



Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ...

New ICO Satellite Services G.P.

...and Thank You for Your Comments

Your Confirmation Number is: '20071219419841 '

Date Received: Dec 19 2007

Docket: 02-55

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	
)	
Amendment of Part 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)	ET Docket No. 00-258
)	
Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service)	ET Docket No. 95-18
)	

COMMENTS ON SPRINT/BAS RELOCATION PROPOSAL

New ICO Satellite Services G.P. (“ICO”) submits these comments addressing the joint proposal for completing the relocation of 2 GHz broadcast auxiliary service (“BAS”) licenses, filed by Sprint Nextel Corporation (“Sprint”), the Association for Maximum Service Television, the National Association of Broadcasters, and the Society of Broadcast Engineers (collectively, the “Sprint/BAS Parties”).¹

ICO recognizes that relocating 2 GHz BAS incumbents is a complex undertaking. ICO also recognizes Sprint’s efforts in relocating the BAS incumbents, and the importance of local

¹ See Consensus Plan of Sprint Nextel Corp. et al., WT Dkt. No. 02-55 (Dec. 6, 2007) (“Sprint/BAS Relocation Proposal”).

news gathering and BAS operations in general. As such, some limited relief for Sprint from its September 6, 2007, deadline for completing BAS relocation may be appropriate.

However, any relief granted to Sprint must not be at the expense of the 2 GHz mobile satellite services (“MSS”) entrants, who reasonably have relied on Sprint’s execution of its joint Sprint/BAS relocation plan. Specifically, any Commission action must ensure that 2 GHz MSS providers can conduct meaningful market trials in 2008 and provide nationwide commercial MSS by January 1, 2009. The Commission’s *November 2007 Order* expressly directed the Sprint/BAS Parties to submit a BAS relocation proposal that would “take into account the operational milestones of the MSS licensees...and suggest appropriate benchmarks to complete the BAS transition while allowing for the introduction of MSS in a timely manner.”² The Sprint/BAS Relocation Proposal, however, falls short of the Commission’s mandate by proposing a timetable for clearing that would preclude ICO and TerreStar from operating broad market trials and would delay introduction of nationwide commercial satellite services until the end of 2009 at the earliest.

Specifically, the Sprint/BAS Relocation Proposal outlines a relocation schedule that would not require BAS relocation to be completed until August 2009 (or possibly later), more than 16 months after ICO’s scheduled launch and two years after Sprint’s current deadline for

² *Improving Public Safety Communications in the 800 MHz Band*, Order, 22 FCC Rcd 19730, ¶ 5 (2007) (“*November 2007 Order*”). ICO currently is required to launch its satellite by November 30 and certify its system operational by December 31, 2007. As a result of an unanticipated delay in the satellite launch schedule beyond its control, however, ICO was forced to request a brief extension of these deadlines until April 15 and May 15, 2008, respectively. See ICO Modification Application, File No. SAT-MOD-20070806-00110 (Aug. 6, 2007), *as amended by*, File No. SAT-AMD-20071109-00155 (Nov. 9, 2007). TerreStar is required to commence operations by November 2008. See *Terrestar Networks, Inc.*, 22 FCC Rcd 17698, ¶ 11 (IB 2007).

completing BAS relocation.³ Moreover, it is not certain that Sprint will meet this delayed timetable, as the Sprint/BAS Relocation Proposal offers only tentative deadlines. The proposed schedule would force ICO to bear costs, including lost revenues and opportunity costs, while delaying the commercial launch of nationwide services offering important public service and consumer benefits by more than 15 months.

As explained further below, ICO therefore urges the Commission to:

- confirm that the Sprint/BAS Parties can and should facilitate MSS in-orbit testing and market trials;
- ensure that MSS licensees can access 2 GHz spectrum nationwide on a primary basis by no later than Jan 1, 2009; and
- require transparency for all stakeholders in the BAS relocation process (*i.e.*, monthly updates on both clearing progress and projections for completion).

