



Sprint Nextel
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April 29, 2009

Notice of *Ex Parte* Communication

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

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

Dear Ms. Dortch:

Representatives from Sprint Nextel Corporation (Sprint Nextel) met yesterday with Julius Knapp, Geraldine Matisse, Jamison Prime, Nicholas Oros, Allen Stillwell, Bruce Romano, and Ira Keltz of the Office of Engineering and Technology.¹ Sprint Nextel distributed copies of the attached presentation and discussed the continued progress in the Broadcast Auxiliary Service (BAS) transition. We explained how 14 of the top 30 broadcast markets and 44 of the top 100 broadcast markets now operate on the new BAS band plan. We showed how most of the East Coast, most of the Gulf Coast, and most of the Southwest are already finished with the BAS transition. And we explained how 85% of all equipment necessary for the transition has already been delivered to broadcasters and how 66% of all broadcasters already have all the equipment they need to transition. Given this progress and the numerous obstacles beyond the control of Sprint Nextel and the BAS incumbents, we again urged the Commission to extend the BAS transition deadline through February 7, 2010.²

We also discussed the importance of timely Commission affirmation of the longstanding obligation of the 2 GHz Mobile Satellite Service (MSS) operators to pay a portion of the costs associated with clearing 20 of the 40 megahertz of 2 GHz MSS spectrum assigned to their use.³ In 2004, the Commission directed the 2 GHz MSS operators to reimburse Sprint Nextel for their *pro rata* share of eligible expenses that Sprint Nextel incurs in relocating BAS licensees above

¹ Lawrence Krevor, Michael Degitz, Richard Engelman, Alfred Mottur and Trey Hanbury represented Sprint Nextel.

² See *Supplemental Joint Request Concerning the BAS Relocation of Sprint Nextel Corporation, the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Society of Broadcast Engineers*, WT Docket No. 02-55 and ET Docket Nos. 00-258 and 95-18 (filed Feb. 12, 2009).

³ The two MSS licensees were awarded 20 MHz each of 2 GHz spectrum without competitive bidding. The MSS uplinks are in the 2000-2020 MHz band which is being cleared in this proceeding; the MSS downlinks are in the 2180-2200 MHz band.

2025 MHz.⁴ Consistent with the Commission's *800 MHz Order*, the 2 GHz MSS licensees must reimburse Sprint Nextel for their *pro rata* share of the costs associated with relocating (i) all fixed and mobile BAS operations in the nation's top-thirty broadcast television markets and (ii) all fixed (but no mobile) BAS operations outside of the top thirty broadcast television markets.⁵

The diagrams below show the MSS licensees' spectrum allocation compared to their estimated cost allocation under applicable Commission Orders. As shown in Figure 1, the MSS licensees occupy 20 megahertz or 57 percent of the 1990-2025 MHz band that Sprint Nextel and the BAS licensees are clearing. By comparison, Figure 2 shows the anticipated MSS cost allocation based on Sprint Nextel's detailed, audit-level accounting of every expense (equipment, internal labor, external labor, overhead, sales taxes, shipping, etc.) associated with retuning all fixed and mobile BAS operations in the nation's top-thirty broadcast television markets and all fixed (but no mobile) BAS operations outside of the top thirty broadcast television markets. As depicted in Figure 2, Sprint Nextel calculates that the MSS licensees are responsible for approximately 27 percent of the total BAS relocation expenses. The 27 percent of total BAS relocation costs for which the MSS licensees must reimburse Sprint Nextel is substantially less than the 57 percent of the cleared BAS spectrum assigned to the two MSS licensees because the MSS reimbursement obligation excludes costs associated with relocating mobile BAS operations outside of the top thirty television markets. For its part, Sprint Nextel is responsible for up to approximately 73 percent of the total BAS relocation expenses, while being assigned only 14 percent of the cleared spectrum.⁶

