 104 million Americans. More than 99 percent of all eligible BAS licensees have signed frequency relocation agreements (FRAs) that specify the equipment, labor, terms and conditions necessary for their transition to the new band plan. And even in those markets yet to be transitioned, hundreds of licensees have already installed replacement BAS equipment or are actively working with vendors and manufacturers to complete the equipment ordering and installation process. In short, BAS relocation is well on the road to completion.

In their original, September 2007 waiver request, the Joint Parties requested that the Commission extend the BAS completion date to February 7, 2010.⁵ In December 2007, the Joint Parties supplemented their waiver request after conferring with numerous parties, including

² *Id.* ¶ 29.

³ *Id.* ¶ 34 n.108.

⁴ Most of the jobs supported by the BAS relocation project require considerable skill and expertise and offer wages substantially above the national average.

⁵ Joint Petition for Waiver, WT Docket No. 02-55, at 4, 15 (Sept. 4, 2007).

Mobile Satellite Service (MSS) licensees, who will occupy more than half of the cleared spectrum and wanted the Joint Parties to reprioritize previously scheduled market transitions. In their supplemental filing, the Joint Parties proposed streamlining measures, faster transitions in specified markets to accommodate the MSS licensees' testing and service requirements, and a tentative schedule that potentially could accelerate the BAS transition by up to five months.⁶ The Joint Parties emphasized the tentative nature of the accelerated schedule due to the inherent complexities of BAS relocation and "the fluid nature of a relocation process that depends on the cooperation of scores of different suppliers, integrators, contractors, programmers, installers, and consultants."⁷

Since the *Extension Order*, Sprint Nextel and the broadcast community have used their best efforts to meet the accelerated schedule. These efforts have made the transition more efficient in a number of respects and fully met MSS market-access demands; nonetheless, the BAS transition remains a complex undertaking with new challenges and obstacles seeming to arise at every turn. For example, as described in Section III below, Congress's recent extension of the digital television (DTV) transition deadline will affect the BAS relocation process due to interdependencies between the two transitions.⁸ Thus, despite the ongoing good faith efforts of Sprint Nextel and the vast majority of broadcasters, it is now clear that completing the BAS transition will require until February 2010 as described in the Joint Parties' original waiver request.

⁶ Consensus Plan of Sprint Nextel, MSTV, NAB, and SBE, WT Docket No. 02-55, at 2-3 (Dec. 6, 2007).

⁷ *Id.* at 15.

⁸ Sprint Nextel took no position for or against nor engaged in any direct or indirect advocacy concerning changing the DTV transition completion date.

Granting this request, which the Commission has held in abeyance, will serve the public interest and achieve the Commission's goal of "complet[ing] the BAS transition in a reasonable, prudent, and timely manner."⁹ Granting this request is also critical to "ensur[ing] that the BAS transition causes the minimum possible disruption to BAS operations"¹⁰ consistent with the directives of both the Commission and members of Congress.¹¹

II. SPRINT NEXTEL AND BROADCASTERS CONTINUE TO WORK DILIGENTLY TO COMPLETE THE BAS TRANSITION AS EXPEDITIOUSLY AS POSSIBLE

Sprint Nextel and the broadcast community have made substantial progress in relocating BAS licensees since filing their original waiver request in September 2007. Broadcasters and Sprint Nextel have now completed the difficult and time consuming tasks of compiling BAS equipment inventories and approved quote packages for virtually all eligible BAS incumbents. Sprint Nextel and broadcasters have also met another key milestone: Sprint Nextel has entered into FRAs with 956 out of 965 BAS incumbents eligible for relocation funding. The FRA process, the foundation for the entire BAS relocation project, has consequently been completed for 99% of eligible BAS licensees, a 120% increase from September 2007. In addition, nearly all BAS licensees (99%) have submitted purchase orders for their BAS replacement equipment, a 148% increase. More than 70% of all equipment necessary for the BAS relocation has been

⁹ *Extension Order*, 23 FCC Rcd. 4393, ¶ 42.

¹⁰ *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, ¶ 42 (2000) (*Second MSS R&O*).

