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May 11, 2009

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FILED/ACCEPTED

MAY 12 2009

Federal Communications Commission
Office of the Secretary

**BY HAND DELIVERY**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Notice of *Ex Parte* Communication

Re: *Improving Public Safety Communications in the 800 MHz Band; 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; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18

Dear Ms. Dortch:

The undersigned counsel of Sprint Nextel Corporation (Sprint Nextel) along with Trey Hanbury, Director, Government Affairs, Sprint Nextel and Larry Krevor, Vice President of Government Affairs, Sprint Nextel met today with Commissioner Jonathan Adelstein along with his legal advisor Renee Crittendon. As detailed in the attached presentation, Sprint Nextel discussed the continued and significant progress Sprint Nextel and the broadcast community have made in transitioning BAS operations above 2025 MHz. We also identified some of the challenges ahead, reiterated a joint request that the Commission establish February 7, 2010 as the new transition date, and requested that, to the extent it is practicable, the FCC resolve all outstanding pending matters in the above referenced proceeding.

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

Sincerely,

Al Mottur, Esq.
Counsel for Sprint Nextel Corporation

CC: Commissioner Jonathan Adelstein
Renee Crittendon
Trey Hanbury
Lawrence Krevor

1350 I Street, NW, Suite 510 | Washington, DC 20005-3355 | 202.296.7353 *tel*
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# 2 GHz BAS Transition

*April 2009*

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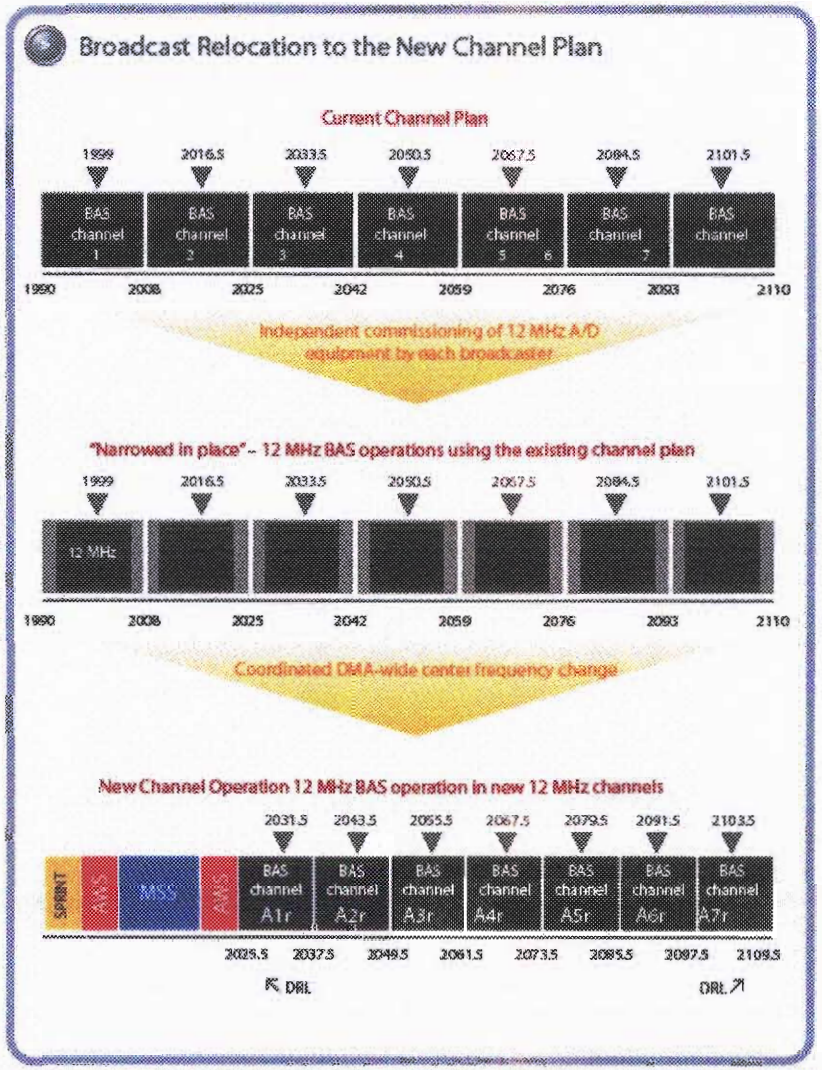
# 2 GHz BAS Transition Process