I. THE SPRINT/BAS RELOCATION PROPOSAL DOES NOT ACCOMMODATE CRITICAL 2 GHz MSS OPERATIONAL REQUIREMENTS

In recognition of the challenges involved in relocating 2 GHz BAS licensees and in an effort to reach a compromise, ICO met with Sprint, BAS representatives, and TerreStar in a series of meetings and conference calls leading up to the “BAS Acceleration Summit” on November 27, 2007. The 2 GHz MSS licensees presented to the Sprint/BAS Parties a number of approaches that would permit MSS operators access to their assigned 2 GHz spectrum, while at the same time expediting the BAS transition.

The 2 GHz MSS licensees framed their operational requirements in three phases: 1) in-orbit testing/certifying systems operational; 2) trial market roll-out, and; 3) commercial operation. First, in order to conduct in-orbit testing of the ICO G1 spacecraft and ground

³ See Sprint/BAS Relocation Proposal at 15.

systems (including its ground-based beam-forming (“GBBF”) system) immediately following the launch of its satellite, ICO informed the Sprint/BAS Parties that it would need to conduct in-orbit testing from its ground control operations center in Las Vegas, Nevada. ICO also indicated that upon launch of its satellite, ICO would operate transmit beacon stations⁴ using 2 GHz frequencies on a continuous basis from Las Vegas, Nevada; South Easton, Massachusetts; Brewster, Washington; and Ellenwood, Georgia. ICO noted that the immediate areas around these transmit stations would need to be coordinated with local BAS operations to avoid any possible interference.⁵ In addition to adopting the Sprint/BAS Parties’ proposed deadline for clearing the Las Vegas market, the Commission should ensure that BAS operations do not impact the operations of the ICO MSS earth station sites in South Easton, Brewster, WA, and Ellenwood, GA, which should begin upon launch of ICO G1.

Second, ICO proposed to begin market trials of its service in the Las Vegas and Raleigh-Durham market clusters by no later than July 2008. Initially, ICO requested that Sprint clear a larger area than these market clusters to enable testing of beam-to-beam hand-off during the market trials. The Sprint/BAS Parties, however, firmly rejected the broader geographic scope of the market trials in the time frame required by ICO. For these market trials, ICO then proposed to severely restrict its own use of the 2 GHz uplink band initially and is making significant design efforts to limit use of its satellite system to a few limited geographic areas in the country.

⁴ These transmit-only stations are a critical part of the calibration of the GBBF system.

⁵ ICO has completed coordination of its use of small (.98 meter) transmit antennas at these four locations through a frequency coordinator; no potential interference cases were found for existing or proposed terrestrial facilities operating within the coordination contours of these transmit stations.

The Sprint/BAS Relocation Proposal offers to clear the Las Vegas and Raleigh-Durham market clusters by ICO's requested deadline.⁶ Additionally, ICO requests that the Sprint/BAS Parties prioritize markets adjacent to or near the Las Vegas and Raleigh-Durham market clusters to enable ICO to more broadly test its satellite service.

Third, ICO and TerreStar proposed to begin primary use of the 2 GHz MSS uplink band by no later than January 1, 2009, and proposed that BAS licensees could continue to operate on a secondary basis in any BAS markets not cleared by this date.⁷ Although ICO's ability to launch commercial service nationwide would be delayed as a result of the proposed January 2009 deadline, ICO was prepared to accept this limited delay in order to forge a mutually acceptable solution for all parties.

Finally, ICO and TerreStar discussed with the Sprint/BAS Parties other potential methods that would enable MSS use of the band during the BAS transition, such as exploring the ability of BAS to "narrow in place" on digital channels. Also, in markets where five or fewer BAS operators are in a market, the 2 GHz MSS licensees proposed that the Sprint/BAS Parties reconfigure use away from BAS channels A1 and A2 to enable the 2 GHz MSS licensees to enter the band. The Sprint/BAS Parties rejected these last two proposals as unworkable and did not include them in the Sprint/BAS Relocation Proposal.