Figure 1

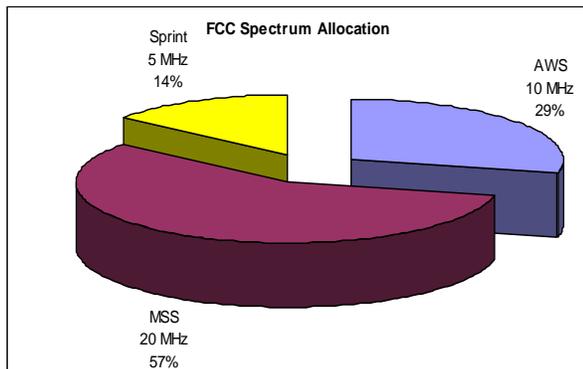
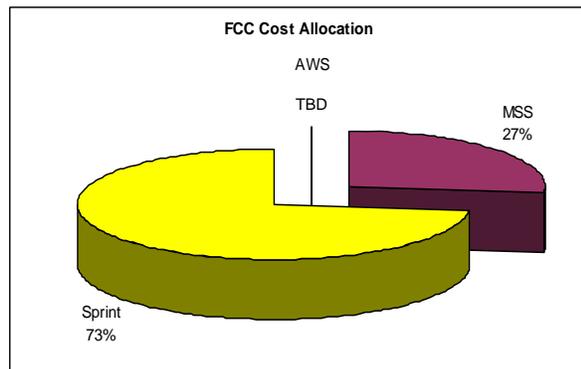


Figure 2



Pursuant to the *800 MHz Report and Order*, Sprint Nextel provided notice on March 7, 2006 of its intent to seek reimbursement from the MSS licensees for eligible relocation

⁴ See, e.g., *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, ¶ 261 (2004) ("800 MHz Order"), as amended by Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd. 19651 (2004); accord *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, WT Docket No. 02-55, 20 FCC Rcd 16015, ¶ 111 (2005) ("*800 MO&O*") ("Nextel, as the first entrant, is entitled to seek pro rata reimbursement of eligible clearing costs from subsequent entrants, including MSS licensees.").

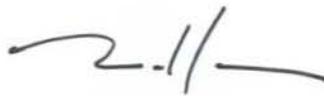
⁵ See *800 MHz Order*, 19 FCC Rcd. at ¶ 261.

⁶ Potential future AWS H and J Block licensees could be required to reimburse a portion of Sprint's BAS clearing expenses if certain conditions that are not pertinent here are met.

expenses.⁷ On January 28, 2008, Sprint Nextel provided ICO and TerreStar with a first interim billing statement that projected each licensee's liability to Sprint Nextel as \$100,121,336.60.⁸ Since then, Sprint Nextel has continued to incur 2 GHz BAS relocation expenses attributable to the MSS licensees. We now project each MSS licensee's share through project completion to be \$100,425,005.30, excluding interest on their debt.⁹ Copies of Sprint Nextel's first interim billing statements to the MSS licensees are attached. Additional information about Sprint Nextel's calculation of the MSS licensees' liabilities for BAS relocation remains available to the MSS licensees or the Commission upon request.¹⁰

If any questions arise concerning this filing, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Trey Hanbury', with a stylized flourish at the end.

Trey Hanbury, Esq.
Director, Sprint Nextel Corporation

CC: Julius Knapp, Geraldine Matisse, Jamison Prime, Nicholas Oros, Allen Stillwell, Bruce Romano, and Ira Keltz

⁷ See Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission at 1 (March 7, 2006) (providing notice of Sprint Nextel's intent to seek reimbursement to the Commission and to representatives of both MSS licensees).

⁸ In its first interim billing statement, Sprint Nextel explained that this estimate was comprised of \$71,359,445.96 in relocation expenses associated with top 30 markets; \$14,156,751.11 in relocation expenses associated with markets outside the top 30 markets; and an allocated \$14,605,139.54 share of nationwide BAS (overhead) costs.

⁹ The estimates vary over time due to change orders, contract overages, and increasingly accurate projections as the BAS relocation project draws to a close.

