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March 2, 2010

Notice of *Ex Parte* Communications

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

**Re: CC Docket Nos. 96-45, 01-92; ET Docket Nos. 95-18, 00-258, 02-380, 04-186;
GN Docket Nos. 09-51, 09-157; WC Docket Nos. 05-25, 05-337;
WT Docket Nos. 02-55, 06-150, 09-66; WTB Docket No. 07-121;
PS Docket No. 06-229**

Dear Ms. Dortch:

Yesterday, Sprint Nextel Corporation (“Sprint Nextel”) representatives Lawrence Krevor, Vice President, Government Affairs; Charles McKee, Vice President, Government Affairs; Trey Hanbury, Director, Government Affairs; and Richard Engelman, Director, Government Affairs, met with Commissioner McDowell; Christine Kurth, Policy Director and Wireline Counsel for Commissioner McDowell; and Ari Moskowitz, an intern for Commissioner McDowell. They also met separately with Commissioner Clyburn and Louis Peraertz, Acting Legal Advisor to Commissioner Clyburn.

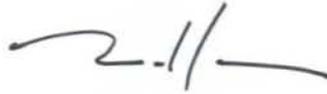
During the meetings, the Sprint Nextel representatives explained their view that public safety providers will enjoy far better prices, faster innovation, better service, and more rapid and extensive 4G broadband service availability if multiple carriers are able to compete on a level playing field for the opportunity to meet public safety’s broadband requirements. The Sprint Nextel representatives also reiterated the company’s view, now jointly endorsed by T-Mobile, MetroPCS, Clearwire, Access Spectrum, and the Rural Telecommunications Group, that the FCC should: (i) encourage public-private partnerships for 4G wireless broadband on a band-neutral, technology-neutral, competitively neutral basis; and (ii) auction the D Block in a way that encourages public-private partnerships between commercial operators and public safety providers. The representatives also discussed ICO’s and TerreStar’s refusal to reimburse Sprint Nextel for Broadcast Auxiliary Service relocation expenses and the need for swift Commission action to enforce and protect its relocation cost reimbursement policies and rules, especially as it prepares to clear new spectrum bands.

Separately, the Sprint Nextel representatives and Michele Farquhar of Hogan & Hartson, LLP, Counsel to Sprint Nextel, discussed the company’s proposals to expedite and advance wireless broadband deployment, innovation and investment in the FCC’s broadband policy proceedings. They highlighted the need for the FCC to: (1) encourage the availability of cost-

effective backhaul; (2) reform the Universal Service Fund to recognize broadband deployment; (3) eliminate an inter-carrier compensation system designed to subsidize old technology; (4) unleash spectrum for commercial mobile broadband use; (5) timely and vigorously enforce relocation and technical rules; and (6) continue flexible and efficient licensing of mobile broadband spectrum.

If any questions arise concerning this submission, please feel free to 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: Commissioner McDowell
Commissioner Clyburn
Christine Kurth
Louis Peraertz

Timely Commission Action Required to Preserve Its Relocation Cost Reimbursement Policies and Ensure Clear Broadband Spectrum for the Future

WT Docket No. 02-55; ET Docket Nos. 95-18, 00-258

Commission Orders and MSS License Conditions Support Prompt Cost Recovery

- More than nine years ago the FCC ordered ICO (aka DBSD) and TerreStar to relocate Broadcast Auxiliary Service (BAS) incumbents from the thirty-five megahertz of spectrum in the 1990-2025 MHz band or to pay their fair share of the costs of doing so.¹
 - The FCC also made this obligation an express condition of their MSS licenses.
 - The FCC repeatedly affirmed the independent BAS relocation obligations of both ICO and TerreStar to relocate the BAS incumbents or pay their fair share of the related costs.
 - Despite these requirements, ICO and TerreStar continue to refuse to reimburse Sprint Nextel for any portion of relocation expenses Sprint Nextel has spent on their behalf.

