

MAY 20 2008

Federal Communications Commission  
Office of the Secretary

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

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	)	

**REPLY OF SPRINT NEXTEL CORPORATION**

In its opposition, TerreStar Networks Inc. (TerreStar) does not dispute that the Commission's gating criteria "requir[e], among other things, that 2 GHz MSS ATC applicants demonstrate their systems will be capable of providing service to all 50 states, Puerto Rico, and the U.S. Virgin Islands."<sup>1</sup> Nor does TerreStar dispute that it has done nothing to clear the Broadcast Auxiliary Service (BAS) licensees from the spectrum it will be using to provide this nationwide MSS service. TerreStar nonetheless maintains it can satisfy its gating criteria by providing MSS service before BAS systems are relocated, claiming that it can do so without causing interference to broadcaster newsgathering operations.

The Commission should reject TerreStar's argument. The Commission has previously found that MSS and BAS cannot share the 2 GHz band, and, as the broadcast industry has pointed out, TerreStar has not demonstrated otherwise. Even if TerreStar could provide MSS on a secondary basis, the resulting MSS coverage would not provide the nationwide MSS service that is a prerequisite to obtaining ATC authority.

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<sup>1</sup> Consolidated Response and Opposition of TerreStar Networks Inc., IBFS File Nos. SES-AMD-20070907-01253 & SES-AMD-20070723-00978, at 8 (May 8, 2008) (Opposition).

Since 2001 when TerreStar received its license and undertook an obligation to relocate BAS from the 2 GHz band, TerreStar has not inventoried a single station, negotiated a single relocation agreement, ordered a single piece of BAS replacement equipment, or relocated a single BAS system. It also refuses to reimburse Sprint Nextel for TerreStar's fair share of BAS relocation costs. Having wholly failed to fulfill its obligation to clear its MSS spectrum of the BAS incumbents or pay its fair share of BAS relocation costs, TerreStar cannot deploy MSS nationwide and, therefore, is ineligible to receive ATC authority.

**I. TerreStar Has Not Demonstrated That It Can Provide MSS Coverage Without Causing Interference to BAS Licensees**

To receive ATC authority under section 25.149 of the Commission's rules, TerreStar must provide nationwide MSS coverage and make commercial service available throughout the United States.<sup>2</sup> "For the 2 GHz MSS band," the rule provides, "an applicant must demonstrate that it can provide 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, consistent with the coverage requirements for 2 GHz MSS GSO operators."<sup>3</sup> Failure to make MSS seamlessly available to end users across the U.S. renders an MSS licensee ineligible for ATC authority.<sup>4</sup>

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<sup>2</sup> 47 C.F.R. § 25.149(b)(1), (3).

<sup>3</sup> 47 C.F.R. § 25.149(b)(1)(i) (emphasis added).

<sup>4</sup> See, e.g., 47 C.F.R. § 25.149(b)(3). Under the Commission's rules, 2 GHz MSS licensees currently 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. 47 C.F.R. § 74.690(e)(1)(i). The Commission has sought comment on whether to eliminate this rule by January 1, 2009. *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 and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 4393, ¶¶ 52-56 (2008) (FCC 08-73) (*BAS Extension Order*).

In its Opposition, TerreStar claims that it can meet its geographic coverage and commercial availability requirements even though it has not satisfied its obligation to clear BAS incumbents from the band.<sup>5</sup> TerreStar points to technical studies purporting to show that its MSS system can share spectrum in uncleared markets with BAS facilities and avoid interference to those BAS operations.<sup>6</sup> The Commission, however, has previously found that it will not be feasible for MSS and BAS to co-exist in the 2 GHz band, since “BAS and MSS cannot share the spectrum without unacceptable mutual interference.”<sup>7</sup> It was on this basis that the Commission found it necessary to relocate BAS systems above 2025 MHz.<sup>8</sup>

Although the Commission has recently sought comment on permitting 2 GHz MSS licensees to operate temporarily on a secondary basis before all BAS licensees are

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Sprint Nextel in its filing urged the Commission to maintain this entry restriction and prohibit the 2 GHz MSS licensees from operating nationally until they fulfill their respective obligations to clear the BAS band of affected incumbents or, alternatively, reimburse Sprint Nextel for their *pro rata* shares of eligible BAS relocation expenses. Comments of Sprint Nextel Corporation, WT Docket No. 02-55, at 6-12 (Apr. 30, 2008).

<sup>5</sup> TerreStar Opposition at 8-9. The Commission has repeatedly held that the two 2 GHz MSS licensees have an obligation to relocate BAS licensees independent of Sprint Nextel’s 800 MHz commitment to relocate BAS. In an order earlier this year, the Commission stated that “both Sprint Nextel and 2 GHz MSS licensees have equal obligations to relocate the 1.9 GHz BAS incumbents.” *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. 2423, ¶ 2 (2008).

<sup>6</sup> TerreStar Opposition at 9 (citing du Treil, Lundin & Rackley, *Predicted Impact to 2 GHz Broadcast Auxiliary Operations From Proposed Handset to Satellite Emissions, TerreStar Networks* (Jan. 30, 2008) (du Treil Report), attached to Letter from Joseph A. Godles, counsel to TerreStar, to Marlene H. Dortch, FCC (Jan. 30, 2008)).

<sup>7</sup> *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, First Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd. 7388, ¶ 30 (1997).