¹¹ *See id.*; *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, ¶ 250 (2004) (*800 MHz R&O*) ("[W]e expect that Nextel and MSS licensees will work together to minimize the disruption BAS licensees will experience in the transition."); Letter from Honorable John D. Dingell and Honorable Fred Upton and to FCC Chairman Powell, at 3 (March 23, 2004) (emphasizing that the Commission's BAS relocation procedures "should not jeopardize the ability of local stations to fulfill their primary role – to provide live local coverage of news events").

delivered to licensees. As a result, the vast majority of BAS licensees have some of the new equipment necessary to relocate, and 59% of BAS licensees have *all* of the equipment necessary to relocate.¹² In addition, 46% of BAS licensees have installed their equipment – a stunning 557% increase from September 2007.

As the result of the intensive, cooperative efforts of broadcasters and Sprint Nextel, 36% of primary BAS operators have now transitioned to frequencies above 2025 MHz.¹³ The transitioned areas cover one-third of the nation’s population and include many top 50 markets such as those shown in the table below.

Designated Market Area (DMA)	2007 Population	2007 Market Rank ¹⁴
Chicago, IL	9,742,455	3
Washington, DC	6,182,411	8
Atlanta, GA	6,176,477	9
Houston, TX	5,823,388	10
Phoenix, AZ	4,876,619	12
Tampa-St. Petersburg, FL	4,288,354	16
Cleveland, OH	3,909,143	18
Orlando, FL	3,580,564	20
Baltimore, MD	2,884,569	24
Charlotte, NC	2,749,255	26
Salt Lake City, UT	2,718,187	28
Raleigh-Durham, NC	2,684,491	29
Kansas City, MO	2,354,445	32
San Antonio, TX	2,265,790	35
Greenville-Spartanburg, SC	2,077,203	37
Grands Rapids-Kalamazoo, SD	2,000,427	38
Norfolk-Portsmouth, VA	1,917,408	39
Las Vegas, NV	1,892,351	42

¹² During installations, some of the 59 percent of BAS operators that have received all the necessary equipment may discover that additional supplies, such as additional cabling or other materials, are required. Supplemental materials, the need for which could not have been reasonably anticipated and is only discovered during installation, are excluded from this analysis.

¹³ The percentage of retuned markets presented here is calculated by dividing the 76 retuned designated market areas (DMAs) by 213, the total number of DMAs in the country, including Guam and US Virgin Islands. If one were to calculate the percentage of retuned markets based on the affected population or based on the affected broadcast systems, the resulting percentages would vary slightly.

¹⁴ For purposes of this chart, Sprint Nextel used 2007 population-based market rankings. Sprint Nextel is required to use a different market ranking for purposes of cost reimbursement.

Harrisburg-Lancaster, PA	1,885,053	43
Jacksonville, FL	1,676,788	48
Greensboro-High Point, NC	1,670,716	49
Austin, TX	1,658,909	50

The transitioned markets have proven that the new BAS equipment and band plan meets broadcaster newsgathering needs and that markets can be transitioned without materially disrupting BAS operations. This success has helped build confidence in the BAS transition throughout the broadcast community and generated even greater momentum toward completing relocation. Once transitioned, nearly all broadcasters are finding that the new equipment provides better picture quality and enables remote shots in areas that previously experienced at best marginal electronic newsgathering (ENG) coverage. Despite the challenges of transitioning an entire industry from thirty years of analog ENG systems to new digital ENG equipment, the program is accelerating toward completion with improved ENG results for broadcasters and their viewers.

The success to date could not have been achieved without the good faith efforts and commitment of the nation's broadcasters, Sprint Nextel and a network of manufacturers, suppliers, integrators, installers, tower climbers, and other vendors. Through MSTV, broadcasters have established individual market coordination teams that work closely with Sprint Nextel. These teams consist of engineers from all local stations involved in the BAS transition. These coordinators report to a national coordinator who oversees the transition from the broadcast perspective. Sprint Nextel continues to dedicate dozens of full-time employees to implementing BAS relocation and indirectly employs thousands of American workers throughout the broadcast industry who support the BAS transition and operations. Sprint Nextel has spent hundreds of millions of dollars in funding the up-front costs of BAS relocation. Individual broadcast stations have also committed extensive resources to the transition,

dedicating many hours of employee time and undertaking an overhaul of the BAS systems they depend on every day to gather and deliver news and other programming.

