

FILED/ACCEPTED

MAY - 5 2008

Federal Communications Commission  
Office of the Secretary

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
TerreStar Networks Inc. )  
Petition for Declaratory Ruling ) File No. ISP-PDR-20080229-00004  
Pursuant to Section 310(b)(4) of the )  
Communications Act of 1934 )

**REPLY OF SPRINT NEXTEL CORPORATION**

In its opposition,<sup>1</sup> TerreStar Networks Inc. (TerreStar) disregards Commission precedent and its burden of proof in this proceeding. The Commission's foreign ownership guidelines make clear that "[w]here there is a showing of a risk to competition in the U.S. market from foreign investments by an individual or entity from a WTO Member country, the Commission may impose specific conditions on the licensee to address such risks to competition."<sup>2</sup>

TerreStar's request to exceed the foreign ownership limits poses a risk to competition because, if granted without appropriate conditions, it would allow a foreign-controlled company to offer services in the U.S. without complying with its regulatory obligation either to relocate 2 GHz Broadcast Auxiliary Service (BAS) licensees or pay its fair share of BAS relocation costs.

Allowing TerreStar to escape its regulatory obligations for BAS relocation would give TerreStar an unreasonable competitive advantage over Sprint Nextel Corporation (Sprint Nextel), a U.S. company which is spending hundreds of millions of dollars to clear 2 GHz spectrum.<sup>3</sup>

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<sup>1</sup> Opposition of TerreStar Networks Inc., File No. ISP-PDR-20080229-00004 (April 23, 2008) (TerreStar Opposition).

<sup>2</sup> *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd. 22612, § III.B.1 (Int'l Bur. 2004).

<sup>3</sup> *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd. 13999, ¶ 16 (2000) (finding that later entrants that benefit from the clearance of spectrum by a

Sprint Nextel's relocation efforts greatly benefit TerreStar, and indeed make it possible for TerreStar to offer Mobile Satellite Service (MSS) in the 2 GHz band. TerreStar seeks an infusion of foreign capital well above the foreign ownership limits set forth in the Communications Act of 1934, as amended, and the Commission must ensure that TerreStar invests this capital in a manner consistent with its regulatory obligations and the Commission's new entrant cost-sharing principles.<sup>4</sup> In these circumstances, there should be no presumption in favor of granting TerreStar's request, and the Commission should condition any grant on the requirement that TerreStar reimburse Sprint Nextel for TerreStar's *pro rata* share of eligible BAS relocation costs.

In a footnote in its opposition, TerreStar makes a passing attempt to dispute its underlying BAS reimbursement obligation.<sup>5</sup> TerreStar claims that it is not required to pay its fair share of BAS relocation costs because it allegedly will not enter the 2 GHz band by June 26, 2008, the previously projected date for the end of 800 MHz band reconfiguration and the commencement of the 800 MHz true-up process. The Commission should not allow TerreStar to avoid both its obligation to relocate BAS licensees and its obligation to bear its fair share of the cost of BAS relocation. TerreStar's refusal to pay its share of BAS relocation costs is wrong on the facts, ignores its own delays in implementing its satellite operations, disregards the need to adjust the 800 MHz true-up schedule, and is contrary to the Commission's well-settled cost-sharing principles.

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first entrant would receive a "significant competitive advantage" if they were not required to reimburse the first entrant for a share of the relocation costs).

<sup>4</sup> See *infra*, note 15.

<sup>5</sup> TerreStar Opposition at 4 n.9.

TerreStar's Commencement of ATC Testing. Contrary to its claims, TerreStar has already triggered its *pro rata* BAS reimbursement obligation. In its 2005 800 MHz MO&O, the Commission stated that Sprint Nextel can seek *pro rata* reimbursement from MSS licensees that “commence operation” anytime prior to the 800 MHz true-up.<sup>6</sup> Over the past six months, TerreStar has apparently undertaken build-out and testing of ATC facilities pursuant to section 25.143(j) of the Commission’s rules.<sup>7</sup> Just as the Commission recently ruled that the “occurrence of transmissions” between a 2 GHz MSS satellite and an authorized earth station constitutes an MSS licensee’s “operations,”<sup>8</sup> TerreStar’s ATC test transmissions represent TerreStar’s “commencement of operations” and the triggering event for its *pro rata* payment requirement.

TerreStar's Delays in Implementing MSS Operations. Even if TerreStar had not already commenced ATC testing and operations, the Commission should not allow TerreStar to escape its BAS reimbursement obligation – at Sprint Nextel’s expense – based simply on TerreStar’s delays in implementing its MSS system. The Commission originally required that this system be

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<sup>6</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 109 (2005) (*800 MHz MO&O*) (emphasis added).

<sup>7</sup> Under section 25.143(j), the holder of a 2 GHz MSS satellite license may engage in pre-operational build-out and equipment tests to ensure compliance with the technical provisions of its MSS authorization, ATC operational requirements, Part 25 rules and regulations, and applicable engineering standards. 47 C.F.R. § 25.143(j); *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Order on Reconsideration, 18 FCC Rcd. 13590, ¶ 13 (2003). On September 7, 2007, TerreStar filed its required notice regarding these ATC operations, indicating its intent to move forward with this construction and testing on or after September 15, 2007. Letter from Joseph Godles, Counsel for TerreStar Networks Inc., to Marlene Dortch, Secretary, FCC, File Nos. SAT-LOI-19970926-00161, SAT-ASG-20021211-00238, SAT-AMD-20061127-00143, and SAT-MOD-20070529-00075 (Sep. 7, 2007).