***ORDER***
new equipment

***INSTALL***
new equipment

***CONVERT***
to new channel plan
on market cutover
date

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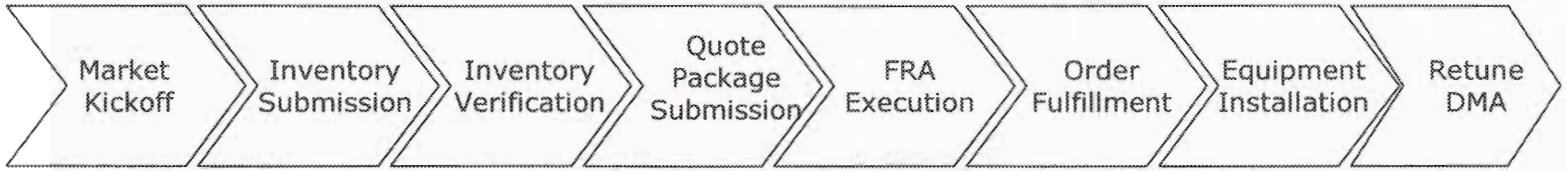
# 2 GHz BAS Transition Process




| Phases | Jan 2007 | Apr 2009 | Percentage Increase |
|---|---|---|---|
| Phase 1: Market Kickoff | 100% | 100% | Complete |
| Phase 2: Inventory Submission | 97% | 100% | Complete |
| Phase 3: Inventory Verification | 71% | 100% | Complete |
| Phase 4: Quote Packages Submitted to Sprint Nextel | 29% | 100% | Complete |
| Phase 5: Frequency Relocation Agreement Execution | 14% | 99% | 707% |
| Phase 6: Order Fulfillment | 3% | 66% | 2100% |
| Phase 7: Equipment Installation | 1% | 55% | 5400% |
| Phase 8: Retune DMA | 1% | 42% | 4100% |