The Joint Parties have undertaken these obligations not only to satisfy the Commission's relocation requirements, but also to meet their own operational objectives. Putting aside the regulatory obligation it shares with the MSS licensees, Sprint Nextel has a powerful incentive to complete BAS relocation as soon as possible. The Commission has recognized the importance of providing Sprint Nextel "timely and certain access to 1.9 GHz spectrum rights in exchange for vacating certain 800 MHz spectrum and assuming the cost of 800 MHz band reconfiguration."¹⁵ Broadcasters also have a strong incentive to expedite the BAS relocation process, as the Commission has recognized.¹⁶ News coverage in the digital age requires electronic newsgathering (ENG) operations to switch to digital. Moreover, given the importance of local news operations, especially during emergencies, local stations and their viewers cannot risk the potential for interference caused by new services to be deployed in the 1990-2025 MHz band. These incentives, along with the substantial progress to date, demonstrate that Sprint Nextel and the broadcast community continue to take all steps within their control to complete the BAS transition as expeditiously as possible.

III. SPRINT NEXTEL AND THE BROADCASTER COMMUNITY CONTINUE TO FACE UNIQUE CHALLENGES IN TRANSITIONING BAS INCUMBENTS

In the *Extension Order* the Commission found "many valid reasons" why Sprint Nextel could not complete the BAS relocation within the Commission's original timetable.¹⁷ As the Commission stated, the record demonstrates that the "BAS transition has proven to be far more

¹⁵ *800 MHz R&O*, 19 FCC Rcd. 14969, ¶ 222.

¹⁶ *Extension Order*, 23 FCC Rcd. 4393, ¶ 38.

¹⁷ *Id.* ¶ 31.

complicated than was first anticipated.”¹⁸ The Commission described a number of unique challenges and complexities that justified extending the BAS completion date:

[T]he BAS facilities of each licensee typically consists of a collection of receive sites, mobile equipment, and control equipment put into operation over a period of thirty or more years, which has made the evaluation of and transition planning for each system a unique undertaking. The equipment is made by a handful of manufacturers who had to ramp up production for this project. There is a shortage of qualified equipment installers and tower climbers, whose schedules must be coordinated with separate work being undertaken as part of the digital television (DTV) transition, and whose ability to install equipment can be hampered by weather events. Unexpected coordination problems between the new radio equipment and the preexisting controllers have arisen. The initial negotiation complications between Sprint Nextel and the broadcasters involving detailed tax and legal considerations significantly retarded Sprint Nextel’s ability to maintain its relocation timetable. Finally, because there was no record of meaningful negotiations or relocation activities having taken place between MSS and BAS at the time the Sprint Nextel relocation plan was adopted, the assumptions incorporated into the plan could not be shaped by any actual relocation experiences.¹⁹

The Commission concluded that the “record presents a compelling case that the BAS transition is sufficiently complex” to warrant an extension of the original relocation deadline.²⁰ Accordingly, the Commission extended the deadline at least through March 5, 2009 and specifically reserved the option of granting a further extension.²¹ Multiple issues beyond the Joint Parties’ individual or collective control indicate that the parties will require an extension of time to complete the BAS transition.

The Joint Parties estimate that they will need until February 7, 2010, to resolve the complexities described in the *Extension Order* and to overcome new challenges that have arisen

¹⁸ *Id.*

¹⁹ *Id.* (citations omitted).

²⁰ *Id.* ¶ 33.