Equitable First Principles Support Prompt Cost Recovery

- *Sprint Nextel occupies little more than 14% of the former BAS spectrum* and will have spent nearly \$750,000,000 to clear the band of tens of thousands of pieces of fixed and mobile BAS equipment since taking the lead on relocation in 2005.
- *ICO and TerreStar occupy more than 58% of the former BAS spectrum*, but have done nothing to relocate even a single BAS incumbent (or reimburse any relocation costs) since the MSS operators first received their FCC licenses nearly a decade ago.
 - The Commission observed that “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” in 2004.
 - Since 2005, Sprint Nextel has offered the MSS licensees numerous ways in which they could participate in the BAS relocation already underway; however, the MSS licensees have refused.
- Working together with the television broadcast industry to overcome a host of obstacles, Sprint Nextel has cleared BAS spectrum covering more than 90% of the country’s population and anticipates clearing the handful of remaining BAS incumbents by August 2010.
- Sprint Nextel has spent \$707,160,847 as of December 2009 to clear BAS incumbents; applying the FCC’s cost reimbursement principles, the MSS licensees owe Sprint Nextel at least \$100 million each.

ICO and TerreStar’s Refusal to Reimburse Relocation Costs Thwarts Commission Policy and Undermines Commission Authority

- If ICO and TerreStar can violate the FCC’s well established *Emerging Technologies* doctrine and refuse to reimburse parties for their legitimate relocation expenses, then licensees will prove much less willing to clear other encumbered spectrum for broadband uses in the future.
- If ICO and TerreStar can escape the Commission’s orders, license conditions, and policies through strategic bankruptcy or restructuring, then the Commission may forfeit much of its authority to control the behavior of its licensees.
- The Commission must take action quickly to enforce and protect its relocation cost reimbursement policies and rules, especially as it prepares to clear new spectrum bands.

¹ See, e.g., *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.”).

SPRINT NEXTEL BROADBAND POLICY PROPOSALS

GN Docket Nos. 09-51, 09-157; WT Docket No. 09-66

Key Steps to Advance Wireless Broadband Deployment, Innovation and Investment:

- *Address the Special Access Market Failure Undermining Competitive Entry*
 - *Modify the Regulatory Compensation Structure to Promote Rather than Tax Broadband Deployment*
 - *Adopt Final Rules and Auction 50 MHz of Spectrum Ready for Licensing*
 - *Timely Enforce Relocation, Cost Recovery and Technical Rules*
 - *Promote Technologically and Competitively Neutral Flexible Use Policies*
-

Facilitate the Availability of Cost-Effective Backhaul

- Reform Special Access to correct anti-competitive rates, terms, and conditions
- Complete any additional data collection quickly to prevent further delay
- Enable innovative backhaul alternatives (TV White Spaces, Microwave Dark Spaces)

Reform the Universal Service Fund to Recognize Broadband Deployment

- Recognize that local loops provide more than one service and allocate cost accordingly
- Shift support to consumers rather than carriers to encourage broadband adoption
- Give consumers the ability to choose the services they want to support
- Adopt a policy that does not exclude new entrants and technologies from USF support

Eliminate an Inter-Carrier Compensation System Designed to Subsidize Old Technology

- Stop the practice of charging for the exchange of voice data
- Remove incentives that encourage the preservation of outmoded network architectures
- Increase efficiency by requiring carriers to accept the exchange of IP traffic
- Ensure that incumbents continue to have the obligation to interconnect in an IP world

Unleash Spectrum for Commercial Mobile Broadband Use

- Assign the 50 MHz in the FCC's "Spectrum Warehouse" ASAP
- Reassign or reallocate at least 20 MHz of the 2 GHz MSS spectrum
- Resolve the SDARS/WCS proceeding to unleash WCS spectrum
- Allow limited licensing of the TV White Spaces for fixed point-to-point services
- Authorize use of Microwave Dark Spaces
- Develop Spectrum Test Beds, including in a portion of the V-Band
- Identify and allocate additional spectrum for commercial mobile licensed use
- Consider network efficiencies and urban/rural factors in assessing spectrum needs

Timely and Vigorously Enforce Relocation and Technical Rules

- Adopt clear spectrum relocation rules and enforce them quickly and consistently
- Ensure that all beneficiaries of the relocation process pay their fair share of costs
- Maintain active and timely oversight of all parties to the relocation process
- Enforce existing technical and interference rules
- Strengthen OOB limits for unlicensed devices

Continue Flexible and Efficient Licensing of Mobile Broadband Spectrum

- Continue and expand technologically and competitively neutral flexible use policies
- Encourage more efficient and intensive spectrum use
- Avoid authorizing spectrum underlays and overlays
- Modify and harmonize build-out deadlines