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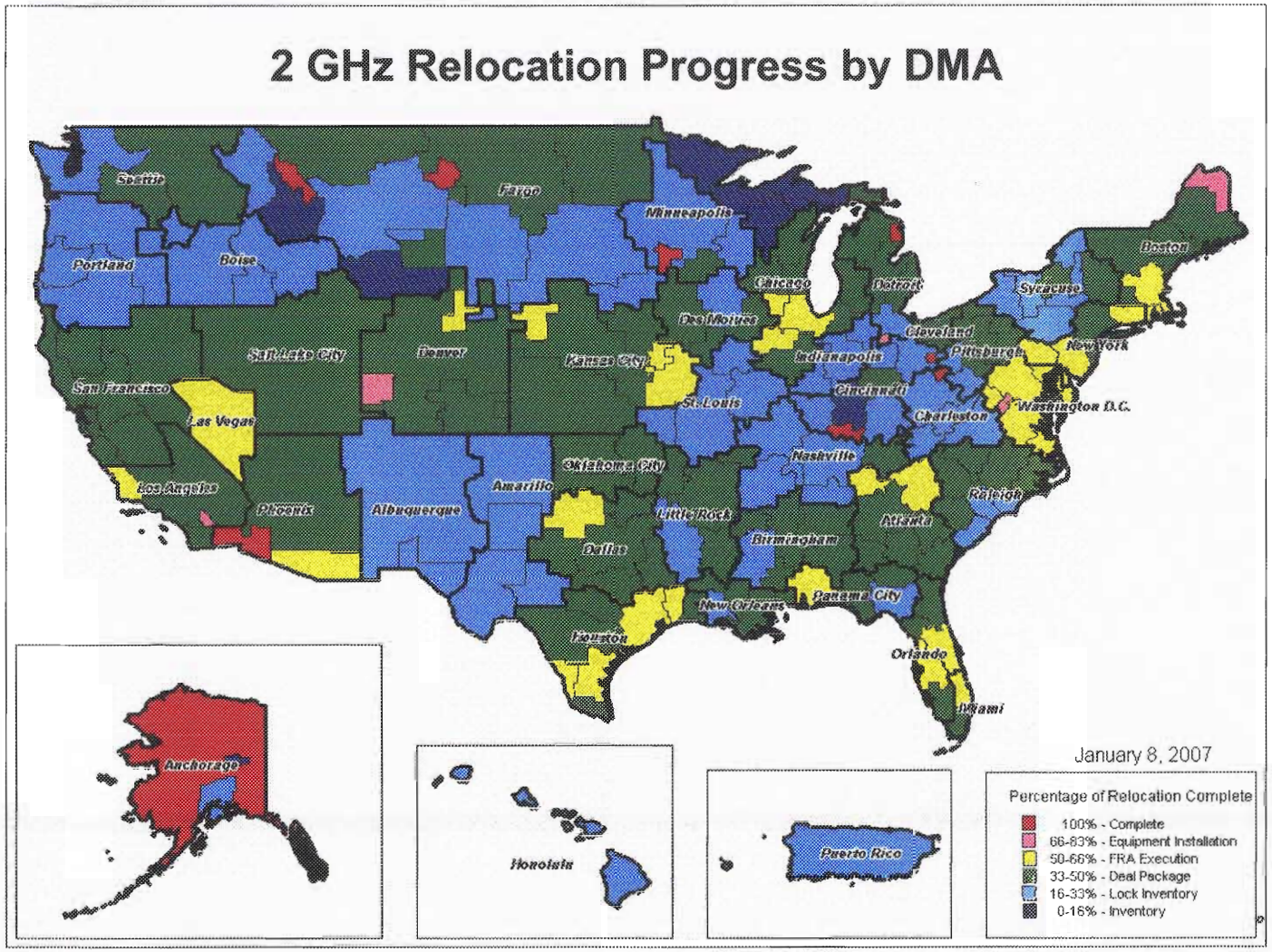
# BAS Relocation Status January 2007

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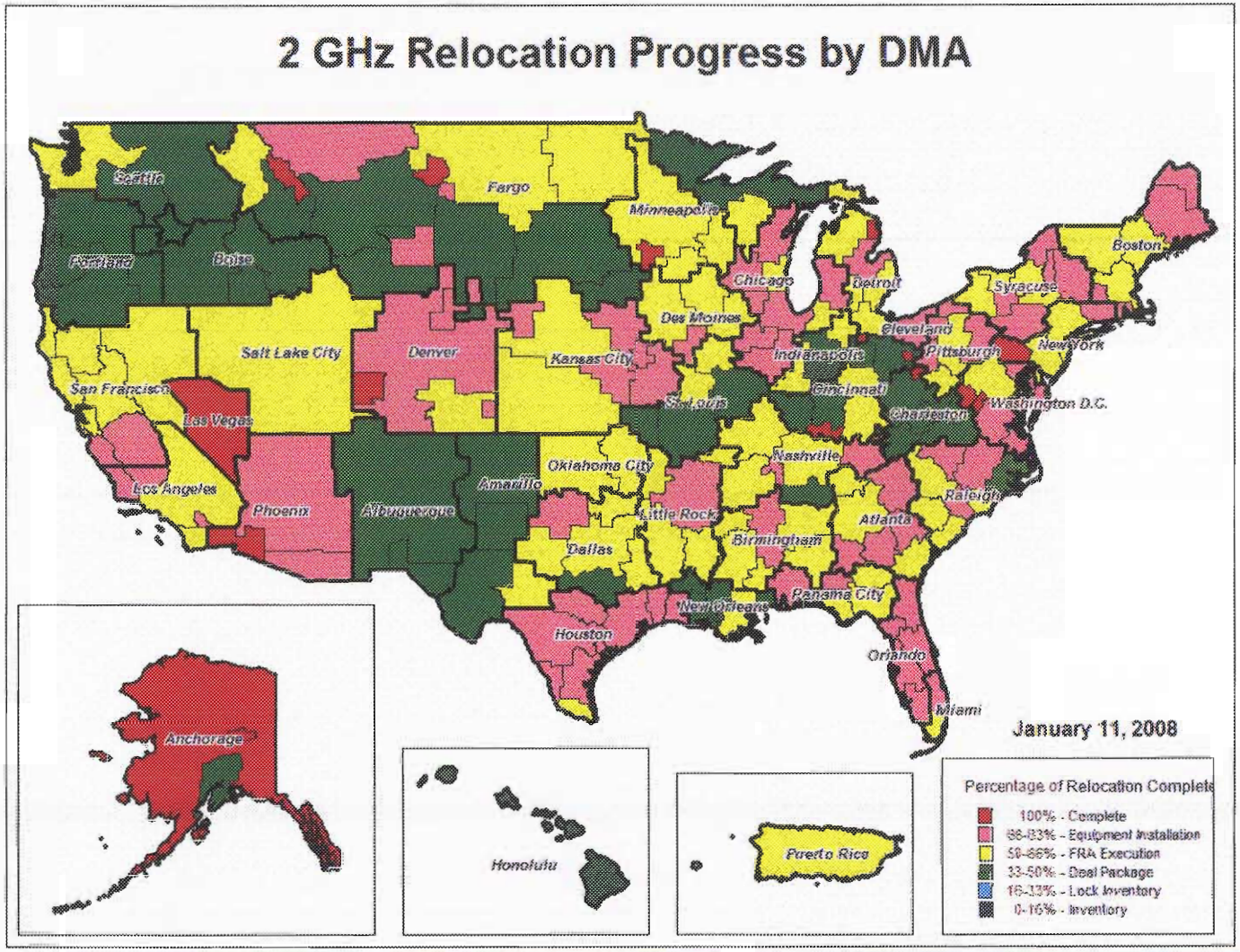
# BAS Relocation Status January 2008