²¹ *Id.* ¶ 29.

during the process. To arrive at the estimated date for completion, Sprint Nextel's on-staff team of broadcast engineers and managers:

- conducted routine meetings and discussions with major BAS equipment manufacturer, integrators, and installers over a period of several weeks;
- monitored and reviewed available and anticipated BAS equipment inventories;
- charted market-by-market transition progress throughout 2007 and 2008;
- assessed projected BAS equipment delivery dates for each station and mapped delivery dates to each DMA and DMA cluster;
- accounted for the reprioritization of markets to meet MSS market-entry demands;
- assessed the likelihood and potential duration of installation problems based on accumulated experience during the transition;
- estimated the number, length and duration of multi-market installations, such as large, commonly controlled helicopter operations, group licensees and stringers; and
- estimated the impact of the DTV transition date on manufacturer production lines, the availability of installers, and the flexibility of on-site broadcast personnel.

As a result, the request for additional time through February 7, 2010 is based not on any one factor, but rather the totality of the circumstances affecting the transition. The principal factors affecting transition progress are explained in greater detail below.

Complexity of the BAS Transition. The Commission stated in the *Extension Order* that the “obstacles that Sprint Nextel continues to face in transitioning BAS are daunting, and it would be unrealistic to expect that they will be resolved simply or easily.”²² The Commission’s observation continues to hold true. Despite the best efforts of Sprint Nextel and the broadcast community, the BAS transition continues to present the same daunting challenges described in the *Extension Order*. The limited number of BAS equipment manufacturers, installers, tower climbers, and other vendors still struggle to confront the unique surge in demand for their services at the same time that the DTV transition is competing for their services, a situation that

²² *Id.* ¶ 33.

will unexpectedly continue for several months due to the recent delay of the DTV transition. Moreover, as described in the *Extension Order*, each of the 965 primary BAS systems eligible for relocation has its own unique configuration requiring its own unique relocation plan and set of replacement equipment. For example, as detailed in a previous Sprint Nextel report, transitioning the Reno, Nevada market involved modifying BAS facilities on a snow-capped mountain that required the use of specialized snow vehicles to gain access to the facilities.²³ Similarly, installers seeking to replace decades-old equipment with new integrated BAS facilities in Greensboro, North Carolina discovered an asbestos problem in the building housing the equipment; discovery of the problem prompted the initiation of an asbestos abatement program, which delayed market transition.²⁴

Delays Caused by Weather and Other Emergencies. Weather and natural disasters continue to cause unexpected delays. Cleveland, for example, experienced unusually harsh and early winter conditions in late 2008, restricting access to some key facilities at a critical time during the transition in that market. The Cleveland transition, which had already been delayed because of the need for international frequency coordination with Canada, consequently took longer than expected. Similarly, the wildfires that plagued the Los Angeles area in 2008 led to transition delays in that market by sapping broadcast station resources and limiting available downtime for dozens of electronic newsgathering vehicles in the market. And in Boston, a series of unavoidable and seemingly inconsequential delays by manufacturers, installers, and other vendors of a few days or weeks each pushed the original relocation date for Boston back by two

²³ Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 2 (Aug. 1, 2008).

²⁴ Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 2 (June 2, 2008).

months.²⁵ By then, however, snow, rain, ice, and wind had set in on Boston and began to delay or prevent tower climbing activity. The harsh weather conditions also constrained the vendors' ability to deploy limited tower climbing resources to other markets not affected by the weather. Thus, adverse weather conditions in one area can lead to delays in the DMA cluster and then ripple through the timing of subsequently scheduled markets.

Market-Prioritization Demands of MSS Licensees. During an earlier stage of this proceeding, the two MSS licensees, ICO and Terrestar, which occupy twenty of the thirty five megahertz that must be cleared of BAS operations, sought priority access to twenty-five separate DMAs.²⁶ Completing the MSS priority markets diverted resources from DMAs in which broadcasters otherwise could have completed the relocation process on an accelerated basis. Nevertheless, Sprint Nextel and the broadcast community agreed to depart from the optimally efficient BAS relocation plan and subsequently met every one of the MSS licensees' demands for priority access to twenty-five DMAs by the September 2008 date by which the MSS licensees said they needed the markets cleared.²⁷ While successful relocation of scores of BAS systems in the twenty-five MSS-priority markets, which cover a combined population of more

²⁵ The original transition plan called for Boston, Massachusetts to relocate in April 2009; however, the transition date for Boston was advanced to October 2008 to accommodate the Commission's desire for an accelerated transition schedule. The accelerated schedule left little room for error and, unfortunately, not all manufacturers were able to provide all the equipment for all of the stations until November 2008; in addition, one of the installers involved in the Boston faced a backlog of work in other markets, which delayed their ability to commence installation in Boston until December 2008.

