



Sprint Nextel
2001 Edmund Halley Drive
Reston, VA 20191
Office: (703) 433-8525 Fax: (703) 433-4142
Mobile: (703) 926-5933

July 8, 2010

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, and Nicholas Oros of the Office of Engineering and Technology and John Leibovitz, Blaise Scinto, Peter Daronco and Robert Alderfer of the Wireless Telecommunications Bureau.¹ Sprint Nextel distributed copies of the attached presentation concerning the Broadcast Auxiliary Service (BAS) transition, which is now 99.9% complete.

After reviewing the challenges and obstacles to BAS relocation, we 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 that they occupy.² 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 2025 MHz.³ Pursuant to the *800 MHz Report and Order*, Sprint Nextel provided notice on March 7, 2006 of its intent to seek

¹ Michael Degitz, Trey Hanbury and Joshua Parker represented Sprint Nextel.

² 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; the MSS downlinks are in the 2180-2200 MHz band.

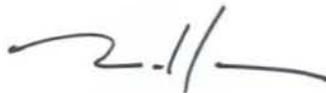
³ See, e.g., *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, ¶ 261 (2004) (“800 MHz Order”), 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.”).

reimbursement from the MSS licensees for eligible relocation expenses.⁴ On January 28, 2008, Sprint Nextel provided the two MSS entrants to the band – ICO (now DBSD) and TerreStar – with a first interim billing statement that projected each licensee’s liability to Sprint Nextel as \$100,121,336.60. Since then, Sprint Nextel has continued to incur 2 GHz BAS relocation expenses attributable to the 2 GHz MSS licensees; however, ICO/DBSD and TerreStar refuse to pay any portion of the cost of the nationwide clearing their 2 GHz MSS spectrum based on alleged ambiguity in the Commission’s rules and policies governing spectrum relocation.

On June 10, 2009, the FCC adopted an *Order and Further Notice* that reaffirmed its longstanding spectrum relocation policies that require beneficiaries of a relocation project to pay their fair share of relocation expenses. The Commission stated that “Nothing in the text of the relevant orders suggests that the FCC limited the time in which Sprint Nextel could seek reimbursements from MSS entrants to provide an independent benefit to MSS entrants, e.g., to subsidize them or provide them certainty about their business costs.”⁵ The FCC also sought comment on a variety of issues relevant to the relocation process and reached several tentative conclusions – all of which essentially affirm prior FCC decisions and policies dating back to 1993 that require the beneficiaries of a relocation project to pay their fair share of relocation expenses.

We urged the Commission to adopt a final order in response to the pending *Further Notice* as quickly as possible. We recommend that, at a minimum, the Commission act on the *Further Notice* prior to exploring the question of whether to grant the 2 GHz MSS licensees valuable additional spectrum rights. Once again reaffirming the longstanding obligation of the beneficiaries of relocation to pay their fair share of relocation expenses will provide certainty to all parties to the present dispute and avoid creating disincentives for future spectrum relocation projects needed to meet the National Broadband Plan’s goal of allocating 500 megahertz of additional wireless spectrum for broadband use. If any questions arise concerning this filing, please contact me.

Sincerely,



Trey Hanbury, Esq.
Director, Sprint Nextel Corporation

CC: Julius Knapp, Geraldine Matisse, Jamison Prime, Nicholas Oros, John Leibovitz, Blaise Scinto, Peter Daronco and Robert Alderfer

⁴ 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).

⁵ See, e.g., *Improving Public Safety Communications in the 800 MHz Band*, Report and Order and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 7904, ¶180 (2009) (“Further Notice”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-49A1.pdf.