¹⁰ To the extent the MSS licensees wish to see detailed cost data specific to individual BAS licensees, a confidentiality agreement is necessary to protect the business interests of BAS licensees participating in the BAS transition. Sprint Nextel remains ready, willing, and able to enter confidentiality agreements with the MSS licensees so that they may review licensee-specific cost data. The Commission has not requested licensee-specific cost data. If this data were requested, Sprint Nextel could provide it, but would join the BAS licensee community in petitioning the Commission to ensure that commercially sensitive BAS cost data remains confidential and exempt from general public disclosure.



Sprint Nextel
2001 Edmund Halley Drive
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February 4, 2008

Mr. Courtney Stadd
Executive Vice President, External Affairs
TerreStar Networks
One Discovery Square
12010 Sunset Hills Road
9th Floor
Reston, VA 20190

**Re: Terrestar's Payment Obligation to Sprint Nextel Corporation for
the Relocation of Broadcast Auxiliary Services to Spectrum
above 2025 MHz**

Dear Mr. Stadd:

As you know, the Federal Communications Commission directed 2 GHz Mobile Satellite Service (MSS) entrants to reimburse Sprint Nextel for their *pro rata* share of eligible expenses that Sprint Nextel Corporation incurs in relocating licensees of the Broadcast Auxiliary Service (BAS) to spectrum above 2025 MHz.¹ Consistent with the Commission's *800 MHz Order*, 2 GHz MSS licensees must reimburse Sprint Nextel for their *pro rata* share of the costs associated with relocating (i) all fixed BAS operations nationwide and (ii) all fixed and mobile BAS operations in the nation's top-thirty broadcast television markets.² Pursuant to the *800 MHz Order*, Sprint Nextel provided notice on March 7, 2006 of its intent to seek this reimbursement from your company and other 2 GHz MSS licensees.³ This letter serves as the first interim billing estimate for your company's *pro rata* share of BAS relocation expenses.⁴

Terrestar holds an authorization for twenty megahertz of 2 GHz MSS spectrum, ten megahertz of which lies in the 1990-2025 MHz band that Sprint Nextel is clearing of BAS

¹ *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, ¶ 261 (2004) ("*800 MHz Order*"), as amended by Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004), and Second Erratum, 19 FCC Rcd. 19651 (2004); accord, *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 111 (2005), as amended by Erratum, 20 FCC Rcd. 18970 (2005) ("*800 MHz MO&O*") ("Nextel, as the first entrant, is entitled to seek *pro rata* reimbursement of eligible clearing costs from subsequent entrants, including MSS licensees.").

² *800 MHz Order*, 19 FCC Rcd. 14969, ¶ 261.

³ Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 02-55, at 1 (March 7, 2006) (providing notice of Sprint Nextel's intent to seek reimbursement to the Commission and to representatives of both MSS licensees).

⁴ TerreStar Networks, Inc. is the holder of the 2 GHz MSS Letter of Intent Authorization, Call Sign S2633. See, e.g., *TMI Communications and Company, Limited Partnership, and TerreStar Networks*, Order, 22 FCC Rcd. 8602 (Int'l Bur. 2007) (modifying the reservation of 2 GHz spectrum to list it in TerreStar's name in lieu of TMI).

licensees. Under the terms of the *800 MHz Order*, Terrestar is liable for a *pro rata*, two-sevenths share or 28.57% (10 MHz / 35 MHz) of all BAS expenses eligible for reimbursement by 2 GHz MSS licensees.⁵ Sprint Nextel currently projects that your company's total, cumulative *pro rata* share of eligible BAS relocation expenses will be approximately \$100 million, as summarized in the table below.⁶ This figure takes into account your company's *pro rata* share of the estimated direct contract costs within the top thirty television markets, as well as your company's *pro rata* share of fixed link costs, and an allocated *pro rata* share of BAS nationwide costs.