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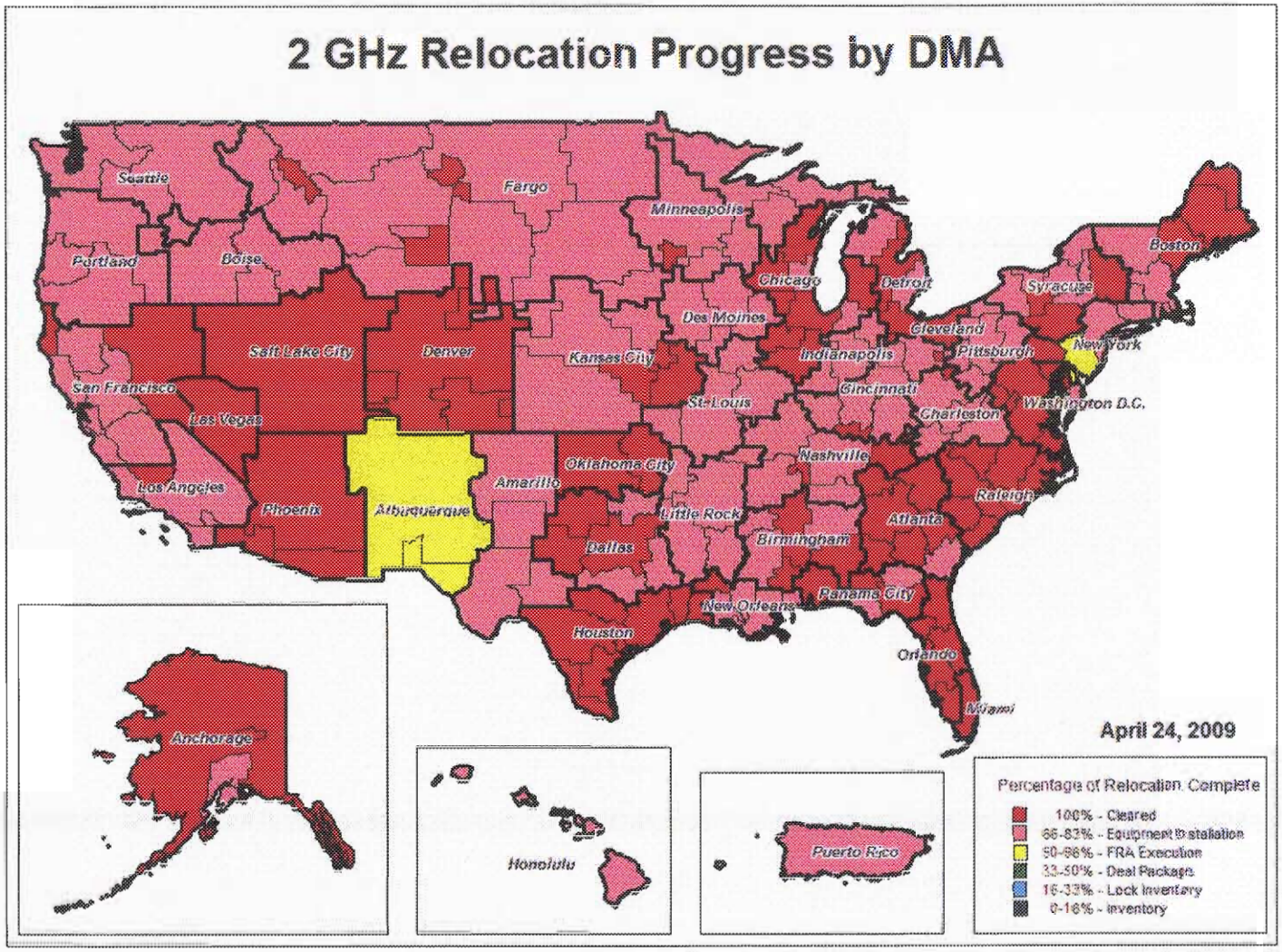
# BAS Relocation Status April 2009