2 GHz BAS Transition

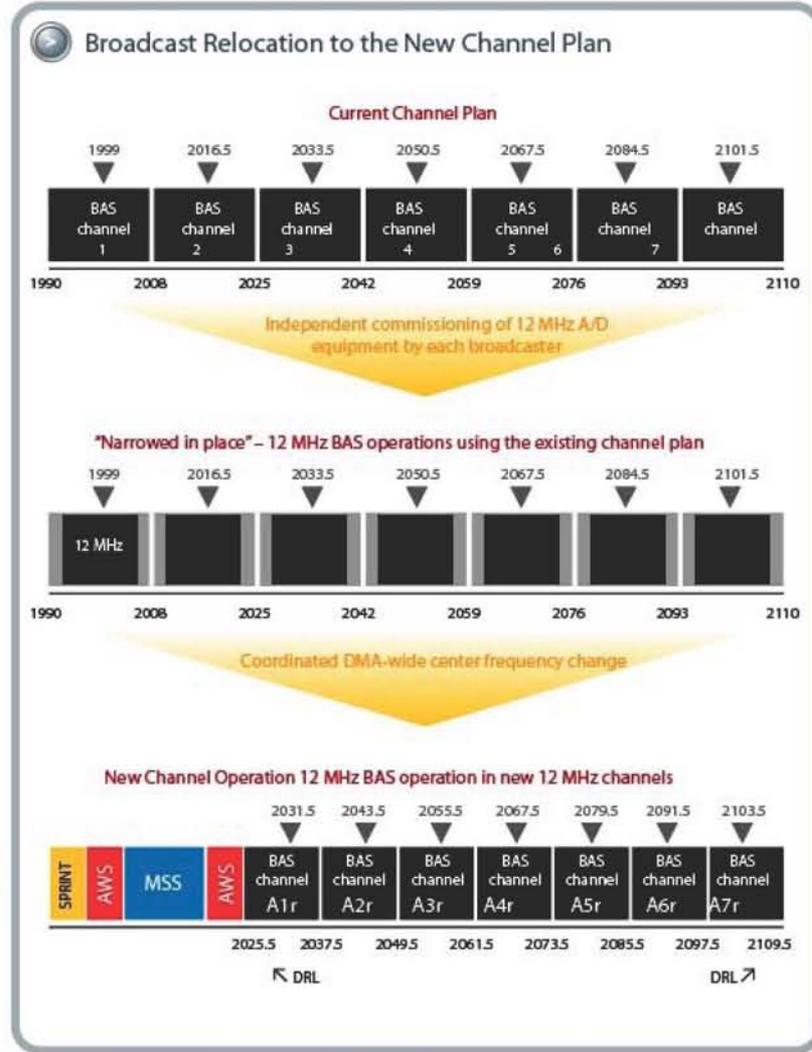
July 2010

2 GHz BAS Transition Process

ORDER
new equipment

INSTALL
new equipment

CONVERT
to new channel plan
on market cutover
date

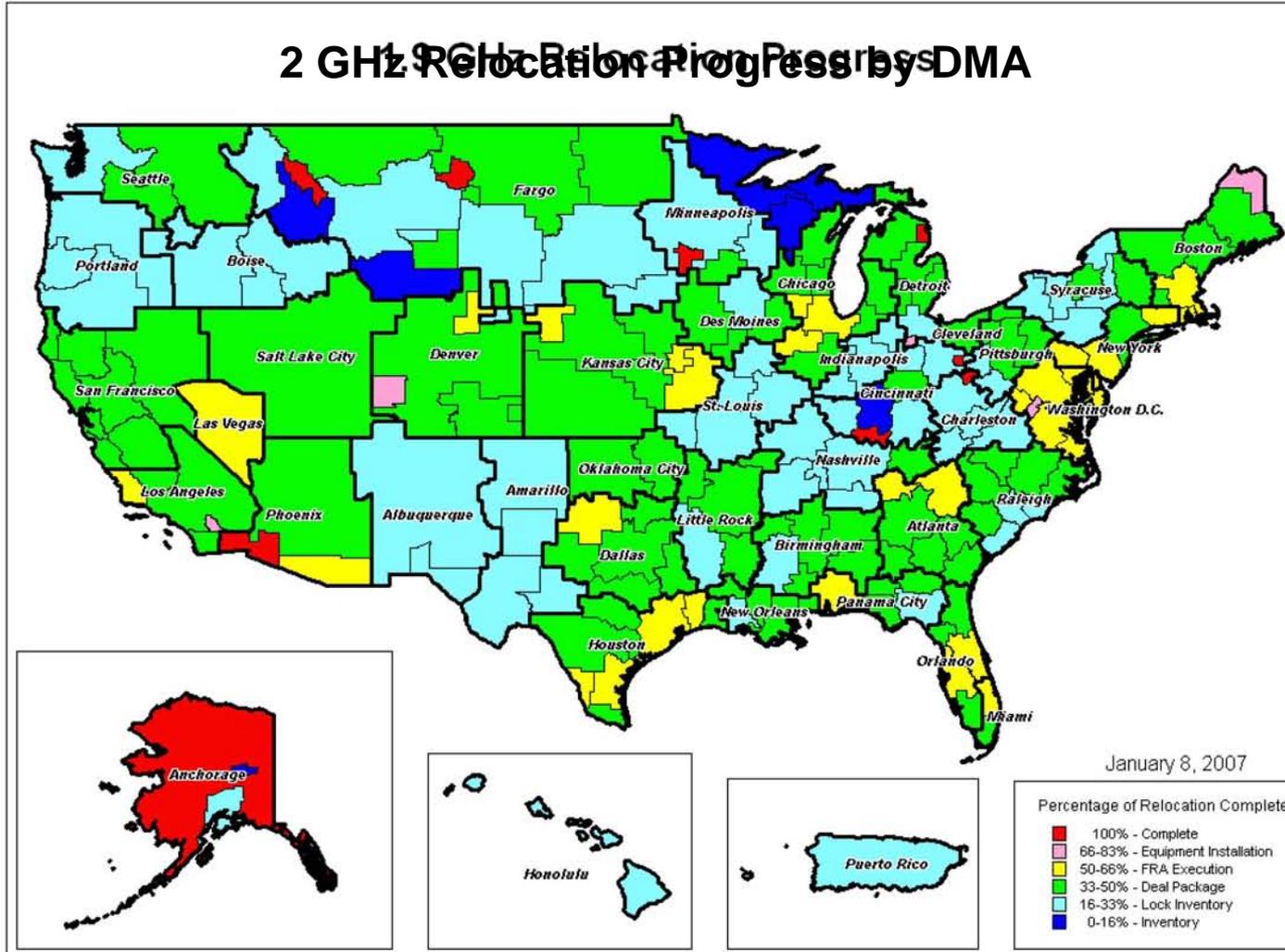


2 GHz BAS Transition Process

