

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )	
)	
Comment Sought On Spectrum for Broadband )	GN Docket No. 09-47
NBP Public Notice # 6 )	
)	GN Docket No. 09-51
)	
_____ )	GN Docket No. 09-137

**REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its Reply Comments in response to the *Public Notice* (the “*Notice*”) issued by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceedings.<sup>2</sup>

The Commenters are nearly unanimous that the Commission should find and allocate paired spectrum below 3.5 GHz for wireless broadband usage as soon as possible. As demonstrated by the Comments, wireless carriers have both immediate and long-term needs for spectrum. The best way for the Commission to meet these needs is to immediately license for commercial terrestrial use the spectrum it currently holds – AWS-2 and the 700 MHz D Block –

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<sup>1</sup> For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed affiliates and subsidiaries.

<sup>2</sup> *Comment Sought On Spectrum for Broadband; NBP Public Notice # 6*, GN Docket Nos. 09-47, 09-51 and 09-137, DA 09-2100, rel. Sept. 23, 2009.

as well as create a steady stream of additional spectrum allocations.<sup>3</sup> MetroPCS looks forward to helping the Commission identify additional spectrum for auction as soon as possible.<sup>4</sup>

To that end, in addition to the proposals previously suggested by MetroPCS in its Comments, MetroPCS endorses three additional proposals that hold promise for easing both the immediate spectrum crisis and addressing the ongoing long-term needs in order to allow wireless providers to offer the wireless broadband services that consumers are increasingly demanding. Specifically, in addition to immediately issuing service rules and auctioning the AWS-2 and 700 MHz D Block spectrum for commercial terrestrial use, MetroPCS recommends that the Commission accept the recommendation of Sprint<sup>5</sup> and promptly resolve pending petitions for reconsideration regarding Mobile Satellite Spectrum (“MSS”) in a manner that will immediately free up 24 MHz of spectrum for auction for commercial terrestrial mobile wireless broadband services. In addition, MetroPCS urges the Commission to (1) consider other proposals regarding the remaining 16 MHz of MSS spectrum, such as eliminating the ancillary terrestrial component (ATC) and auctioning such ATC rights immediately; (2) reallocate and auction for mobile wireless broadband services any Wireless Communications Service (“WCS”) spectrum that is not built out by the July 2010 construction deadline; and, (3) begin examining broadcast spectrum below 700 MHz to determine if any such spectrum may be reallocated for mobile wireless broadband use. These actions will enable highly valuable and sorely needed spectrum

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<sup>3</sup> MetroPCS also recommended that the Commission consider pairing the 1755 MHz – 1780 MHz spectrum band with AWS-3 to create a 40 MHz of paired spectrum broken into 2 x 5 MHz paired blocks.

<sup>4</sup> When, as occurred with the recent 700 MHz auction, bidders perceive that there is no additional spectrum to be auctioned in an identifiable time frame, artificial scarcity is created and auction outcomes become skewed toward the largest bidders.

<sup>5</sup> Sprint Comments at 9-12.

to be put to better use, and begin the process of allocating additional needed spectrum for mobile wireless broadband services.

**A. The Commission Should Grant Pending Petitions for Reconsideration and Reallocate 24 MHz from MSS Providers, As Well as Allow for ATC Rights to be Auctioned in Connection with Their Highest and Best Use**

In its Comments, MetroPCS suggested the Commission take a hard look at the Mobile Satellite Service (“MSS”) at 2 GHz.<sup>6</sup> This spectrum has been dedicated to MSS use for more than a decade and yet, to this day, MetroPCS knows of no substantial, commercially-viable mobile satellite services being provided to consumers on a regular basis. MetroPCS suggested that the presently authorized MSS operations should be moved to higher portions of the band, and the 2 GHz MSS allocation should be reallocated and auctioned off for advanced wireless service use in the commercial sector.

However, MetroPCS acknowledges that such a reallocation would be time consuming, and, thus, would not resolve the immediate spectrum needs of terrestrial wireless carriers. Thus, in addition to asking the Commission to consider the long-term prospect of relocating all MSS services to a higher portion of the spectrum band, MetroPCS also supports Sprint’s proposal to foster immediate relief by resolving the longstanding petitions for reconsideration in this band in a manner that reassigns or reallocates up to 24 MHz of 2 GHz MSS spectrum for terrestrial commercial broadband uses - which can then be allocated into two 2 x 6 MHz channels.

Currently, both Globalstar and Inmarsat are prosecuting timely-filed petitions for reconsideration of the allocations of the then-remaining MSS spectrum to ICO Services Ltd. (“ICO,” now New DBSD Satellite Services G.P.) and TMI Communications and Company, LP (“TMI,” now TerreStar Networks Inc.). These reallocations increased the spectrum position of

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<sup>6</sup> MetroPCS Innovation Comments at 14.