⁶ Sprint's recent progress reports indicate that Las Vegas will complete relocation by the end of 2007 or early 2008 without any new approaches. *See* Sprint/BAS Relocation Proposal at 11, App. B at 29.

⁷ Additionally, ICO and TerreStar proposed to coordinate with all secondary BAS licensees. ICO and TerreStar also requested that, to the extent possible, Sprint and BAS licensees prioritize clearance efforts based on ICO's and TerreStar's service rollout plans.

II. THE RELOCATION PROCESS SHOULD BE ACCELERATED, INCLUDING THROUGH INVOLUNTARY RELOCATION PROCEDURES

Although ICO acknowledges the Sprint/BAS Parties' efforts to streamline the relocation process in their relocation proposal, the parties can and should implement additional measures to accelerate the process. Importantly, a significant source of the relocation delays can be attributed to the apparently mistaken assumption that Sprint is still required to negotiate relocation agreements with 2 GHz BAS licensees. In fact, the final mandatory negotiation period expired a year and a half ago, on May 15, 2006.⁸ Despite this expiration, Sprint continues to enter into numerous and potentially lengthy BAS negotiations that are no longer required and threaten to delay the relocation process beyond the August 2009 deadline proposed by the Sprint/BAS Parties.⁹

Under the Commission's established relocation procedures and policies (as adopted in the *Emerging Technologies* proceeding¹⁰ and applied to 2 GHz MSS/BAS relocation), all parties

⁸ See *Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding*, 19 FCC Rcd 21492, 21493 (WTB 2004); *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 353 (2004) ("800 MHz Order").

⁹ The Sprint/BAS Parties indicate that approximately 45 percent of the necessary relocation agreements have yet to be completed. Sprint/BAS Relocation Proposal at 4-5. They anticipate that these remaining relocation agreements will not be completed until September 2008 or, if the methods in the Sprint/BAS Joint Relocation Proposal are successfully implemented, July 1, 2008 "absent circumstances beyond the Joint Parties' control." *Id.* at 19. They further state that "[m]ost [relocation agreements] have required two amendments after the parties have signed the document, and even relatively commonplace missteps, such as misstating the legal name of the party signing the agreement ... can impede transition progress." *Id.* at 22.

¹⁰ See, e.g., *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, 9 FCC Rcd 1943 (1994).

during the mandatory negotiation period “are required to negotiate in good faith.”¹¹ However, after this mandatory negotiation period expires, a new entrant “may proceed to involuntary relocation of the incumbent” if the parties cannot reach agreement during negotiations.¹² During involuntary relocation, the new entrant “may, at its own expense, make necessary modifications to or replacement of the incumbent licensee’s BAS equipment in a fashion consistent with the modifications or replacement performed in negotiated agreements.”¹³ Involuntarily relocated BAS incumbents will not have a right of return, but rather may “petition the Commission for additional modification to or replacement of their equipment in any case where the incumbent believes it has not received comparable performance from its retuned or replaced equipment.”¹⁴ Given that Sprint and the BAS licensees continue to expend large amounts of time and resources to negotiate relocation agreements and amendments that are no longer required, the Commission should remove this source of delay by mandating that Sprint proceed to involuntary relocation.

ICO applauds the recent efforts of the Sprint/BAS Parties to accelerate the BAS relocation process. Therefore, ICO urges a continuation of these recent efforts to accelerate BAS relocation. Although the Sprint/BAS Parties’ efforts have been productive, BAS relocation cannot proceed on a timely basis unless the Sprint/BAS Parties and stakeholders continuously evaluate the relocation process and incorporate lessons learned into the relocation effort. This

¹¹ *See Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, 15 FCC Rcd 12315, ¶ 38 (2000) (quoting 47 C.F.R. § 101.73(b)).

¹² *Id.* (citing 47 C.F.R. § 101.75).