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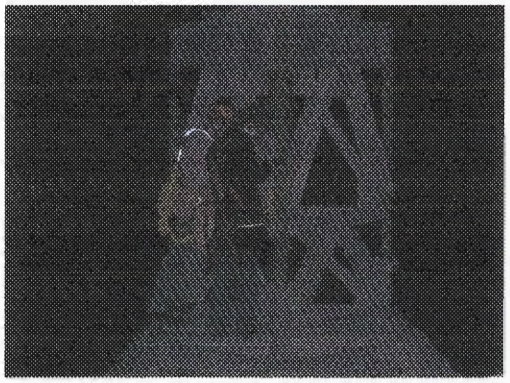
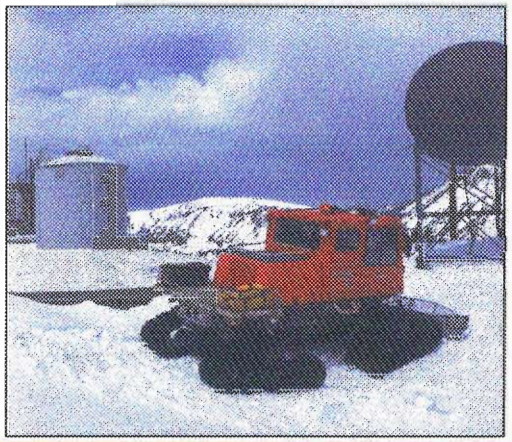
# BAS Relocation Challenges

- *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*





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# 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.*