²⁶ The Designated Market Areas that were accelerated for the MSS licensees were: 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, 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.

²⁷ Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 1 (Oct. 1, 2008).

than 40 million people, stands as a considerable achievement, meeting the MSS licensees' market-entry demands unavoidably diverted resources from the optimal BAS transition plan and delayed completing the overall transition by several months.

Avoiding Material Disruption to Broadcaster Operations. Coordinating the transition to minimize disruptions to broadcaster news and sports coverage creates inefficiencies in installation and burdens an already taxed installation workforce. Broadcaster coverage of the recent presidential election, for instance, constrained relocation activities during October and November of last year.²⁸ The BAS transition process also continues to accommodate the “sweeps” periods that occur four times each year. Because any material disruption to news and other programming during these periods can harm advertising ratings and revenues, some licensees have chosen not to install new equipment or transition to the new band plan during sweeps months. Planning for unexpected news events and accommodating reduced activity during sweeps periods requires building additional time into the BAS transition schedule.

Delay in DTV Transition. The Commission has stated that “it is prudent to set a date beyond the DTV transition date for the completion of the BAS relocation.”²⁹ The Commission recognized that the two transitions are taking place simultaneously and both transitions depend to some degree upon the same limited pool of broadcast engineers, installers, tower climbers, and manufacturers. The delay in the DTV transition will seriously affect the availability of technical people. For example, many broadcast engineers were expected to be relieved of the need to continue operating analog facilities after February 17, 2009. With the delay, however, it will be necessary for technical staff to continue to devote time to both facilities. Engineering resources

²⁸ Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 2 (Feb. 3, 2009); Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 2 (Nov. 26, 2008).

²⁹ *Extension Order*, 23 FCC Rcd. 4393, ¶ 34.

will be further strained as a result of the staggered transition, as engineers try to assess whether stations shifting to digital TV transmissions cause interference to other stations remaining on their analog channels.

Vendors working on both the BAS and DTV transitions have recognized this resource conflict. “DTV is taking precedence,” Tim Carroll of DSI RF Systems Inc., a major 2 GHz BAS vendor, said recently. “If there’s an issue of our having to do both [DTV and BAS transitions], . . . we take the BAS [transition] second.” In developing the BAS transition plan, the Joint Parties recognized the interdependence of the two transition processes and planned the BAS transition around the February 2009 DTV transition. Thus, postponing the DTV transition from February 17, 2009 to June 12, 2009 will adversely affect the BAS transition schedule and require the Joint Parties to accommodate the conflicting demands placed on the limited pool of trained technicians available to complete both transitions.³⁰ The Joint Parties anticipate that the DTV transition extension to June 12, 2009 will likely result in at least a commensurate delay of the BAS transition progress.

Competing Priorities for Vendors. Sprint Nextel has taken extraordinary measures to encourage timely fulfillment of all purchase orders, up to and including pre-paying hundreds of millions of dollars in purchase orders to allow the industry of broadcast suppliers, integrators, and vendors to ramp up to the considerable additional demands placed upon the industry by the scope of the BAS relocation. Nonetheless, as noted above, the task of relocating BAS licensees is not always every vendor’s uppermost priority given a number of competing considerations.

³⁰ See John Eggerton, “Obama Makes it Official: DTV Deadline Extended to June 12,” MULTICHANNEL NEWS (Feb. 11, 2009), *available at*: <http://www.multichannel.com/article/174042-Obama_Makes_It_Official_DTV_Deadline_Extended_To_June_12.php?rssid=20059>; Sanjay Talwani, “DTV Delay Promises Torment for Broadcasters,” TELEVISION BROADCAST (Jan. 30, 2009), *available at*: <<http://www.tvtechnology.com/article/73894>>.

