

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

FILED/ACCEPTED

APR 25 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Application of TerreStar Networks Inc.)	File Nos. SES-LIC-20061206-02100,
for Blanket Authority for Ancillary)	SES-AMD-20070723-00978,
Terrestrial Component Base)	SES-AMD-20070907-01253, and
Stations and Mobile Terminals for)	SES-AMD-20080229-00217
2 GHz Mobile Satellite Service)	

PETITION TO DENY OF SPRINT NEXTEL CORPORATION

I. Introduction

TerreStar Networks Inc. (TerreStar) seeks authority to operate an Ancillary Terrestrial Component (ATC) network in the 2 GHz band in connection with its 2 GHz Mobile Satellite Service (MSS) system. The Commission should deny TerreStar's ATC application. TerreStar cannot obtain ATC authority unless it demonstrates that it will offer commercial MSS, and TerreStar cannot offer MSS until it shows that it will either relocate 2 GHz Broadcast Auxiliary Service (BAS) itself or pay its fair share of the relocation costs. Unless TerreStar certifies that it will satisfy these conditions by either relocating BAS or certifying that it will reimburse Sprint Nextel Corporation (Sprint Nextel) for TerreStar's *pro rata* share of eligible BAS relocation costs Sprint Nextel has incurred during the transition, Terrestar has failed to satisfy the minimum criteria necessary to receive ATC authority and Terrestar's ATC application must be denied.

II. TerreStar Cannot Satisfy the Commission's ATC Gating Criteria Without Complying with Its BAS Relocation and Reimbursement Obligations.

The Commission established a number of gating factors that TerreStar must satisfy before it can be authorized to provide ATC service.¹ Among other things, TerreStar must show that it

¹ 47 C.F.R. § 25.149.

will offer commercial MSS as a prerequisite to receiving ATC authority. The Commission's rules provide:

MSS operators' ability to offer ATC service is tied to their ability to offer satellite service. Specifically, section 25.149 of the Commission's rules places several conditions on 2 GHz MSS systems that provide ATC services, including: (a) providing space segment service covering all 50 states, Puerto Rico and the U.S. Virgin Islands one-hundred percent of the time, unless it is not technically possible, and (b) offering MSS for a fee (*i.e.*, commercially available) in accordance with the coverage requirements that pertain to each band as a prerequisite to offering ATC service.²

According to the Commission, this rule requires that "an eligible MSS licensee that wishes to implement ATC must provide space-segment service across the entire geographic area stipulated in our rules and policies for that operator's particular space-station system geometry and frequency band."³ In this case, however, TerreStar cannot provide satellite service to the entire United States until it either relocates incumbent BAS licensees to the new 2 GHz band plan or pays its fair share of the cost of this relocation. TerreStar has not demonstrated that it will satisfy these BAS conditions; therefore, TerreStar has failed to demonstrate that it has satisfied the Commission's gating requirements for receiving ATC authority.

MSS licensees may not commence satellite service until they have relocated all BAS licensees in the top 30 markets and all fixed BAS links in all markets.⁴ The Commission has held that "both Sprint Nextel and 2 GHz MSS licensees have equal obligations to relocate the 2

² *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, FCC 08-73, 2008 FCC LEXIS 1896, ¶ 51 (rel. March 5, 2008) (*BAS Extension Order*); see also 47 C.F.R. § 25.149(b).

³ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 1962, ¶ 75 (2003).

⁴ 47 C.F.R. § 74.690(e)(1)(i).

GHz BAS incumbents.”⁵ TerreStar, however, has done nothing to relocate BAS incumbents. Since it received its MSS authorization in 2001, TerreStar has not inventoried a single broadcaster television station. TerreStar has not negotiated a single relocation agreement. Nor has TerreStar provided an incumbent with a single piece of new electronic newsgathering equipment. TerreStar has, in fact, taken no action whatsoever to clear the spectrum it intends to use of the electronic newsgathering operations that currently occupy the space.

Moreover, TerreStar also has informed Sprint Nextel that it will not satisfy its obligation to pay TerreStar’s *pro rata* share of eligible BAS relocation costs,⁶ which Sprint Nextel has estimated at approximately \$100 million.⁷ The Commission must require TerreStar to meet this obligation. First, TerreStar must pay its fair share of eligible BAS relocation expenses under well-established cost-sharing policies that have applied to relocation projects since 1993.⁸ As

⁵ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Order, 23 FCC Rcd. 575, ¶ 2 (2008).

⁶ *See infra* section III.

