

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
)	

COMMENTS OF TERRESTAR NETWORKS INC.

Douglas I. Brandon
General Counsel and Senior Vice President
TerreStar Networks Inc.
12010 Sunset Hills Road, 9th Floor
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

March 9, 2009

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	2
II.	BACKGROUND	5
III.	THE NEEDS OF BAS LICENSEES AND MSS LICENSEES BOTH CAN BE ACCOMMODATED.....	7
IV.	SPRINT SHOULD BE HELD RESPONSIBLE FOR FAILURE TO SATISFY ITS BAS RELOCATION RESPONSIBILITIES.	9
	CONCLUSION.....	13

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
)	

COMMENTS OF TERRESTAR NETWORKS INC.

On February 12, 2009, a Supplemental Joint Request Concerning the BAS Relocation (the "Supplemental Request") was filed in the above-captioned proceedings by Sprint Nextel Corporation ("Sprint"), 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"). In their filing, the Joint Parties asked that the 2 GHz broadcast auxiliary service ("BAS") relocation deadline, which originally

was September 7, 2007, be extended an additional 11 months through and including February 7, 2010.

On February 27, 2009, the Commission's Office of Engineering and Technology released a public notice establishing a due date for comments of March 9, 2009.¹ TerreStar Networks Inc. ("TerreStar") hereby comments on the Supplemental Request.

I. INTRODUCTION AND SUMMARY

The Supplemental Request is one of three interrelated matters in the above-captioned proceedings that are pending before the Commission. The resolution of each of these matters will turn on findings of facts and law that will guide the outcome of the other two matters.

The second matter is a Further Notice of Proposed Rulemaking ("FNPRM") in which the Commission has tentatively concluded that it should eliminate the rule preventing 2 GHz mobile satellite service ("MSS") systems from beginning operations until BAS stations in the top 30 markets and fixed BAS stations in all markets have been relocated (the "Top 30 Markets Rule").²

The third matter is a filing in which the Sprint has requested that the Commission either: (1) determine that the 2 GHz band was entered by TerreStar prior to the "sunset date" of June 26, 2008 (if an MSS licensee has not entered the

¹ See DA 09-468.

² FCC 08-73, ¶ 49.

band by that date, it has no obligation to reimburse Sprint *pro rata* for eligible BAS relocation expenses); or (2) extend the sunset date.³ For reasons that are discussed in these comments, the Commission should have all three proceedings in mind as it reviews the Supplemental Request.

The Supplemental Request raises two issues. The first issue is whether BAS stations that have not been relocated should be permitted to continue operating in the MSS portion of the 2 GHz band through February 7, 2010. In considering this issue, the Commission should weigh into the balance the impact that continued operation of non-relocated BAS stations in the MSS portion of the band will have on MSS operators seeking to initiate service. TerreStar demonstrates in these comments that the Commission can accommodate the needs of both BAS licensees and MSS licensees if, in addition to granting the extension requested by the Joint Parties, it adopts its proposal to eliminate the “Top 30 Markets Rule.”

The second issue is the consequences Sprint should be subject to for not having completed BAS relocation by the Commission’s deadline, as already extended by 24 months. Sprint’s relocation efforts are demonstrably inadequate. Sprint’s own “progress” reports show that it never acknowledged the original Commission deadline for BAS relocation completion and, moreover, never altered its target completion dates to take into account the Commission’s March

³ Letter, dated October 8, 2008, from Lawrence R. Krevor and Trey Hanbury, Sprint, to Marelene H. Dortch, FCC.

2008 deadline extension.⁴ This disregard for Commission mandates is further evidenced by the Supplemental Request which reveals that 64% of primary BAS operators still have not been relocated.

Given this record, Sprint's request to extend the sunset date for MSS reimbursement obligations should be denied; Sprint should not be rewarded for inadequate relocation efforts. Extending the sunset date, moreover, would unfairly penalize TerreStar by disturbing settled expectations. Sprint could have had no reasonable expectation of recouping BAS relocation expenses from TerreStar, and TerreStar - and investors in TerreStar - had a justifiable expectation that TerreStar would not be required to reimburse Sprint for these relocation expenses, because when the Commission adopted its reimbursement policy in 2004, TerreStar was not required to bring its 2 GHz MSS system into operation until November 2008, which is months after the "enter the band" deadline of June 26, 2008, for triggering a reimbursement obligation.⁵

⁴ See pp. 9-10 *infra*.