Helicopters Inc., for instance, is the largest ENG-equipped helicopter operator in the country and leases more than 80 electronic newsgathering helicopters to television stations across the country. While Helicopters Inc. and other vendors have taken leadership roles in ramping up production lines and committing resources to the BAS transition, the BAS transition represents a one-time transaction to a one-time customer, rather than a recurring revenue stream from a repeat customer. As Tom Wagner, Vice President of Business Development at Helicopters Inc. explained recently, the economic reality is that one-time purchasers command different treatment than repeat customers. “I have to tend to my normal business first before I turn to my Sprint Nextel business,” Mr. Wagner said. “[Sprint] Nextel takes the back seat to my day-to-day business. The guy who is going to be with me until I retire is going to be more important” than a one-time purchaser such as Sprint Nextel.

Mr. Wagner’s statement is not unique; other BAS vendors express similar business judgment. Thus, while Sprint Nextel has and will continue to work with all vendors to ensure timely completion of the BAS relocation project, the continued good will and cooperation of the numerous vendors involved in the BAS relocation process remains essential to ensure timely relocation of BAS licensees and is emblematic of the numerous factors outside Sprint Nextel’s reasonable control.

Bankruptcy Filings. Another byproduct of the global economic downturn has been bankruptcy filings by some of the BAS licensees undergoing transition. Several major television licensees – including Pappas Telecasting, which controls thirteen BAS operations, and the Tribune Company, which controls an additional nineteen BAS licenses – recently filed for bankruptcy protection.³¹ Sprint Nextel has had to coordinate among multiple teams of lawyers

³¹ Peg Brickley, “Pappas Telecasting Files for Bankruptcy, Blames CW Ratings,” DOW JONES NEWSWIRES (May 10, 2008), *available at*: <<http://www.marketwatch.com/>>; Tribune Company, Press

for creditors, vendors, and bankrupt licensees to minimize the impact of the bankruptcy process on the BAS transition. For example, Sprint Nextel has sought to avoid payment delays from the broadcasters to vendors that might otherwise upend the simultaneous market-wide relocation of all BAS facilities in a DMA. Transitioning a bankrupt licensee introduces additional complexities to an already complex process, particularly with respect to how and when payments are made from the bankrupt BAS licensees to installers, integrators, manufacturers and other parties involved in the transition.

Tower Climbing Hazards. Tower climbers are essential to the BAS transition. Scarce in number, they must climb tall towers to replace BAS central receive site antennas, receivers, and other facilities. This work is acutely hazardous. According to the Bureau of Labor Statistics, which compiles all workplace deaths in the Census of Fatal Occupational Injuries, tower climbing remains one of the most dangerous jobs in America.³² Tower climbers are weighed down with a climbing harness, tools and supplies, and must ascend towers that can be 1000 feet or more above the ground. Working in low-light conditions or at night when broadcast stations can shut down BAS systems for repair, the climber must ascend the tower and then move from one elevated position to another, re-clipping end-over-end to stay connected, and, once situated, let go with both hands to work.³³ The job is so dangerous that five tower climbers died in on-the-job accidents during one twelve-day span in 2008. Despite ongoing and vigorous safety

Release, "Tribune Company to Voluntarily Restructure Debt Under Chapter 11: Publishing, Interactive and Broadcasting Businesses to Continue Operations" (Dec. 8, 2008), *available at*: <<http://www.tribune.com/pressroom/releases/2008/12082008.html>>.

³² See, e.g., Jeffrey Silva, "Tower Climbing: Deadliest Job in U.S.," RCR WIRELESS NEWS (July 9, 2008), *available at*: <<http://www.rcrwireless.com>>; Vicente Arenas, "Cell Phone Tower Climbers Go Where Few Others Have Gone," KHOU-TV (Jan. 15, 2009), *available at*: <http://www.khou.com/news/local/stories/khou090114_tnt_tower-climbers.227deed.html>.