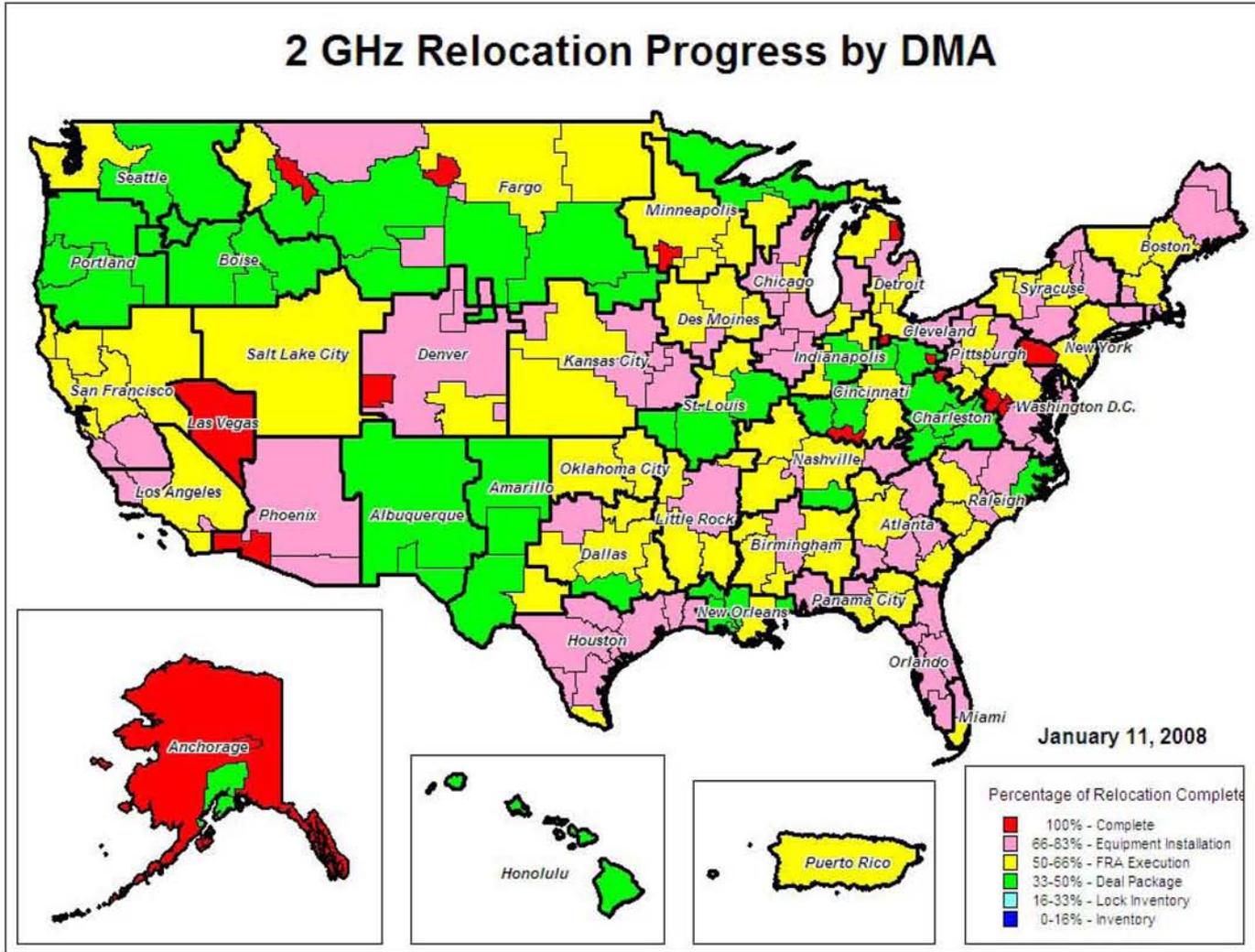
	Market Kickoff	Inventory Submission	Inventory Verification	Quote Package Submission	FRA Execution	Order Fulfillment	Equipment Installation	Retune DMA
<i>Phase 1: Market Kickoff</i>					100%	100%		Complete
<i>Phase 2: Inventory Submission</i>					97%	100%		Complete
<i>Phase 3: Inventory Verification</i>					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%		Complete
<i>Phase 6: Order Fulfillment</i>					3%	61%		Complete
<i>Phase 7: Equipment Installation</i>					1%	47%		Complete
<i>Phase 8: Retune DMA</i>					1%	34%		99.9% Complete