<sup>8</sup> *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 4393, ¶ 48 (2008) (FCC 08-73) (*BAS Extension Order*).

launched by July 2006 and operational by July 2007, but TMI, TerreStar's predecessor, failed to meet its July 2002 construction contract milestone.<sup>9</sup> The Commission subsequently waived the 2002 milestone, reinstated TMI's license, and established new launch and operational milestones of November 2007 and November 2008, respectively.<sup>10</sup> In October 2007, the Commission granted yet another extension, providing TerreStar an extra ten months to launch its satellite.<sup>11</sup> Had TMI/TerreStar complied with either its original or even its extended satellite implementation milestones, TerreStar would by now have "commenced operations" and would have had to comply with its relocation obligations by either clearing BAS licensees itself or fulfilling its BAS reimbursement obligation. Allowing TerreStar to use its extensive delays in implementing its satellite operations as an excuse to avoid paying its fair share of BAS relocation costs would be arbitrary, unfair, and legally unsustainable.

*The True-Up Schedule and the Commission's Cost-Sharing Principles.* Putting aside TerreStar's ongoing ATC operations and its delays in implementing its mobile-satellite service, circumstances have changed since the Commission established the original June 26, 2008 cut-off date for MSS reimbursement obligations. As the Commission recently recognized, BAS relocation has proven to be far more complex than originally anticipated and, for reasons beyond Sprint Nextel's control, the BAS transition will take longer to complete, with a large portion of the relocation costs incurred *after* June 26, 2008, which was the original date for a true-up accounting of 800 MHz expenses. Based on this finding, the Commission extended Sprint

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<sup>9</sup> *TMI Communications and Company, Limited Partnership*, Memorandum Opinion and Order, 18 FCC Rcd. 1725, ¶ 1 (Int'l Bur. 2003).

<sup>10</sup> *TMI Communications and Company, Limited Partnership*, Memorandum Opinion and Order, 19 FCC Rcd. 12603, ¶¶ 57, 59 (2004).

<sup>11</sup> *TerreStar Networks, Inc.; Request for Milestone Extension*, Memorandum Opinion and Order, 22 FCC Rcd. 17698, ¶ 1 (Int'l Bur. 2007).

Nextel's deadline for relocating BAS licensees to March 5, 2009.<sup>12</sup> The Commission consequently will need to adjust the current 800 MHz/BAS retuning true-up and reimbursement schedule to be consistent with the *BAS Extension Order* as well as developments in the 800 MHz reconfiguration process.<sup>13</sup> Though TerreStar might prefer never to have to bear its *pro rata* share of eligible BAS relocation costs through the completion of the BAS relocation process, adjusting the date for reconciling expenses simply accounts for the reality of an inordinately complex BAS relocation process.

The Commission established a June 26, 2008 true-up date for the 800 MHz transition not to award an enormous economic windfall to the 2 GHz MSS licensees, but to promote "administrative efficiency" related to the true-up "accounting process" and avoid any possible double-counting of reimbursement payments.<sup>14</sup> The obligation of the MSS licensees to reimburse Sprint Nextel for their fair share of BAS relocation expenses is based on the bedrock principle that new entrants into reallocated spectrum must share the cost of relocating incumbent licensees.<sup>15</sup> Adhering to a June 26, 2008 cut-off date when circumstances have changed would

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<sup>12</sup> *BAS Extension Order*, FCC 08-73, ¶ 29.

<sup>13</sup> In addition, more than five hundred 800 MHz public safety incumbents are seeking waivers of the original June 26, 2008 deadline for completing this project. Assuming the Commission grants these waiver requests in whole or in part, revision of the true-up process will be required. Sprint Nextel will file a letter with the Commission describing several adjustments that will need to be made to the true-up and other reconfiguration processes.

<sup>14</sup> *800 MHz MO&O*, 20 FCC Rcd. 16015, ¶ 113.

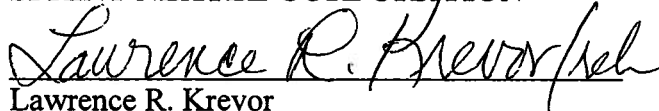
<sup>15</sup> *Id.* ¶ 111; *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, ¶ 261 (2004) (*800 MHz R&O*); *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd. 6886, ¶ 24 (1992); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589, ¶ 2 (1993); Memorandum Opinion and Order, 9 FCC Rcd. 1943, ¶ 3 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797, ¶ 4 (1994), *aff'd sub nom. Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996).

violate this well-settled principle and arbitrarily grant TerreStar a windfall at Sprint Nextel's expense. TerreStar's predecessor, TMI, recognized that "equity requires" that entities that benefit from the clearing of BAS licensees "should . . . share in the financial burdens of the relocation of [these] licensees."<sup>16</sup> These same principles of equity require TerreStar to pay its fair share of BAS relocation costs.

To protect competition and ensure compliance with the Commission's cost sharing policies, the Commission should condition any grant of TerreStar's request on the requirement that TerreStar pay its *pro rata* share of the total cost of relocating BAS operators in the top 30 markets and all fixed links through the completion of the BAS relocation and 800 MHz true-up processes.

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**



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May 5, 2008

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<sup>16</sup> Comments of TMI Communications and Company, L.P., ET Docket No. 95-18, at 2, 7 (Feb. 3, 1999).

**Certificate of Service**

I, Ruth E. Holder, hereby certify that on this 5th day of May, 2008, I caused true and correct copies of the foregoing Reply of Sprint Nextel Corporation to be mailed by first class U.S. mail, postage prepaid, to:

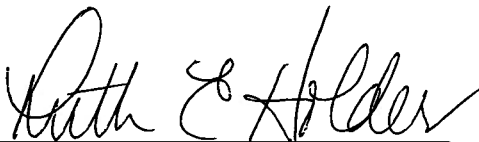
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Additionally, I caused true and correct copies of the foregoing Reply of Sprint Nextel Corporation to be mailed by electronic mail to:

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