ICO and TMI from 8 MHz to 20 MHz. As noted by Sprint, action on these pending petitions is “long overdue.”<sup>7</sup> Although the Commission increased the spectrum authorization of both TMI and ICO to 20 MHz each in 2005, there still is no evidence that either provider has been or will be putting either the originally granted spectrum or the more recently granted spectrum to beneficial use in the identifiable future. Further, since the Commission originally believed a 2 x 4 MHz channel was adequate to offer the MSS services contemplated, with no real MSS services available and an immediate need for terrestrial broadband spectrum, there is no reason to allow the MSS operators to keep the entire 2 x 10 MHz allocation. With all wireless carriers and the Commission itself having recognized the “looming spectrum crisis,”<sup>8</sup> the Commission should not sit back and allow this MSS spectrum to remain unused any longer. As Sprint notes, “TerreStar and ICO should have no reason to expect the current 40 MHz allocation to be preserved in the face of their disappointing market performance, the fact that both still hold significantly more spectrum than they were initially assigned, and the terrestrial mobile spectrum crisis.”<sup>9</sup> Thus, the Commission should grant immediately Globalstar and/or Inmarsat’s petitions for reconsideration of the allocation of the then-remaining MSS spectrum to ICO and TMI.<sup>10</sup> The Commission should then reallocate the spectrum and auction it off for use by terrestrial broadband wireless providers, in order to help satisfy the growing consumer demand for terrestrial broadband

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<sup>7</sup> Sprint Comments at 8-10.

<sup>8</sup> Prepared Remarks of Chairman Julius Genachowski at the International CTIA Wireless I.T. & Entertainment Convention, “America’s Mobile Broadband Future,” October 7, 2009 at p. 4 (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-293891A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf)) (“the biggest threat to the future of mobile in America is the looming spectrum crisis.”).

<sup>9</sup> Sprint Comments at 11.

<sup>10</sup> See *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, Petition of Globalstar for Reconsideration, IB Docket Nos. 05-220 and 05-221, filed Jan. 9, 2006; Consolidated Petition for Reconsideration of Inmarsat Ventures Limited and Inmarsat Global Limited, IB Docket Nos. 05-220 and 05-221, filed Jan. 9, 2009.

services.<sup>11</sup> Such a grant and reallocation would free up 24 MHz of prime spectrum that is proximate to the existing AWS-1 band which is being rapidly and successfully commercially deployed by a variety of wireless carriers including MetroPCS, T-Mobile Communications and Leap Wireless, among others.<sup>12</sup>

Instead of working to develop the satellite service that they have been authorized to use the spectrum for, MSS licensees appear to be devoting most of their time and attention to developing an ancillary terrestrial component (“ATC”) service. The Commission should not support efforts of licensees to garner spectrum for one use and convert it to an alternate use. Rather, the Commission should resolve the pending applications for review and remove the right of MSS carriers to use ATC in addition to their MSS spectrum. The Commission should then auction such ATC rights so that such access to spectrum is put to its highest and best use.<sup>13</sup>

Notably, Sprint currently has a timely-filed, pending application for review of the grant of ATC rights to ICO.<sup>14</sup> In its application for review, Sprint attacks the International Bureau’s decision to grant ICO’s ATC license on two main grounds. Sprint contends that the Bureau’s decision directly contravenes prior Commission directives that ATC applications be granted “only after [the Commission is] satisfied that each of the gating criteria has in fact been met, or

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<sup>11</sup> Notably, the incumbent MSS providers could be eligible to bid on the spectrum, but would only prove able to do so if they could make a compelling case to the financial community that they had viable business plans.

<sup>12</sup> See Comments of MetroPCS in GN Docket No. 09-157 filed September 30, 2009 at p. 14.

<sup>13</sup> Of course, if the MSS operators acquire the ATC authority they then could use the spectrum just like all other terrestrial broadband wireless carriers.