³³ See, e.g., Richard Mullins, "The Most Lethal Job in America," THE TAMPA TRIBUNE (Sept. 20, 2007), *available at*: <<http://www.tbo.com/news/nationworld/MGBSQA8IS6F.html>>.

efforts, two tower climbers have already lost their lives during the course of the BAS relocation project.³⁴ The Joint Parties will continue to make every effort to complete the BAS transition in a timely manner; however, the hazardous work of tower climbing simply cannot be rushed.

State Contracting Requirements. For more than two years, the State of New Jersey has attempted to reconcile its “fair and open” anti-corruption public bidding rules with the Federal Communications Commission’s “comparable facilities” replacement obligations. At some level, the state’s concerns are simple – state laws forbid the acceptance of “free” goods and services as a means of preventing illicit corruption schemes. In practice, however, applying the state’s rigorous anti-corruption rules to the Commission’s “comparable facilities” relocation process where Sprint Nextel (and, eventually, other new entrants) must pay the entire cost of like-kind replacement facilities necessary to move the operator to new frequencies has proven quite complicated.³⁵ Despite the challenging legal issues involved, the State of New Jersey has cooperated with Sprint Nextel in attempting to resolve the issue expeditiously. Following more than a year of discussions and consultations at various levels of state government, the state attorney general’s office ultimately concluded that compliance with state law required notice and an opportunity for public bidding. While an earlier effort by the state to bid the BAS contracts was deemed insufficient and later abandoned, New Jersey recently issued what is expected to be a final Request for Quotations and reportedly received final bids for BAS equipment Friday, February 6, 2009. If New Jersey finds the bids acceptable and proves able to select a vendor by

³⁴ See, e.g., “Two Die in BAS Relocation Accident,” BROADCAST ENGINEERING (July 25, 2007), available at: <<http://broadcastengineering.com/eng/2-die-bas-relocation/>>.

³⁵ At a minimum, state law generally requires that any contract is: “(1) advertised in newspapers or on the public entity’s website to give sufficient prior notice of the contract; (2) awarded pursuant to public solicitation of proposals or qualifications under criteria disclosed in writing prior to the solicitation; and (3) the proposals or qualifications are publicly opened and announced when the contract is awarded.” See generally Steven Sholk, “A Guide to New Jersey Corporate Political Action Committees After the 2004 Campaign Finance Legislation and Executive Order,” 29 Seton Hall Legis. J. 11, 22 (2004).

March 2009, New Jersey should be able to execute a frequency relocation agreement by May 2009. The recent progress in New Jersey represents an extremely positive development. Nonetheless, the two-year-long delay in reaching an FRA with the four New Jersey television stations has consumed considerable resources and – especially if compounded by any delay in New Jersey executing an FRA – may adversely impact the relocation of the New York City, Philadelphia and Hartford DMAs. In addition, government-supported stations in other states have had to confront analogous, though less complicated, state contracting rules that have the potential to affect the relocation process.

Helicopter Constraints. Retrofitting helicopters with new BAS equipment has proven far more complicated and time-consuming than expected. Installing BAS equipment in a single helicopter – a process Tom Wagner of Helicopters Inc. recently described as “cracking open an eggshell and then trying to put it back together again” – can require one month or more to complete because nearly all of the electronic equipment on board the helicopter is custom-built and must be designed to meet exacting specifications of the Federal Aviation Administration (FAA).³⁶ The installation must be done by experienced avionics technicians who are in short supply. BAS relocation installations must also compete with transition, general maintenance, and other demands involved in the day-to-day servicing of clients leasing helicopter services. As a result of the DTV transition, moreover, many stations are also commissioning services and equipment unrelated to the BAS transition, such as high-definition photography, recording and transmission capabilities. While adding unrelated high-definition work to the BAS replacement

³⁶ By way of example, an original analog control panel for an under-carriage ENG camera might measure three by six inches, but the replacement panel might measure five by seven inches. Installing the single control panel requires Helicopters Inc. to remove the electronics from the new control panel box, recut the box to fit the available space, and retrofit the electronics into the newly sized box in a manner still capable of meeting FAA specifications. Once the box is completed, moreover, Helicopter Inc. then must thread the connecting wires that run through the aircraft, boxes, cables, to the camera pods to FAA specifications.

order can reduce out-of-air time for the helicopter owner, the net effect on the BAS transition is to put helicopters out of service longer, use loaner helicopters more extensively, and increase service times – all of which can result in cascading delays of successive DMAs.