¹³ *Id.*

¹⁴ *Id.*

requires that all stakeholders ensure that they meet the goals set forth in the Commission's *November 2007 Order*.

III. 2 GHz MSS LICENSEES NEED TRANSPARENCY AND CERTAINTY IN THE BAS CLEARING PROCESS

The Sprint/BAS Relocation Proposal would preclude ICO from commencing nationwide, commercial service until after August 2009 (or later if the Sprint/BAS Parties' purportedly aggressive schedule is not met) — more than 16 months after the ICO G1's scheduled satellite launch. Notably, the Sprint/BAS Parties are not proposing any firm interim or final benchmarks for completing BAS relocation, but merely state that their proposed schedule “must remain somewhat tentative due to the fluid nature of a relocation process that depends on the cooperation of scores of different suppliers, integrators, contractors, programmers, installers, and consultants.”¹⁵ Thus, they offer no real assurance that BAS relocation will be completed even by their proposed deadline of August 2009.

Since the Commission adopted the Sprint BAS clearing obligation, it has become effectively impossible for MSS licensees to attempt to accelerate the BAS transition.¹⁶ When

¹⁵ See Sprint/BAS Relocation Proposal at 15. The Sprint/BAS Parties further warn that “[m]any of the resources devoted to the BAS relocation process ... already are working at full capacity to meet the DTV transition deadline” and that “[m]eeting the [proposed relocation schedule] may necessitate additional visits by tower crews, thereby placing additional constraints [sic] on this limited service. *Id.* at 4. They also state that “the last three phases of the BAS transition process ... depend on the manufacturing schedules of multiple vendors, each of which faces its own supply chain and implementation challenges and are subject to a variety of additional constraints on installation and conversion such as bad weather, zoning issues, and accessibility concerns, that are subject to unanticipated implementation delays.” *Id.* at 17.

¹⁶ The practical ability of 2 GHz MSS licensees to relocate BAS incumbents themselves is not viable now that Sprint, despite its delays, has engaged in extensive BAS relocation negotiations, established specific contractual terms, and assumed responsibilities that would be difficult to pass on to 2 GHz MSS licensees. Requiring 2 GHz MSS licensees to duplicate the efforts previously made by Sprint would be inefficient, impractical, costly, and time-consuming. *Footnote continues...*

given the option to allow Sprint to clear and to reimburse for relocation costs,¹⁷ ICO had no indication that the clearing would be delayed by years beyond the deadline. Sprint's required annual reports on the BAS clearing process offered mixed messages and did not convey any real urgency to 2 GHz MSS licensees until 2007.¹⁸ More than three years into the Sprint BAS relocation process, ICO is forced to focus its efforts not on deploying a nationwide service upon launch, but instead on carving out areas where it can function on a trial basis during this delayed transition.

Accordingly, the Commission should allow 2 GHz MSS licensees to obtain primary use of their assigned 2 GHz MSS spectrum as discussed above by no later than January 1, 2009,

Furthermore, it would be counterproductive and frustrating for BAS incumbents, which have invested substantial time and resources in negotiating with Sprint, to be forced to expend additional resources to engage in a separate relocation process with 2 GHz MSS licensees. The Sprint/BAS Parties' are wrong that 2 GHz MSS licensees have had "nearly a decade" to relocate BAS incumbents. The claim ignores licensing issues and rule changes, many requested by Sprint and BAS licensees, that were not fully settled until a few years ago. *See Sprint/BAS Relocation Proposal* at 6 n.8. The Commission did not adopt the current BAS relocation scheme for 2 GHz MSS licensees, which were first licensed in 2001, until November 2003, pursuant to a BAS request for reconsideration of the rules originally adopted. *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, 18 FCC Rcd 23638, ¶¶ 47-64 (2003). These rules were further revised in August 2004 when the Commission adopted a joint Sprint/BAS plan that provided Sprint access to this spectrum in exchange for relocating 800 MHz and BAS incumbents.