<sup>14</sup> *Application of New ICO Satellite Services G.P.*, Application for Review of Sprint Nextel Corporation, IBFS File Nos. SES-LIC-20071203-01646, SES-AMD-20080118-00075 and SES-AMD-20080219-00172, filed Feb. 17, 2009.

will be met at the same time that the application is granted.”<sup>15</sup> As a result, the Bureau’s ruling “directly conflicts with the Commission’s prior ruling and is therefore ultra vires.”<sup>16</sup> Sprint also argues that, even if the International Bureau had the authority to grant an ATC license under such conditions, such a grant is contrary to the public interest, as ICO consistently has refused to assist with incumbent relocation, per the band plan. Sprint asks the Commission to reverse the Bureau’s decision, until such time as ICO can show that “its satellite service is, or soon will be, commercially available throughout the United States,” and agrees to “either relocate 2 GHz BAS licensees itself...or reimburse Sprint Nextel for ICO’s pro rata share of the costs.”<sup>17</sup>

TerreStar also currently has an application pending before the Commission seeking ATC authority for its system,<sup>18</sup> which is the subject of a pending petition to deny filed by Sprint Nextel.<sup>19</sup> The pleadings demonstrate that TerreStar is an MSS operator attempting to use ATC as a last-ditch effort to save a failed business model. TerreStar itself admits to the company’s precarious financial position, and finds itself holding its breath on the grant of an ATC authorization to keep the company afloat. In a recent *ex parte* communication,<sup>20</sup> a TerreStar executive noted that, absent an immediate grant of ATC authority, TerreStar will begin to default

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<sup>15</sup> *Id.* at 6 (quoting *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Bands*, Order on Reconsideration, 18 FCC Rcd 13590, ¶ 10 (2003)).

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Application of TerreStar Networks, Inc.*, IBFS File No. SES-LIC-20061206-02100, filed Dec. 6, 2005.

<sup>19</sup> *Application of TerreStar Networks, Inc.*, Petition to Deny of Sprint Nextel Corporation, IBFS File Nos. SES-LIC-20061206-02100, SES-AMD-20070723-00978, SES-AMD-20070907-01253 and SES-AMD-20080229-00217, filed Apr. 25, 2008.

<sup>20</sup> Email from Alexandra (Sasha) Field, Senior Vice President and Deputy General Counsel of TerreStar, to Karl Kensinger, Associate Division Chief, Satellite Division, International Bureau,

under the terms of a loan agreement used to finance its second satellite.<sup>21</sup> Even if these near term default events are surmounted by TerreStar, the company admits that major additional troubles are looming on the horizon. TerreStar states that “the real hit [under the terms of their loan] is January 20, 2010,” and triggering that event of default, by virtue of its ATC application not having been granted by that date, would be “catastrophic to the company.”<sup>22</sup> In sum, nearly a decade after the Commission first presented the MSS operators with a valuable gift of free spectrum set-asides– and after additional spectrum was granted without charge – there are no viable commercial MSS operations that improve the lives of consumers. It is time for the Commission to make such spectrum available to proven wireless carriers, and ultimately to the consumers that they serve.

The Commission should recapture the improvidently granted supplemental spectrum and cancel the ATC rights to allow proven wireless carriers the opportunity to offer broadband services over this spectrum. This would allow wireless carriers to bid on the right to provide ATC services, and cause MSS carriers to focus on the satellite services that they were authorized to provide in the first instance. If for any reason the Commission is not inclined to terminate either MSS carrier’s ATC authority completely, it could take a less drastic approach of only cancelling the ATC authority of the current MSS operators in the top 50 metropolitan areas. These are the areas where the broadband spectrum shortage is most critical. The carriers could continue to develop its MSS service to serve rural areas – an objective consistent with the

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Federal Communications Commission, IBFS File Nos. SES-LIC-20061206-02100, SES-AMD-20070723-00978, SES-AMD-20070907-01253 and SES-AMD-20080229-00217, Oct. 21, 2009.

<sup>21</sup> The *TerreStar Ex Parte* notes that the first event of default was to have occurred on October 20, 2009, with the second and third default dates coming “the Friday before Thanksgiving and the weekend before Christmas.” *See Id.*

<sup>22</sup> *Id.*

Commission's policy of fostering universal nationwide service. They could use ATC to supplement its service in markets outside of the top 50 where building penetration issues and terrain adversely affect coverage. Such a proposal would allow MSS carriers to maintain ATC rights in certain rural areas which are best suited to satellite service, but allow additional spectrum and resources to be used in the metropolitan areas for mobile wireless broadband uses.

**B. The Commission Should Reauction the WCS Spectrum if Providers are Unable to Construct in Accordance with their Authorizations**

The Commission auctioned Wireless Communications Service ("WCS") in April 1997, granting 126 WCS licenses on July 21, 1997. This spectrum is located in the 2305-2320/2345-2360 MHz bands. The licenses originally were granted for 10-year license terms, and WCS licensees were required to submit a showing of substantial service to their license areas in connection with their renewal application. In 2006, the WCS Coalition filed a request for a 3-year extension of construction deadlines due to the uncertainty surrounding the rules governing Satellite Digital Audio Radio Service ("SDARS") repeaters. This request was granted by the Commission in December 2006, but it noted that it "expect[s] WCS licensees to take advantage of this relief and aggressively develop equipment and service options" for the WCS band.<sup>23</sup>

MetroPCS acknowledges that there have been certain questions raised about possible interference between the WCS band and SDARS. However, these issues only arise because the WCS licensees do not want to abide by the technical limitations that were set before the spectrum was auctioned off. In the order adopting the final WCS rules, the out-of-band emission ("OOBE") rules which the WCS licensees seek to relax were clearly stated.<sup>24</sup> As a consequence,

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<sup>23</sup> *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14134, ¶ 13 (Wireless Tel. Bur. 2006).