Eligible BAS Relocation Expenses	Estimated <i>Pro Rata</i> Total
BAS Fixed and Mobile Costs in Top Thirty Markets	\$71,359,445.96
BAS Fixed Costs outside of Top Thirty Markets	\$14,156,751.11
Allocated Nationwide BAS (Overhead) Costs	\$14,605,139.54
Total	\$100,121,336.60

Your company's *pro rata* share is based on Sprint Nextel's total paid, payable, and projected BAS relocation expenses that are eligible for reimbursement by 2 GHz MSS licensees. A material portion of the estimated *pro rata* expenses attributable to your company is based on current relocation contract arrangements that remain subject to change orders by the relocating parties, which may alter the costs attributable to your company. The impact of change orders, in addition to any other cost adjustments, will be reflected in future invoices.

To ensure timely payment of your company's financial obligation to Sprint Nextel, we suggest a meeting between our respective business and finance teams. We propose that this meeting address detailed instructions on payment terms and conditions as well as specific procedures for future invoices and true-up efforts. A representative from Sprint Nextel will contact you soon to arrange this meeting or you may contact me. Thank you for your attention to this matter.

Sincerely,


Michael B. Degitz
Vice President, Spectrum Management
Sprint Nextel Corporation

⁵ See, e.g., *800 MHz MO&O*, 20 FCC Rcd. 16015, ¶¶ 111-112.

⁶ This letter is provided to your company as a courtesy to estimate the scope of your company's liability to Sprint Nextel; this letter is an estimate only and is not to be construed as a limitation on liability.



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February 4, 2008

J. Timothy Bryan
Chief Executive Officer
ICO Global Communications Holdings Limited
11700 Plaza America Drive, Suite 1010
Reston, Virginia 20190

Re: ICO's Payment Obligation to Sprint Nextel Corporation for the Relocation of Broadcast Auxiliary Services to Spectrum above 2025 MHz

Dear Mr. Bryan:

As you know, the Federal Communications Commission directed 2 GHz Mobile Satellite Service (MSS) entrants to reimburse Sprint Nextel for their *pro rata* share of eligible expenses that Sprint Nextel Corporation incurs in relocating licensees of the Broadcast Auxiliary Service (BAS) to spectrum above 2025 MHz.¹ Consistent with the Commission's *800 MHz Order*, 2 GHz MSS licensees must reimburse Sprint Nextel for their *pro rata* share of the costs associated with relocating (i) all fixed BAS operations nationwide and (ii) all fixed and mobile BAS operations in the nation's top-thirty broadcast television markets.² Pursuant to the *800 MHz Order*, Sprint Nextel provided notice on March 7, 2006 of its intent to seek this reimbursement from your company and other 2 GHz MSS licensees.³ This letter serves as the first interim billing estimate for your company's *pro rata* share of BAS relocation expenses.⁴

ICO holds an authorization for twenty megahertz of 2 GHz MSS spectrum, ten megahertz of which lies in the 1990-2025 MHz band that Sprint Nextel is clearing of BAS

¹ *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, ¶ 261 (2004) ("*800 MHz Order*"), as amended by Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004), and Second Erratum, 19 FCC Rcd. 19651 (2004); accord, *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 111 (2005), as amended by Erratum, 20 FCC Rcd. 18970 (2005) ("*800 MHz MO&O*") ("Nextel, as the first entrant, is entitled to seek *pro rata* reimbursement of eligible clearing costs from subsequent entrants, including MSS licensees.").

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³ Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 02-55, at 1 (March 7, 2006) (providing notice of Sprint Nextel's intent to seek reimbursement to the Commission and to representatives of both MSS licensees).

⁴ We refer to both ICO Services Ltd. and its parent, ICO Global Communications (Holding) Ltd., as simply "ICO." See *Joint Application for Review of Constellation Communications Holdings, Inc., Mobile Communications Holdings, Inc., and ICO Global Communications (Holdings) Limited*, Memorandum Opinion and Order, 19 FCC Rcd. 11631, ¶ 14 n.48 (2004). The FCC issued a 2 GHz license to the former entity. See, e.g., *ICO Services Limited*, Order, 16 FCC Rcd. 13762 (Int'l Bur. 2001).

licensees. Under the terms of the *800 MHz Order*, ICO is liable for a *pro rata*, two-sevenths share or 28.57% (10 MHz / 35 MHz) of all BAS expenses eligible for reimbursement by 2 GHz MSS licensees.⁵ Sprint Nextel currently projects that your company's total, cumulative *pro rata* share of eligible BAS relocation expenses will be approximately \$100 million, as summarized in the table below.⁶ This figure takes into account your company's *pro rata* share of the estimated direct contract costs within the top thirty television markets, as well as your company's *pro rata* share of fixed link costs, and an allocated *pro rata* share of BAS nationwide costs.