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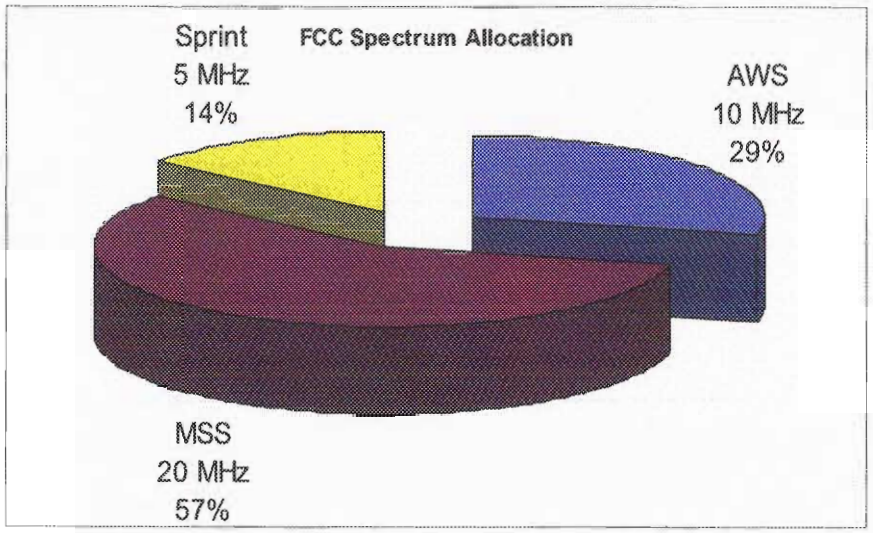
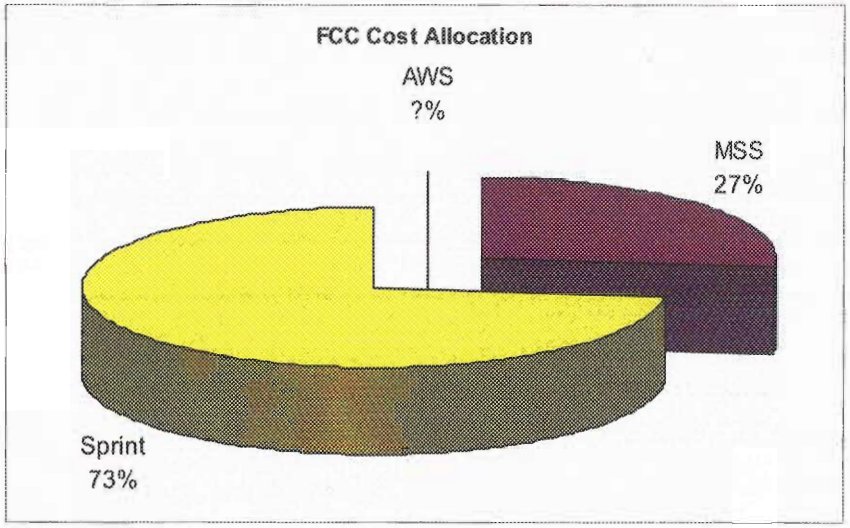
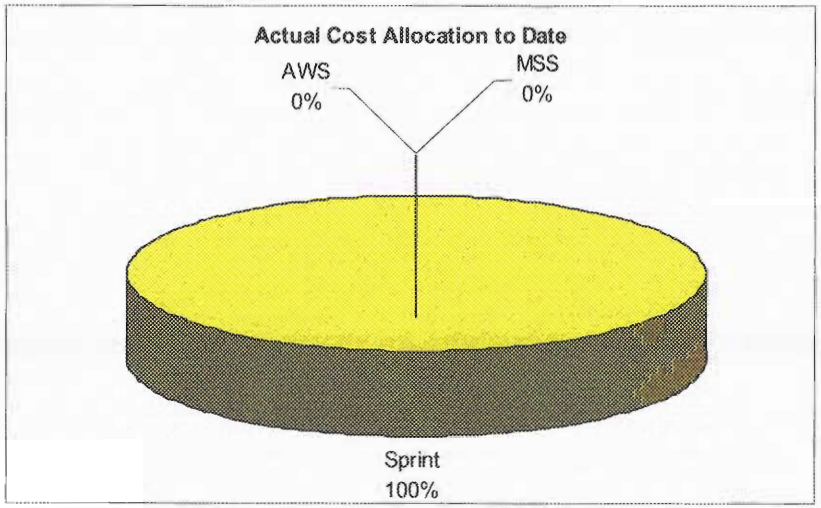
# MSS Spectrum and Cost Share