⁵ The Joint Parties also suggest in the Supplemental Request that they had to make significant changes to their BAS relocation schedule in order to accommodate TerreStar's trial market requirements. The Joint Parties have it backwards. TerreStar proposed to conduct trials in three markets. The schedule TerreStar requested for two of the markets was consistent with the Joint Parties' pre-existing relocation schedule as reflected in the presentation Sprint made in a "BAS acceleration summit" held in November 2007. At the Joint Parties' request, TerreStar changed its third trial market from one that would have required the Joint Parties to make schedule adjustments to a different market as to which no such adjustments were required.

II. BACKGROUND

There are two 2 GHz bands that are dedicated to MSS service links. The 2000-2020 MHz band is used to uplink to the satellite and the 2180-2200 MHz band is used to downlink from the satellite. At present, there are seven BAS channels in the 2 GHz band. Two of these BAS channels - channels 1 and 2 - operate on frequencies that have been allocated to 2 GHz MSS uplinks, and will be displaced by 2 GHz MSS operations.

In 2004, the Commission awarded Sprint (then Nextel) 2 GHz spectrum, including 2 GHz BAS spectrum, as a replacement for 800 MHz spectrum Sprint was relinquishing to facilitate reconfiguration of public safety spectrum in the 800 MHz band.⁶ As a condition of this spectrum award, the Commission required Sprint to fund the entire upfront cost of relocating both the BAS incumbents it would be displacing and the BAS incumbents that 2 GHz MSS licensees would be displacing.⁷ The deadline for Sprint to complete this BAS relocation was September 7, 2007.⁸

On September 4, 2007, the Joint Parties filed a Joint Petition requesting a twenty nine month extension of the deadline for completing relocation of BAS

⁶ *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004) (“800 MHz Order”).

⁷ 800 MHz Order, ¶ 261.

⁸ See *Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding*, WT Docket No. 02-55, Public Notice (Oct. 22, 2004).

licensees from the 2 GHz band. Following multiple short term extensions that the Commission granted *sua sponte* in order to provide additional time for it to consider the Joint Petition and the filing by the Joint Parties of what they characterized as a “consensus plan,”⁹ the Commission determined that a 29 month extension was “not warranted,”¹⁰ and instead granted an extension through March 5, 2009.¹¹

Although the Commission held open the possibility of a further extension, it recognized that “[w]aiving the BAS transition deadline for twenty-nine months,” as the Joint Parties had proposed unsuccessfully then and are proposing once again in the Supplemental Request, “would delay the ability of MSS operators to provide commercial service.”¹² The Commission also took cognizance of “[t]he fact ... that Sprint Nextel did agree to undertake the BAS transition by September 7, 2007 and the BAS transition has not been completed”¹³ and placed a premium on “minimizing the time in which MSS and BAS must co-exist.”¹⁴

⁹ Consensus Plan of Sprint Nextel Corp., the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Society of Broadcast Engineers, WT Docket 02-55, ET Docket 00-258, filed December 6, 2007.

¹⁰ See the Memorandum Opinion and Order (“MO&O”) in the above-captioned proceedings, ¶ 32.

¹¹ MO&O, ¶ 29.

¹² MO&O, ¶ 32.

¹³ MO&O, ¶ 32.

¹⁴ MO&O, ¶ 34.

The Commission made clear there would be a price to pay if Sprint did not live up to its BAS relocation responsibilities, warning that “the inability of Sprint Nextel to meet its obligations carries the risk of severe regulatory jeopardies.”¹⁵ To provide incentives for Sprint to complete BAS relocation by the extended deadline of March 5, 2009, the Commission required Sprint to “meet one interim benchmark”¹⁶ and directed Sprint “to file status reports every two months on the progress of the BAS transition.”¹⁷ On February 12, 2009, the Joint Parties filed their Supplemental Request seeking a further extension of the BAS relocation deadline through February 7, 2010.