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Sincerely,



Michael B. Degitz
Vice President, Spectrum Management
Sprint Nextel Corporation

⁵ See, e.g., *800 MHz MO&O*, 20 FCC Rcd. 16015, ¶¶ 111-112.

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2 GHz BAS Transition

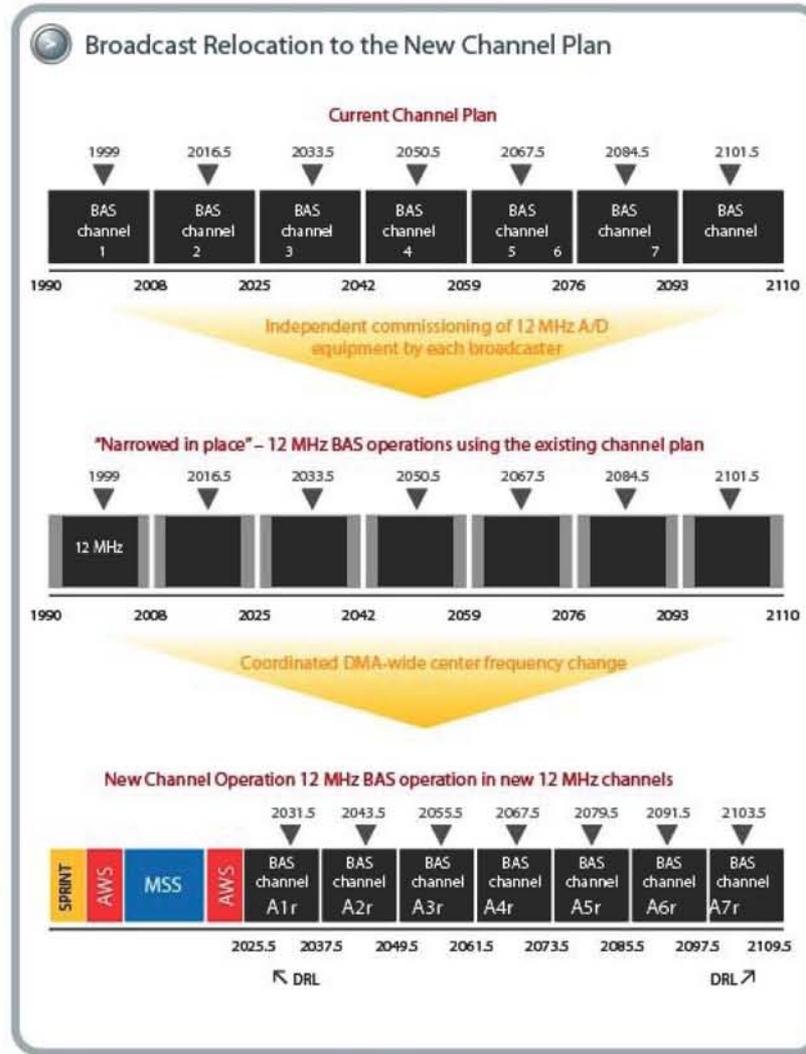
April 2009

2 GHz BAS Transition Process

ORDER
new equipment

INSTALL
new equipment

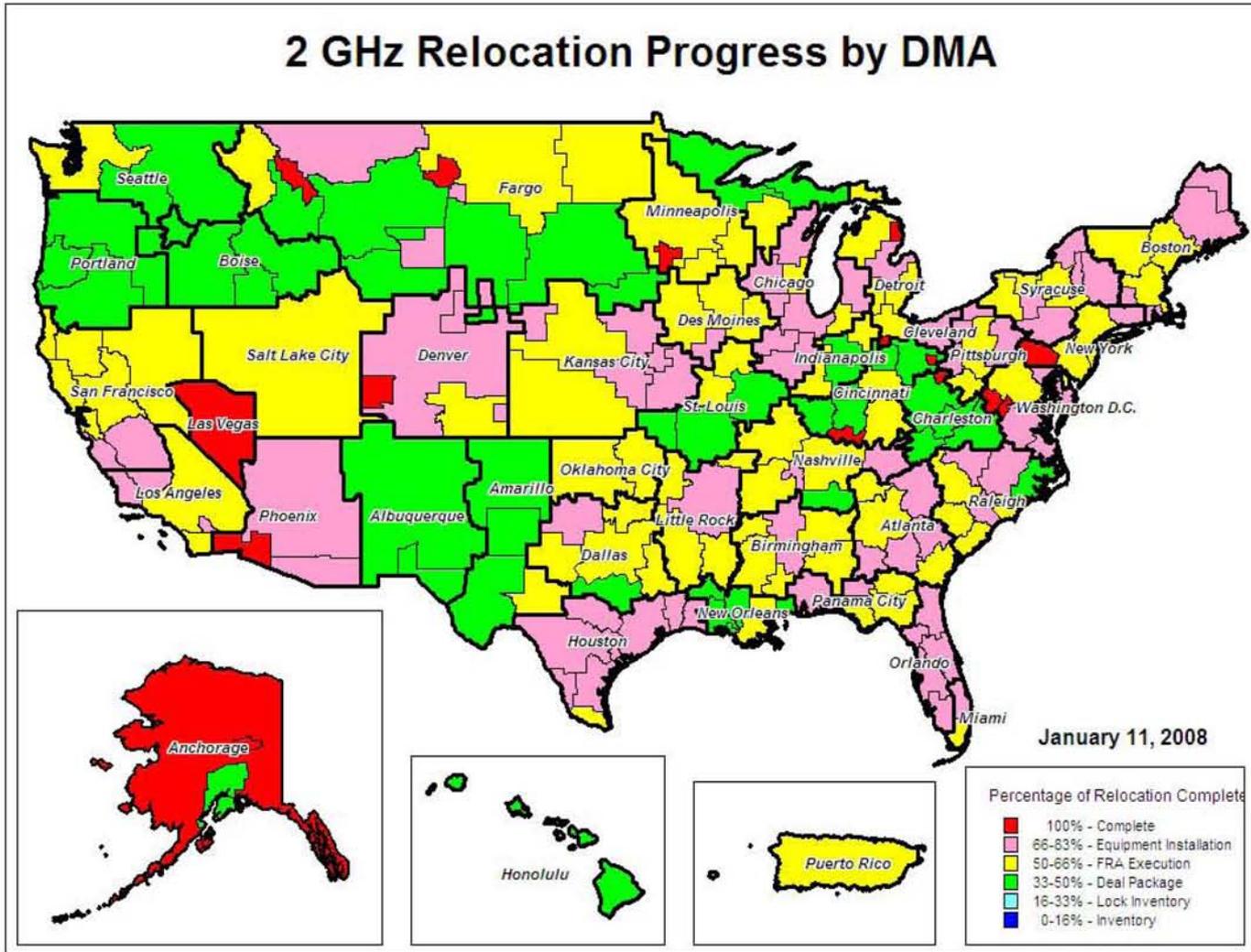
CONVERT
to new channel plan
on market cutover
date