¹⁷ In adopting the Sprint/BAS relocation plan, the Commission gave 2 GHz MSS licensees the option to allow Sprint to proceed with its relocation plan by stating that "[i]f MSS licensees choose not to trigger involuntary relocation, Nextel will proceed under its plan to relocate BAS incumbents." *800 MHz Order* ¶ 257 (emphasis added).

¹⁸ *See Sprint BAS Relocation Status Report*, WT Dkt. No. 02-55 (Mar. 7, 2006); *Sprint BAS Relocation Status Report* (March 7, 2007) ("Sprint March 2007 BAS Relocation Report"). Sprint's March 2007 BAS relocation report predicted a delay of 12-24 months in completing BAS relocation. *See Sprint March 2007 BAS Relocation Report* at 25. Yet, six months later and days before the FCC-established deadline, Sprint anticipated that BAS relocation would be delayed by at least 29 months. *See Joint Petition for Waiver of Sprint Nextel Corp. et al* at 4, WT Dkt. No. 02-55 (Sept. 4, 2007).

regardless of whether BAS relocation has been completed by then. The Commission also should establish mandatory interim and final benchmarks and impose specific penalties for failure to meet those benchmarks.

To ensure the continuation of the Sprint/BAS Parties' recent efforts to accelerate BAS relocation, and to measure progress against interim and final benchmarks, the Commission should require Sprint to file monthly reports and serve copies on ICO and TerreStar. The Commission recently imposed a similar requirement to ensure that Sprint completes the relocation of incumbents in the 800 MHz band in a timely manner.¹⁹ These monthly reports should provide detailed information for each market, including the number of BAS stations that have been relocated, the number of BAS stations that have yet to be cleared, the stages in the eight-stage relocation process that have yet to be completed for each BAS station, a description of any delays that have been encountered, and forward-looking information regarding estimated completion dates for each remaining stage.

Now that the Sprint/BAS Parties have provided projections for market-by-market relocation, the Commission has a measure against which to monitor the progress of the relocation effort. As the Sprint/BAS Parties recognize in their filing, firm target dates for relocation will help all stakeholders to focus their efforts on timely relocation,²⁰ and will give ICO and TerreStar the ability to plan for roll-out of MSS and ATC services.

Given the expected two-year delay in completing BAS relocation, the Commission should take into account the effect of the delay on 2 GHz MSS licensees' ability to begin

¹⁹ See *Improving Public Safety Communications in the 800 MHz Band*, Third Memorandum Opinion and Order, 22 FCC Rcd 17209, ¶ 30 (2007).

²⁰ Sprint/BAS Relocation Proposal at 11, App. B.

nationwide commercial operations. For example, the continuing presence of BAS in the 2 GHz MSS band will negatively impact satellite operations because BAS operations in the band emit signals that will be visible to the ICO G1 satellite. For the reasons cited here and above, the requested delay in BAS relocation would significantly limit ICO's ability to fully utilize its assigned 2 GHz MSS spectrum, limit the useful life of its satellite, and delay ICO's ability to launch commercial service nationwide.

IV. CONCLUSION

ICO appreciates the efforts by the Sprint/BAS Parties, and is encouraged by the strides made in the past few months, including at the BAS Acceleration Summit. Based upon the foregoing, however, ICO urges the Commission to accelerate Sprint's BAS relocation efforts as proposed herein and to revisit certain 2 GHz MSS requirements so as to ensure fairness and to expedite use of 2 GHz MSS spectrum for service to the public.

Respectfully submitted,

NEW ICO SATELLITE SERVICES G.P.

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW, Suite 5500
Washington, D.C. 20006
Its Counsel

By: /s/ Suzanne Hutchings Malloy
Suzanne Hutchings Malloy
Senior V.P., Regulatory Affairs
815 Connecticut Avenue, N.W., Suite 610
Washington, D.C. 20006

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