<sup>24</sup> *See* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, 12 FCC Rcd 10785 (1997) (The Commission noted

the WCS licenses sold for much lower prices than other broadband wireless licenses.<sup>25</sup> In effect, the WCS licensees are seeking a windfall by buying encumbered spectrum at a bargain price and then petitioning to remove the encumbrance. In the view of MetroPCS, sound auction policy is compromised, and speculation is encouraged, when spectrum is auctioned off for one use and then converted to an alternate use. If WCS licensees are unwilling to construct and operate their authorized stations under the terms of the original licenses by the relevant July 21, 2010 deadline, the Commission should take back the spectrum, give thoughtful consideration to the best manner to configure the spectrum, including the OOB rules, and then auction the spectrum for terrestrial commercial wireless broadband use. Existing WCS licensees who bought the spectrum at bargain basement prices should not be the automatic beneficiaries of rule changes that will allow them to earn gains far beyond their original prices paid. Any WCS licenses that are not constructed by July 21, 2010 should be cancelled, and the Commission should then allocate such spectrum in accordance with a notice of proposed rulemaking to resolve all OOB and interference concerns prior to such auction. Such an action would open up 30 MHz of needed spectrum for mobile wireless broadband development.

**C. The Commission Should Consider Reallocating Unused or Inefficiently Used Broadcast Spectrum**

MetroPCS joins with CTIA and encourages the Commission “to take a hard look at the spectrum use of the U.S. broadcast industry and urges the Commission to consider reallocating

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that, due to the fact that WCS spectrum was located on both sides of the spectrum allocated for SDARS, that there was a substantial risk that the OOB limits it was adopting would make, at least in the foreseeable future, mobile operations in the WCS spectrum technically infeasible).

<sup>25</sup> Indeed, all of the WCS licenses, totaling 30 MHz of spectrum, were purchased for less than \$14,000,000. *See* Public Notice, “WCS Auction Closes,” 12 FCC Rcd 21653 (Apr. 28, 1997). Compare that amount to the most recent 700 MHz auction, where Verizon Wireless purchased 20 MHz of spectrum for wireless uses for approximately \$4.6 billion dollars.

this valuable spectrum to services better able to serve the needs of U.S. consumers.”<sup>26</sup> By all accounts, the decision of the Commission to reallocate the 700 MHz spectrum from broadcast to wireless uses in the course of the DTV transition has been and will continue to be a significant economic boon to the United States and critical communications needs will be met as a result of this forward-thinking action. Following on this success, any broadcast spectrum below 700 MHz band that is not being used to its fullest extent in an efficient way should be removed from the broadcast band and allocated for mobile wireless broadband use. In considering this option, the Commission should keep in mind the fact that the greatest need for broadband wireless spectrum exists in the major metropolitan areas where cable penetration rates are highest. This means that the needs of broadcasters can be addressed through must carry rights on cable stations rather than through over-the-air transmissions. Consequently, MetroPCS agrees with CTIA that the Commission should “begin immediately looking at the broadcast spectrum bands closest to the 700 MHz allocation and reallocat[e] unused DTV channels to licensed mobile broadband use.”<sup>27</sup> Any such actions to use any and all such spectrum for its highest and best use will be to the benefit of consumers. MetroPCS recommends that the Commission immediately initiate a Notice of Proposed Rulemaking to examine whether any spectrum below 700 MHz may be allocated for mobile wireless broadband uses.

Further, since DTV channels are more lightly used in rural areas, the Commission could immediately reclaim such channels and relicense them on a non-interfering basis for terrestrial broadband wireless services. The 700 MHz Band has excellent propagation characteristics to serve rural areas. This proposal could lead to an immediate surge in rural wireless broadband services – which would support the goals of the national broadband plan.

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<sup>26</sup> CTIA Comments at 30.

## II. CONCLUSION

The foregoing premises having been duly considered, MetroPCS Communications, Inc. respectfully requests the Commission to take actions to with respect to spectrum policy consistent with these Reply Comments.

Respectfully submitted,



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<sup>27</sup> *Id.*