BAS Relocation Status January 2007

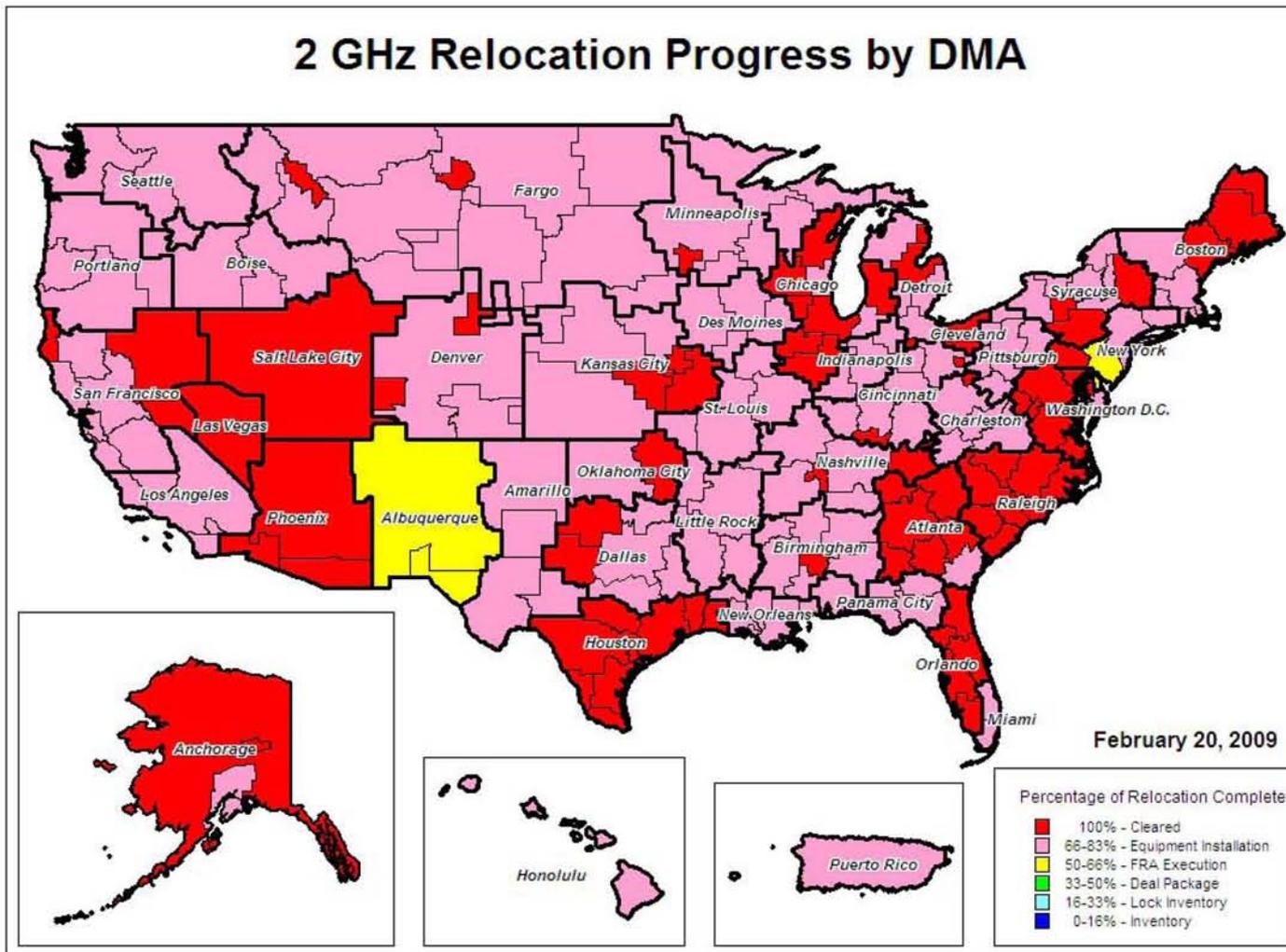
2 GHz Relocation Progress by DMA



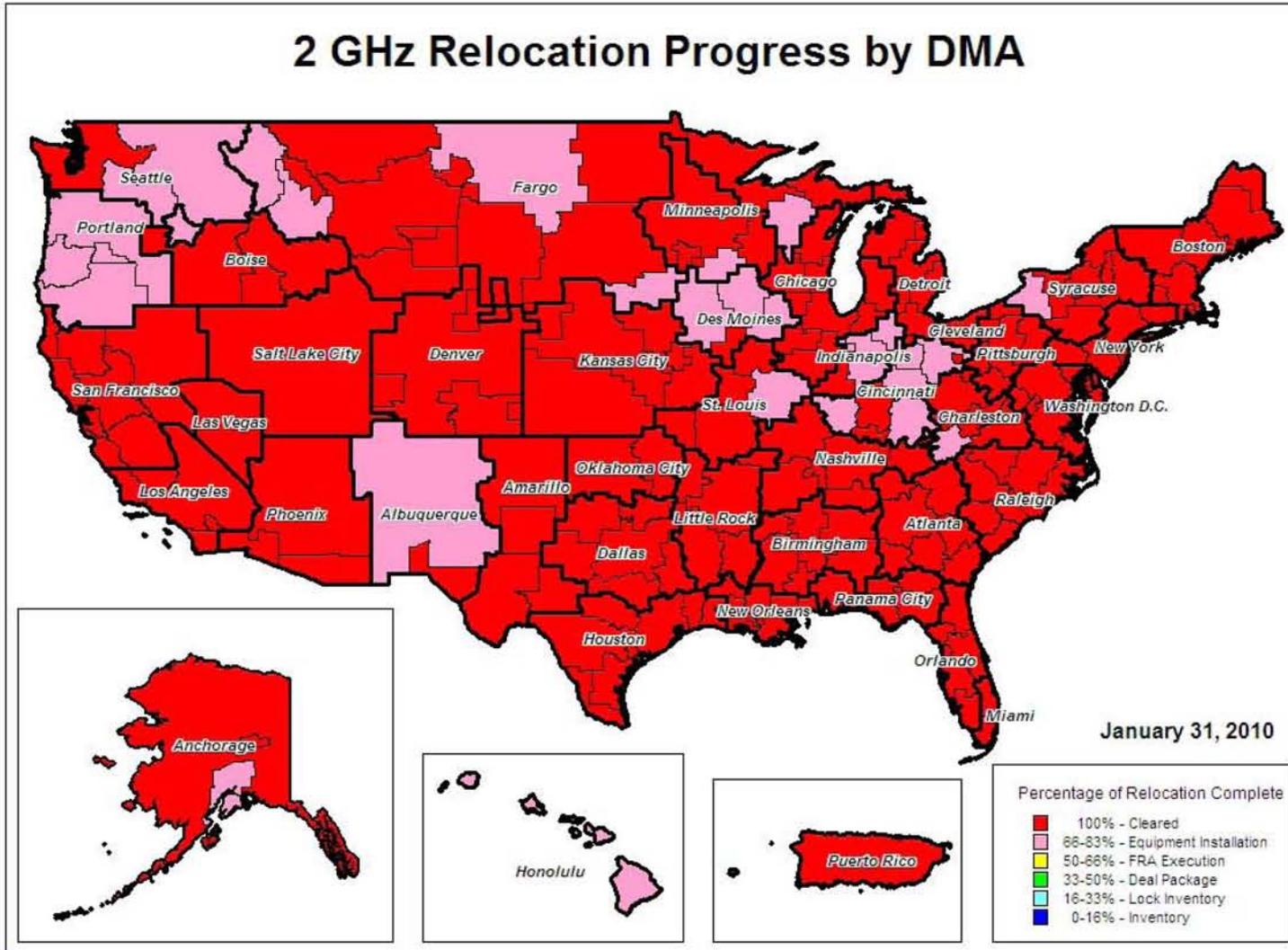
BAS Relocation Status January 2008



BAS Relocation Status February 2009