⁷ Because TerreStar will occupy 10 megahertz of the 35 megahertz of cleared BAS spectrum, TerreStar is liable for a *pro rata*, two-sevenths share or 28.57% (10 MHz / 35 MHz) of Sprint Nextel’s eligible BAS relocation costs. *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*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 111 (2005) (*800 MHz MO&O*). On March 7, 2006, Sprint Nextel provided notice of its intent to seek reimbursement from 2 GHz MSS licensees, including TerreStar. *See* Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 02-55 (March 7, 2006).

⁸ *See 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); *see also 800 MHz MO&O*, 20 FCC Rcd. 16015, ¶ 111; *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool*

explained in detail in Section III below, TerreStar's rejection of its reimbursement obligation errs on the facts, disregards its own delayed implementation, and fails to account for the need to revise the 800 MHz true-up schedule.

Second, TerreStar's license is expressly conditioned upon TerreStar reimbursing the parties paying for relocation a fair share of BAS relocation expenses. In 2000, the Commission conditioned 2 GHz MSS licenses on licensees bearing their fair share of BAS relocation costs. Specifically, the Commission stated that "[a]ll MSS licensees who benefit from relocation of BAS are responsible for contributing [to BAS relocation], *as a condition of their licenses*," and indicated further that "[s]ubsequently entering MSS licensees in Phase I spectrum will, *as a condition of their licenses*, compensate the first entrant on a *pro rata* basis, according to the amount of spectrum the subsequently entering licensees are authorized to use."⁹ This condition remains in full force and effect. Indeed, the Commission earlier this year affirmed that "the underlying relocation rules . . . established for MSS entrants to undertake the relocation of BAS incumbents" remain unchanged.¹⁰

Channels, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, ¶ 261 (2004) (*800 MHz R&O*), *as amended by* Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd. 19651 (2004) (subsequent history omitted).

⁹ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd. 12315, ¶¶ 69, 71 (2000) (*2 GHz Allocation 2d R&O*) (emphasis added); *see also TMI Communications and Company, Limited Partnership*, Order, 16 FCC Rcd. 13808, ¶ 7 n.23 (Int'l Bur. 2001) (granting MSS license now held by TerreStar and stating that TerreStar's system "must be implemented" in accordance with the *2 GHz Allocation 2d R&O* establishing BAS relocation and cost-sharing policies). The Commission's 2000 order specifically addressed cost-sharing among MSS licensees, given that the Commission did not contemplate Sprint Nextel's involvement in BAS relocation until 2004. There is no basis, however, for not applying these same cost-sharing principles and MSS license conditions to TerreStar's reimbursement obligation to Sprint Nextel.

¹⁰ *BAS Extension Order*, FCC 08-73, ¶ 39, citing *800 MHz R&O*, 19 FCC Rcd. 14969, ¶ 250.

TerreStar cannot shirk both its relocation obligations *and* its obligation to reimburse Sprint Nextel, while at the same time certify that it will commence MSS to satisfy the Commission's ATC gating factors. Under the Commission's rules and the terms of its license, TerreStar may not offer commercial MSS service if it fails to comply with its BAS relocation/reimbursement obligations. Until it demonstrates that it will comply with these obligations, it cannot be granted ATC authority.

Aside from TerreStar's failure to satisfy the ATC gating requirements, granting TerreStar ATC authority without requiring it to adhere to its BAS relocation obligations would undermine the Commission's competition policies. TerreStar indicates that it will use its MSS ATC network to provide mobile telecommunications services throughout the United States across the government, commercial, and consumer segments, and it has acknowledged it will be competing against Sprint Nextel and other existing wireless operators.¹¹ Allowing TerreStar to escape its BAS reimbursement obligations would artificially and unfairly lower its costs of deploying its terrestrial services by at least \$100 million and at the same time improperly impose at least a \$100 million surcharge on Sprint Nextel's ability to provide competing terrestrial wireless services. Significantly, the Commission has found that later entrants that benefit from the clearance of spectrum by a 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.¹² In order to ensure a level playing field and prevent TerreStar from gaining an unfair competitive advantage contrary to the Commission's cost-sharing and competition policies, the Commission

¹¹ TerreStar Corp., Annual Report (Form 10-K), at 2-4, 11, 29 (March 31, 2008).

¹² *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).

should deny TerreStar's ATC authority unless and until TerreStar satisfies its *pro rata* payment obligation for BAS relocation.¹³

III. TerreStar Has No Basis for Avoiding Its BAS Reimbursement Obligations.

On February 4, 2008, Sprint Nextel sent a letter to TerreStar regarding its *pro rata* share of BAS relocation expenses. In this letter, Sprint Nextel provided TerreStar with an initial interim billing estimate for TerreStar's *pro rata* reimbursement obligation, and in good faith proposed a meeting between the companies' respective business and finance teams to ensure a timely payment. In a February 11, 2008 letter to Sprint Nextel, however, TerreStar claimed 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.