III. THE NEEDS OF BAS LICENSEES AND MSS LICENSEES BOTH CAN BE ACCOMMODATED.

TerreStar wishes that BAS relocation had been completed, and believes that it could have been completed, within the four years the Commission has already provided. The unfortunate reality, however, is that relocation has not been completed and apparently will not be for some time.

The Commission has recognized that the delay in BAS relocation presents “a new and significant element of this proceeding,”¹⁸ *i.e.*, “the balancing of our interest in finding a means of permitting MSS operators to begin to deploy nationwide service ... with a realization that some unrelocated BAS operators

¹⁵ MO&O, ¶ 38.

¹⁶ MO&O ¶ 43.

¹⁷ MO&O, ¶ 44.

¹⁸ MO&O, ¶ 34.

may still be operating in the band”¹⁹ Given this development, the Commission is “particularly concerned about managing the interference environment during the period in which both MSS and BAS operate in the band.”²⁰

Fortunately, there is a means for accommodating the requirements of both BAS licensees and MSS licensees, and the Commission already has laid the groundwork for this accommodation. In an FNPRM in the above-captioned proceedings, the Commission has tentatively concluded that it should eliminate the Top 30 Markets Rule that prevents 2 GHz MSS systems from beginning operations until BAS stations in the top 30 markets and fixed BAS stations in all markets have been relocated. TerreStar believes it can accommodate extending the BAS relocation deadline to February 7, 2010, as proposed in the Supplemental Request, so long as the Top 30 Markets Rule is eliminated. Taking both actions would strike an appropriate balance between the needs of 2 GHz MSS licensees to initiate service and the needs of BAS licensees to have continued access to the 2 GHz MSS band until the BAS licensees are relocated.

The record in the Top 30 Markets Rule proceeding supports elimination of the rule. TerreStar and ICO have filed studies demonstrating that it is technically feasible for 2 GHz MSS systems and BAS stations to share spectrum during the

¹⁹ MO&O, ¶ 34.

²⁰ MO&O, ¶ 34.

completion of the BAS relocation process.²¹ These technical studies are uncontested,²² and they address the Commission's concern with managing the interference environment during the period when BAS stations and MSS stations both are operating in the 2 GHz band. Accordingly, the Commission should couple any further extension of the BAS relocation deadline with elimination of the Top 30 Markets Rule.²³

IV. SPRINT SHOULD BE HELD RESPONSIBLE FOR FAILURE TO SATISFY ITS BAS RELOCATION RESPONSIBILITIES.

TerreStar's willingness to accommodate an extension of the BAS relocation deadline, assuming that the Top 30 Markets Rule is eliminated, is based on its recognition of the operational needs of BAS licensees. TerreStar's position, however, should not be viewed as an endorsement of Sprint's relocation efforts.

By any fair measure, Sprint's efforts have been inadequate. Most telling is the information in the bi-monthly status reports that Sprint itself has filed. Each

²¹ For a summary of these technical studies, *see* Reply Comments of TerreStar Networks Inc. (May 30, 2008) at 5-6.

²² The only two filers that objected to eliminating the Top 30 Markets Rule, Sprint and MSTV/NAB, offered no technical analysis in support of their position.

²³ In its comments addressing the Commission's proposal to eliminate the Top 30 Markets Rule, TerreStar stated that absent coordination it would not conduct ATC operations in non-relocated markets. *See* Comments of TerreStar Networks Inc. (Apr. 30, 2008) at 4 n.9, 5. Even if the BAS relocation deadline were extended to February 7, 2010, TerreStar's plans at present are consistent with that statement. Because TerreStar cannot predict with certainty how its service needs will evolve, however, TerreStar requests that in the event the Commission extends the BAS relocation deadline it leave open the possibility of providing ATC service prior to the extended deadline upon an appropriate showing.