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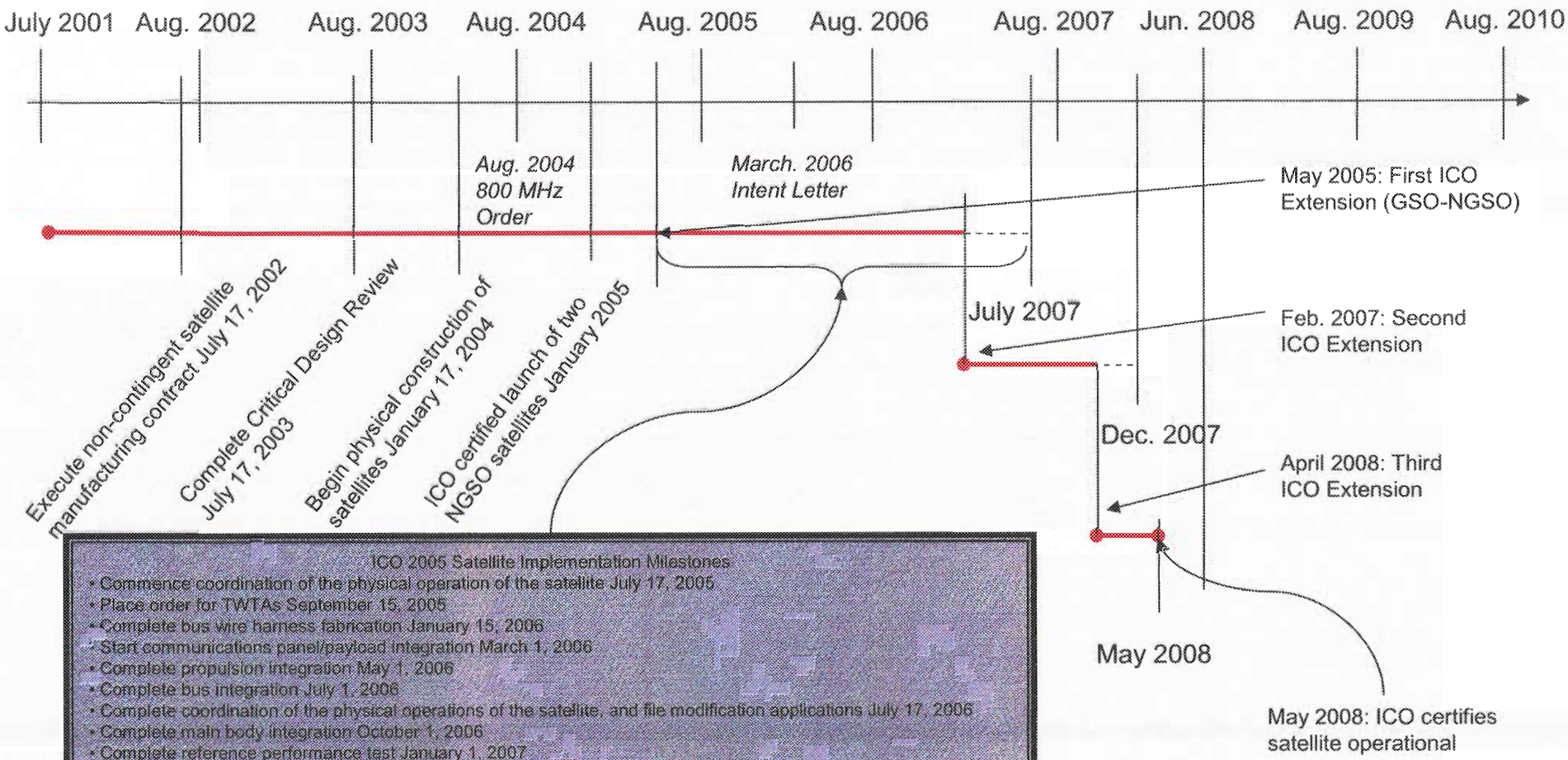
# ICO Satellite Milestone Extensions