2 GHz BAS Transition Process

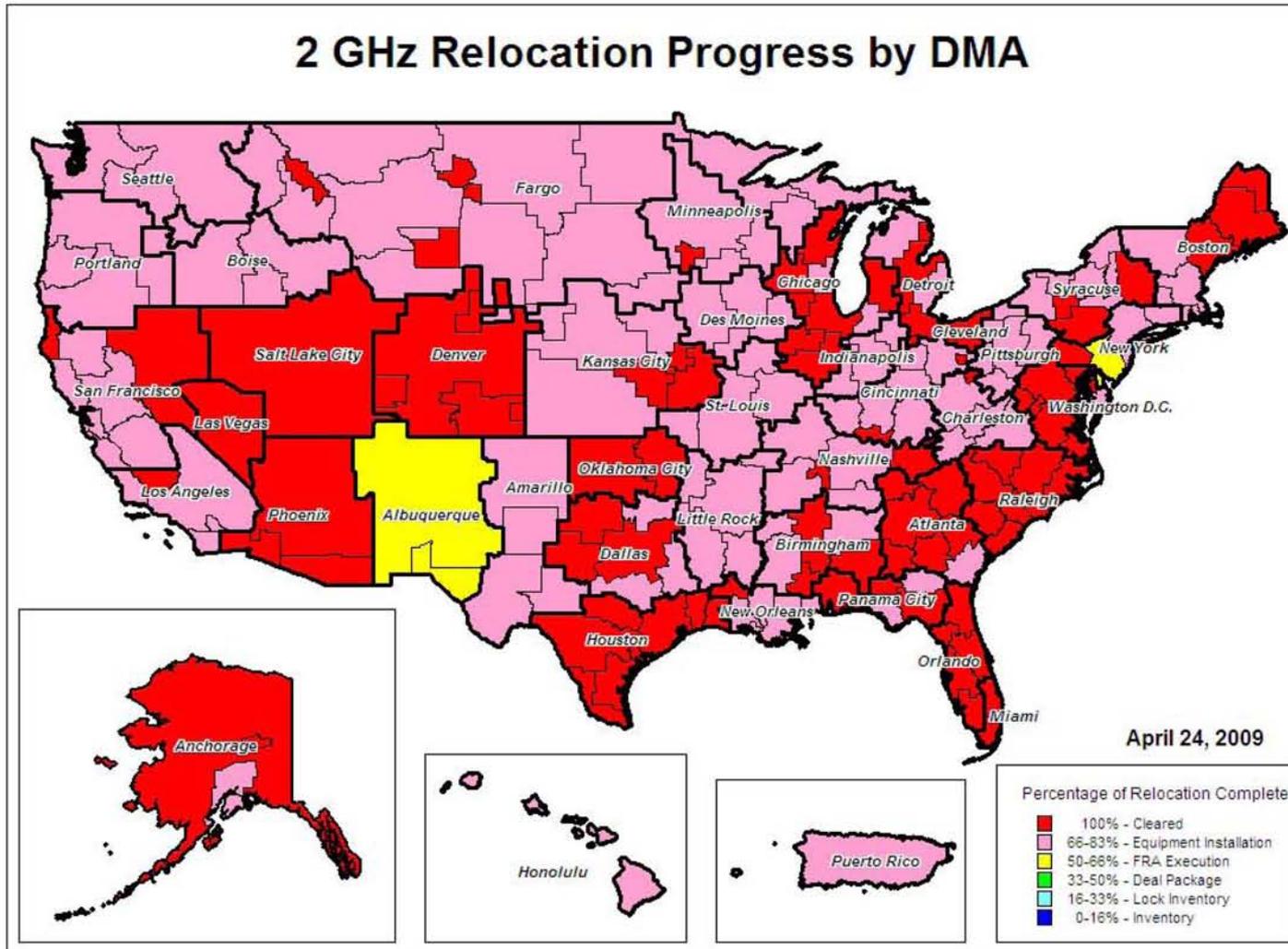
	Market Kickoff	Inventory Submission	Inventory Verification	Quote Package Submission	FRA Execution	Order Fulfillment	Equipment Installation	Retune DMA
<i>Phase 1: Market Kickoff</i>					100%	100%		Complete
<i>Phase 2: Inventory Submission</i>					97%	100%		Complete
<i>Phase 3: Inventory Verification</i>					71%	100%		Complete
<i>Phase 4: Quote Packages Submitted to Sprint Nextel</i>					29%	100%		Complete
<i>Phase 5: Frequency Relocation Agreement Execution</i>					14%	99%		707%
<i>Phase 6: Order Fulfillment</i>					3%	66%		2100%
<i>Phase 7: Equipment Installation</i>					1%	55%		5400%
<i>Phase 8: Retune DMA</i>					1%	42%		4100%