report includes a relocation timeline showing the “scheduled relocation month” and “expected relocation month” for each of the nation’s designated market areas. Despite the fact that the BAS relocation deadline, as extended, was March 5, 2009, Sprint’s reports following the grant of an extension to that date uniformly show numerous markets for which the scheduled and expected relocation months are April, June, July, or August 2009. Sprint’s most recent report shows over 70 such markets.²⁴

The Supplemental Request also paints a disturbing picture. When that pleading was filed nearly 48 months after the BAS relocation period officially had begun, 64% of primary BAS operators still had not transitioned to frequencies above 2025 MHz.²⁵ Perhaps this lack of progress should come as no surprise given that Sprint is targeting post-deadline dates for relocation in so many markets. But it is a problematic record nonetheless.

As stated above, the Commission has warned that “the inability of Sprint Nextel to meet its [BAS relocation] obligations carries the risk of severe regulatory jeopardies.”²⁶ It is up to the Commission to determine whether a forfeiture is warranted, but at a minimum Sprint should not be rewarded for its substandard efforts. A reward, however, is precisely what Sprint is seeking.

²⁴ See Letter, dated February 2, 2009, from Trey Hanbury, Sprint, to Marlene H. Dortch, FCC, Appendix C.

²⁵ See Supplemental Request at 5.

²⁶ MO&O, ¶ 38.

Under ground rules that have long been in place, Sprint cannot seek reimbursement from TerreStar for a *pro rata* share of eligible BAS relocation expenses if TerreStar entered the 2 GHz band after June 26, 2008.²⁷ Sprint claims that this sunset date for TerreStar's reimbursement obligations has been "superseded by the Commission's decision to extend the deadline for BAS retuning."²⁸ Sprint's claim is demonstrably incorrect; in the MO&O the Commission emphasized that "the action we take herein has no impact on any other aspect of the rebanding timetable set forth in the Commission's orders in this proceeding."²⁹ More importantly, extending the sunset date because the BAS relocation deadline has been moved would reward Sprint for its inadequate efforts.

If the "enter the band" sunset date were to be extended at this late juncture, moreover, settled expectations would be disturbed and TerreStar would be penalized unfairly. When the Commission adopted the sunset date in 2004,³⁰ TerreStar was not required to bring its 2 GHz MSS system into operation until November 2008,³¹ which is months after the "enter the band" deadline of June 26, 2008, for triggering a reimbursement obligation. Sprint could have had

²⁷ See MO&O, ¶ 16.

²⁸ Letter, dated October 8, 2008, from Lawrence R. Krevor and Trey Hanbury, Sprint, to Marelene H. Dortch, FCC, at 7. Sprint also relied on "the Commission's decision to grant additional time to complete 800 MHz reconfiguration." *Id.*

²⁹ MO&O, ¶ 35.

³⁰ See *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969 (2004).

³¹ See *TMI Communications and Company, Limited Partnership and TerreStar Networks Inc.*, Memorandum Opinion and Order, FCC 04-144, ¶ 59 (June 29, 2004).

no expectation, therefore, of recouping relocation expenses from TerreStar, and TerreStar – and investors in TerreStar - had a justifiable expectation that it would not be required to reimburse Sprint for these relocation expenses.

In sum, Sprint's BAS relocation efforts have been inadequate. Sprint targeted completion dates beyond the deadline the Commission established, and 64% of primary BAS operators have yet to be relocated. Extending the sunset date for TerreStar's reimbursement obligations, as Sprint has requested, would reward Sprint for its failures and unfairly penalize TerreStar and its investors.

CONCLUSION

For the reasons stated herein:

- TerreStar will refrain from objecting to extending the BAS relocation deadline until February 7, 2010, so long as the Top 30 Markets Rule is eliminated; and
- Sprint's request to extend the sunset date for MSS reimbursement obligations should be denied.

Respectfully submitted,

TERRESTAR NETWORKS INC.

By: /s/Douglas I. Brandon
Douglas I. Brandon
General Counsel and Senior Vice
President
TerreStar Networks Inc.
12010 Sunset Hills Road, 9th Floor
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

March 9, 2009