¹³ Like New ICO Satellite Services G.P. (ICO), TerreStar seeks various technical rule waivers to operate ATC. Unlike the sweeping rule changes that ICO seeks, however, the technical deviations that TerreStar has sought to implement *thus far* appear unlikely to materially increase the risk of interference to adjacent channel licensees. To take but one example, TerreStar has requested a 5 dB increase in base station power, but would measure signal strength over the full bandwidth of the five-megahertz-wide UMTS/WCDMA signal that it intends to use. By comparison, ICO has sought *both* a 5 dB increase in power *and* a narrower measurement bandwidth. Whereas Terrestrial's technical deviations would not make the *status quo* any worse, ICO's proposal would result in a four-fold increase of approximately 5.9 dB in overall power and a corresponding increase in potential overload for adjacent-channel base station receivers. See Petition to Deny of Sprint Nextel Corporation, File Nos. SES-LIC-20071203-01646, SES-AMD-20080118-00075, and SES-AMD-20080219-00172, at 5 n. 9 (Apr. 4, 2006). Sprint Nextel, therefore, has opposed ICO's multiple technical rule waiver requests, but does not contest the technical rule waivers proposed by Terrestrial to date.

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.¹⁴ 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.¹⁵ 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,”¹⁶ TerreStar’s ATC test transmissions represent TerreStar’s “commencement of operation[s]” 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 launched by July 2006 and operational by July 2007, but TMI, TerreStar’s predecessor, failed to

¹⁴ 800 MHz MO&O, 20 FCC Rcd. 16015, ¶ 109 (emphasis added).

¹⁵ 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).

¹⁶ *BAS Extension Order*, FCC 08-73, ¶ 48.

meet its July 2002 construction contract milestone.¹⁷ 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.¹⁸ In October 2007, the Commission granted yet another extension, providing TerreStar an extra ten months to launch its satellite.¹⁹ Had TMI/TerreStar complied with either the original or even the extended milestones, TerreStar would by now have "commenced operations" and it 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 Terrestrial'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

¹⁷ *TMI Communications and Company, Limited Partnership*, Order, 16 FCC Rcd. 13808, ¶ 24 (Int'l Bur. 2001); *TMI Communications and Company, Limited Partnership*, Memorandum Opinion and Order, 18 FCC Rcd. 1725, ¶ 1 (Int'l Bur. 2003).

¹⁸ *TMI Communications and Company, Limited Partnership*, Memorandum Opinion and Order, 19 FCC Rcd. 12603, ¶¶ 57, 59 (2004).

¹⁹ *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, 2009.²⁰ 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.²¹ 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, readjusting the date for reconciling expenses simply accounts for the reality of an inordinately complex BAS relocation process.

The Commission established a June 26, 2008 cut-off date for MSS reimbursement obligations 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.²² 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.²³ Adhering to a June 26, 2008 cut-off date when circumstances have changed would 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

²⁰ *BAS Extension Order*, FCC 08-73, ¶ 29.

²¹ 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.

²² *800 MHz MO&O*, 20 FCC Rcd. 16015, ¶ 113.

²³ *See supra* note 8.

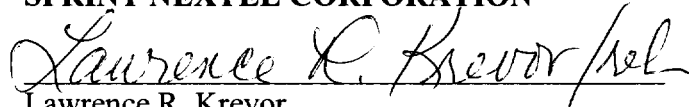
relocation of [these] licensees.”²⁴ These same principles of equity require TerreStar to pay its fair share of BAS relocation costs.

IV. Conclusion

The Commission should deny TerreStar’s ATC application because TerreStar cannot and will not offer a nationwide commercial mobile-satellite service unless it relocates the nation’s BAS licensees or reimburses Sprint Nextel for the cost of doing so.

Respectfully submitted,

SPRINT NEXTEL CORPORATION



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April 25, 2008

²⁴ Comments of TMI Communications and Company, L.P., ET Docket No. 95-18, at 2, 7 (Feb. 3, 1999).

Declaration

I declare under penalty of perjury that the information contained in the foregoing Petition to Deny of Sprint Nextel Corporation is true and correct to the best of my personal knowledge and belief.

Executed on April 25, 2008

A handwritten signature in black ink that reads "Trey Hanbury". The signature is written in a cursive style with a horizontal line underneath the name.

Trey Hanbury
Director, Government Affairs
Sprint Nextel Corporation

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 25th day of April, 2008, I caused true and correct copies of the foregoing Petition to Deny of Sprint Nextel Corporation to be mailed by first class U.S. mail, postage prepaid, to:

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A handwritten signature in cursive script that reads "Ruth E. Holder". The signature is written in black ink and is positioned above a horizontal line.

Ruth E. Holder