BAS Relocation Status January 2008



BAS Relocation Status April 2009

2 GHz Relocation Progress by DMA



BAS Relocation Challenges

- *Complexity of BAS Transition*
- *Market-Prioritization Demands of MSS Licensees*
- *Digital TV Delay*
- *Broadcaster Bankruptcies*
 - *Pappas Telecasting – thirteen BAS systems*
 - *Tribune Company – nineteen BAS systems*
 - *Young Broadcasting – thirteen BAS systems*
- *Avoiding Material Disruptions to Broadcasters*
- *Aviation Disasters*
- *Weather and Natural Disasters*
- *Tower Climbing Hazards*
- *Competing Priorities for Vendors*
- *Capacity Limitations*
- *Helicopter Constraints*
- *State Contracting Requirements*



MSS 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.”*
- *In 2004 and again in 2008, the Commission 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.*

MSS Spectrum and Cost Share

Sprint
5 MHz
14%

FCC Spectrum Allocation

AWS
10 MHz
29%

FCC Cost Allocation

AWS
?%

MSS
27%

MSS
20 MHz
57%

Sprint
73%

Actual Cost Allocation to Date

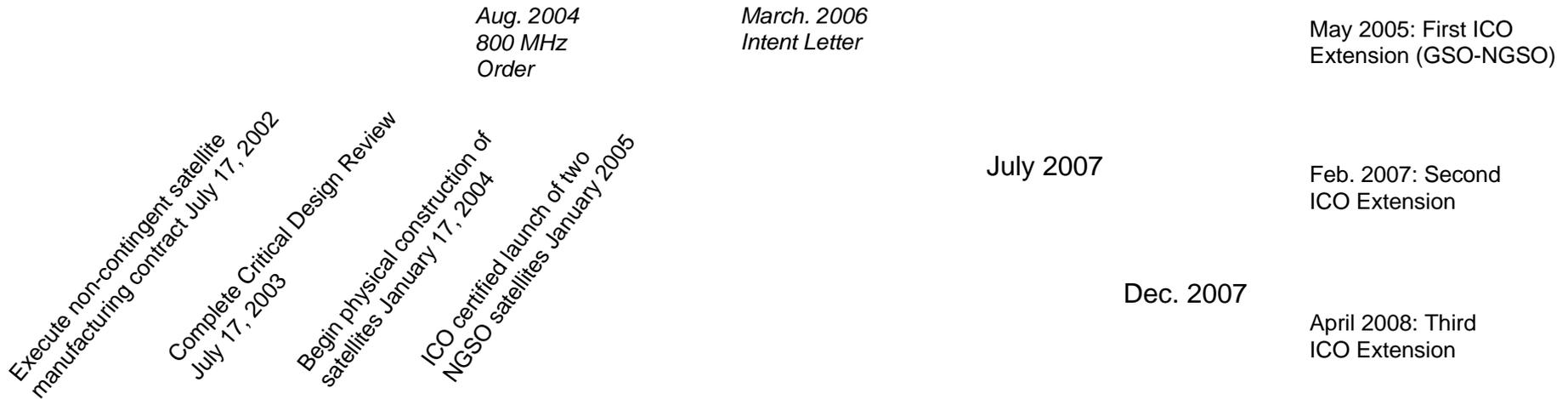
AWS
0%

MSS
0%

Sprint
100%

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* *

October
2007

Nov. 2008

Terrestar 2008 Implementation Milestones

- Launch satellite into assigned orbital location
- Certify entire system operational

June 2009
August 2009

Aug. 2009

Simple Premise

- *In declining to dismiss and then staying Sprint’s civil suit against ICO and Terrestar pending FCC action, United States District Judge Leonie M. Brinkema 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.”*