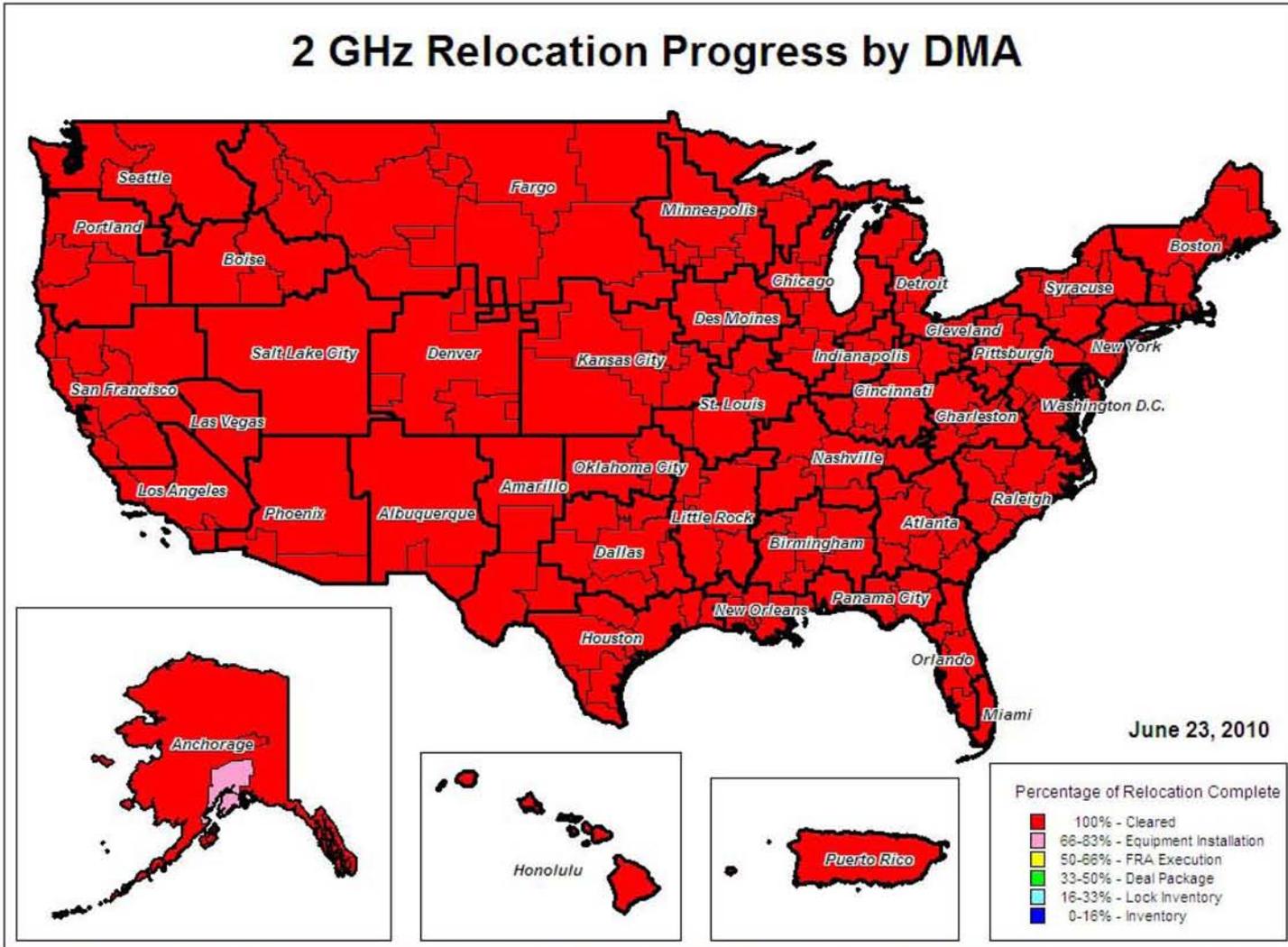


BAS Relocation Status January 2010



BAS Relocation Status July 2010

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*

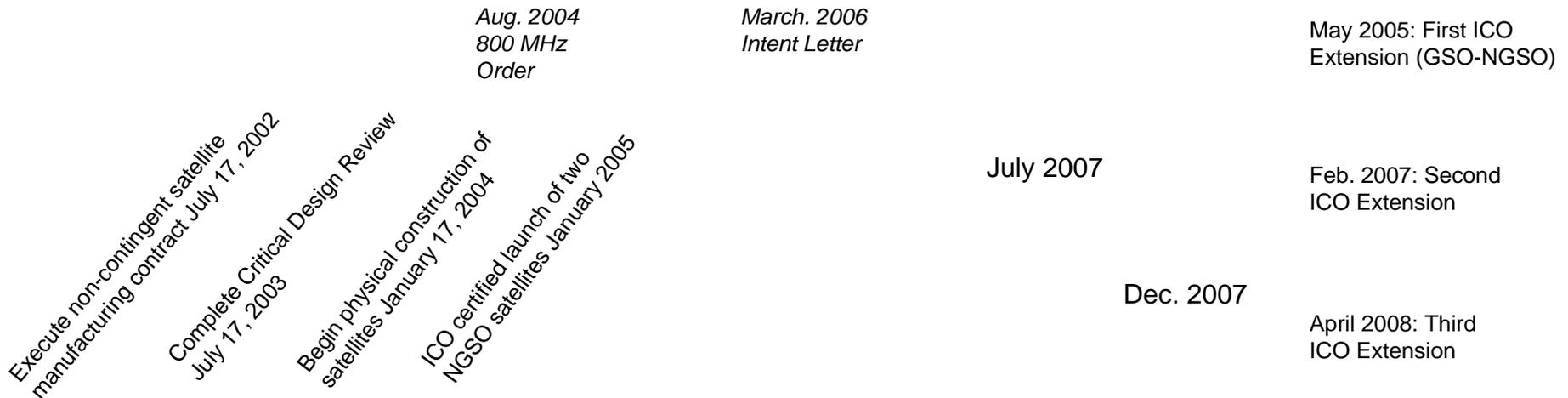


MSS BAS Relocation Obligations

- *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 nine 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.*

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."*