Aviation Disasters and Capacity Limitations. The severe constraints on spare helicopters to support ENG operations during the transition has created potential for delay that could not have been anticipated. Following a spate of helicopter accidents and mechanical failures, Helicopters Inc. currently has only two spare ENG-equipped helicopters for stations to use when a helicopter is out of service either for repairs and routine maintenance or for an upgrade of its BAS equipment. Given the very limited number of spare ENG aircraft now available and the strong desire of television stations to have access to a helicopter at all times to capture breaking news, weather and sports, the amount of time necessary to retrofit the nation's ENG helicopter fleet with new BAS equipment has greatly exceeded expectations. Furthermore, because Helicopter Inc.'s two spare ENG-equipped helicopters are shuttled among multiple markets, even seemingly inconsequential delays in routine helicopter maintenance can cause "ripple effects" that delay BAS equipment installation in distant DMAs.

In January 2009, for instance, the ability to conclude relocation in three mid-western DMAs hinged on the successful installation of next-generation BAS equipment aboard *a single helicopter in a single market*. Every other facility in all three DMAs was prepared to proceed with the transition; however, because the helicopter for a station in the first market could not be equipped with ENG equipment on schedule, the spare helicopter was unavailable for the second market and precluded transition there, which, in turn, delayed the BAS cutover in the third market. As a result, delayed BAS installation in a single helicopter slated for one market delayed

the transition in that market and the two other markets, even though every other BAS operation in all three areas was ready, willing, and able to convert to the new band plan.

IV. LIVE LOCAL NEWS COVERAGE MUST BE PROTECTED FROM INTERFERENCE DURING THE BAS TRANSITION PERIOD

As noted above, the broadcast community and Sprint Nextel worked with the MSS interests to accommodate their stated needs. Indeed, the entire BAS relocation schedule was adjusted to allow Terrestar and ICO to conduct operations in twenty-five markets on an accelerated basis. Given the limitations of equipment production and installation, this adjustment delayed the overall BAS transition schedule by several months.

The Joint Parties believe that it is extremely important that BAS operations remain free from interference until the transition is complete. Broadcast television serves as an important source of news for local communities and the entire country. As both Congress and the Commission have recognized, the provision of local news and emergency information is a cornerstone of communications policy in the United States.³⁷ This goal will be undermined if the key element in the provision of local news, *i.e.*, live reporting using electronic newsgathering, is subject to interference. Accordingly, combined with the Joint Parties' commitment to work with MSS interests in satisfying their independent obligation to relocate BAS, the Joint Parties request that the Commission take such actions as are necessary to prevent interference to both ENG and fixed operations on BAS frequencies until this transition is complete.

V. CONCLUSION

Since the issuance of the *Extension Order*, Sprint Nextel and broadcasters have made great strides toward completing the BAS transition. The equipment inventory and FRA

³⁷ See *e.g.*, *Implementation of the Short-term Analog Flash and Emergency Readiness Act*, MD Docket No. 88-255, FCC 09-2 (rel. January 15, 2009); *Short-term Analog Flash and Emergency Readiness Act*, Pub. L. No. 110-459, 122 Stat. 5121 (2008).

negotiation stages are essentially complete, hundreds of licensees have ordered and installed replacement equipment, and numerous licensees have completed the transition. The transition nonetheless continues to raise unique challenges and complexities that are outside the control of Sprint Nextel and the broadcast licensees. Even with the best efforts of Sprint Nextel and the broadcast community, additional time is necessary to complete the BAS transition in a manner that does not disrupt critical newsgathering operations. The Joint Parties remain committed to completing the BAS transition and accordingly request that the Commission grant their original waiver request in full and establish February 7, 2010 as the completion date for BAS relocation.

Respectfully submitted,

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