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.*

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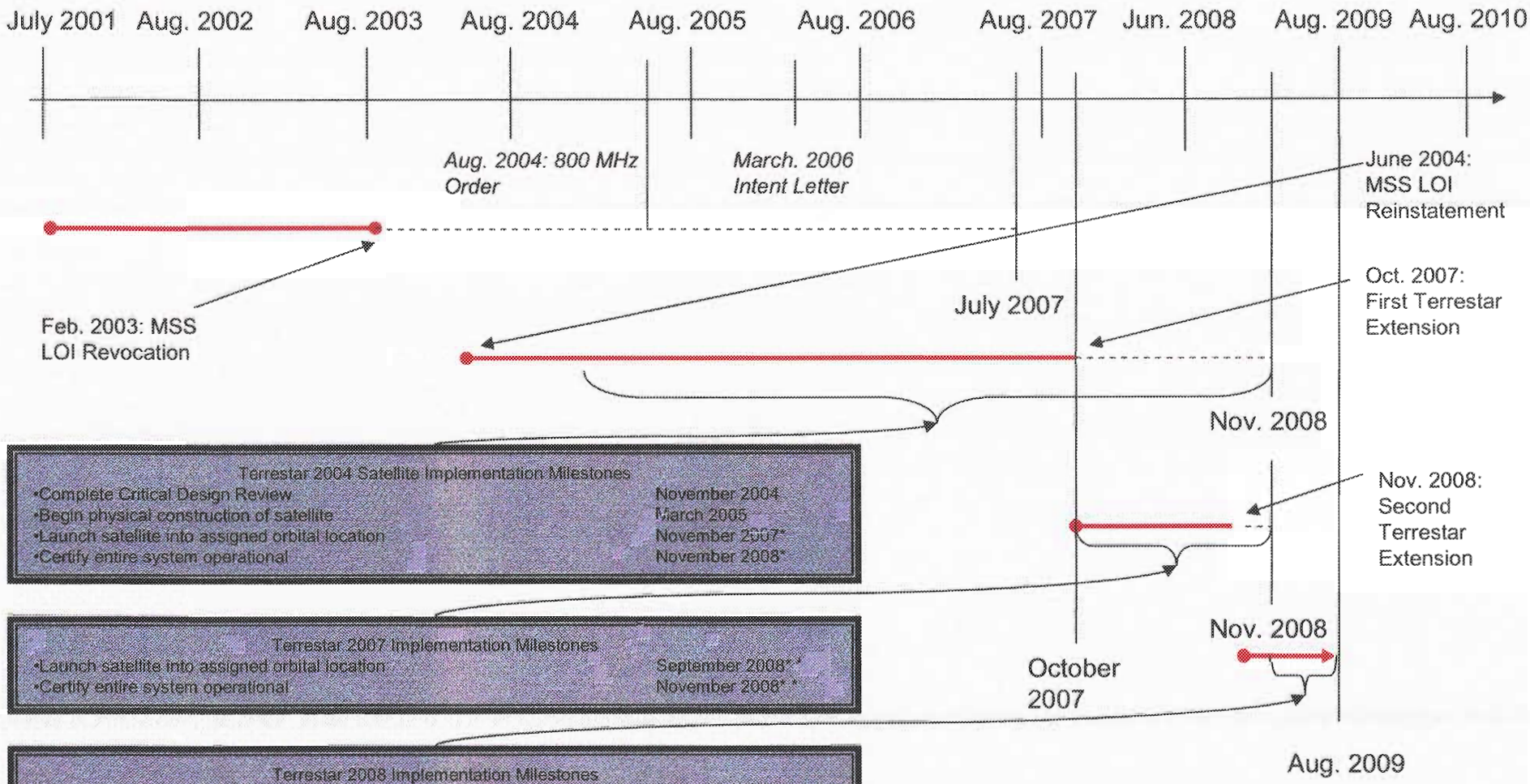
# Terrestar Satellite Milestone Extensions




**Terrestar 2004 Satellite Implementation Milestones**

| | |
|---|---|
| •Complete Critical Design Review | November 2004 |
| •Begin physical construction of satellite | March 2005 |
| •Launch satellite into assigned orbital location | November 2007* |
| •Certify entire system operational | November 2008* |

**Terrestar 2007 Implementation Milestones**

| | |
|---|---|
| •Launch satellite into assigned orbital location | September 2008* * |
| •Certify entire system operational | November 2008* * |

**Terrestar 2008 Implementation Milestones**

| | |
|---|---|
| •Launch satellite into assigned orbital location | June 2009 |
| •Certify entire system operational | August 2009 |

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# *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."*

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