<sup>8</sup> *Id.*

relocated,<sup>9</sup> the broadcast industry has opposed this measure due to the serious interference risk it would cause. As the Association for Maximum Service Television, Inc. (MSTV) and the National Association of Broadcasters (NAB) have stated, TerreStar's assertions fail to demonstrate that sharing between MSS and BAS is technically feasible. In their recent comments opposing the elimination of the Top 30 market rule, MSTV and NAB stated the following:

MSS will not be able to share spectrum with BAS in markets that are not relocated. Operations within the same frequency band and within the same geographic area are not technically feasible because of the interference that will occur. . . . Contrary to *ex parte* submissions filed by MSS operators claiming that BAS could facilitate sharing by operating with reduced bandwidth using digital equipment, there has been no testing or analysis to suggest that MSS operation in the 'narrow swaths of spectrum between BAS' would not result in interference to BAS receivers.<sup>10</sup>

Indeed, TerreStar's own study demonstrates that its MSS system *can cause harmful interference* to BAS facilities that rely on analog equipment that has not yet been retuned.<sup>11</sup> Specifically, BAS operations that have not been replaced or relocated will be

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<sup>9</sup> *BAS Extension Order* ¶ 52.

<sup>10</sup> Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, WT Docket No. 02-55, at 7-8 (Apr. 30, 2008) (citation omitted).

<sup>11</sup> The du Treil Report, filed by TerreStar on January 30, 2008, predicts the impact to 2 GHz BAS operations from TerreStar's proposed handset. The du Treil Report was based both on bench and field testing. That report posits that it is unlikely that interference would be caused from the MSS handsets to digital BAS operations or to analog BAS operations using a narrow IF filter. *See* du Treil Report at 18. However, the report also predicts that, for analog BAS operations using a normal IF filter, a TerreStar handset "in the main beam of the BAS receive antenna and with a relatively unobstructed view to the BAS receive antenna" would exceed the minimum desired-to-undesired signal ratios and thus could cause interference "in some cases with the BAS link at or near margin." *Id.* The du Treil Report also goes on to state that such interference to analog BAS operations using a normal IF may result "in some situations no matter on which frequency it operates." *Id.*

using analog BAS equipment, most likely with a normal IF since legacy analog equipment is not capable of operating with a narrow IF without significant equipment modification, which would depend on legacy manufacturers being still in business and willing to attempt such modifications. Thus, unless the BAS equipment has been replaced or moved out of BAS channels 1 and 2, interference from MSS handsets to BAS receivers is quite possible.

Given the likelihood of interference to BAS, TerreStar cannot certify that it will comply with the Commission's ATC gating requirements. Unless TerreStar can make this certification, the Commission should deny its ATC application. TerreStar can provide MSS only after BAS systems are fully relocated, *and* after TerreStar has satisfied its BAS relocation and reimbursement obligations. Until it satisfies these obligations, it is not eligible for ATC authority.

## **II. Conclusion**

The Commission should deny TerreStar's ATC application because TerreStar cannot and will not provide nationwide commercial MSS unless it relocates the nation's BAS licensees. TerreStar's license is conditioned on its compliance with its BAS reimbursement obligation,<sup>12</sup> and the Commission's rules and well-established cost-sharing principles similarly require TerreStar to relocate BAS or pay its *pro rata* share of eligible BAS relocation costs.<sup>13</sup> TerreStar may not provide commercial MSS in *any*

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<sup>12</sup> See Petition to Deny of Sprint Nextel Corporation, IBFS File Nos. SES-LIC-20061206-02100, SES-AMD-20070723-00978, SES-AMD-20070907-01253, and SES-AMD-20080229-00217, at 4 (Apr. 25, 2008) (Sprint Nextel Petition to Deny).

<sup>13</sup> *Id.* at 2-4.

geographic portion of the United States – and therefore cannot satisfy its ATC gating requirements – until it satisfies these reimbursement obligations.<sup>14</sup>

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**



Lawrence R. Krevor

Vice President, Government Affairs – Spectrum  
Trey Hanbury  
Director, Government Affairs  
2001 Edmund Halley Drive  
Reston, VA 20191  
(703) 433-4141

Regina M. Keeney  
Charles W. Logan  
Stephen J. Berman  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K Street NW, Suite 802  
Washington, DC 20006  
(202) 777-7700  
*Counsel to Sprint Nextel Corporation*

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<sup>14</sup> TerreStar makes a passing attempt to dispute its reimbursement obligations, Opposition at 8 n.24, but its conclusory, two-sentence footnote in this regard fails to rebut the detailed justification set forth in Sprint Nextel's petition to deny. Sprint Nextel Petition to Deny at 6-10.

### Certificate of Service

I, Ruth E. Holder, hereby certify that on this 20th 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:

Cheryl A. Tritt  
Morrison & Foerster  
2000 Pennsylvania Ave. NW, Suite 500  
Washington, DC 20006

Suzanne Hutchings Malloy  
Peter Corea  
New ICO Satellite Services G.P.  
815 Connecticut Avenue NW, Suite 610  
Washington, DC 20006

Joseph A. Godles  
Goldberg, Godles, Wiener & Wright  
1229 19th Street NW  
Washington, DC 20036

Diane J. Cornell  
Vice President, Government Affairs  
Inmarsat, Inc.  
1101 Connecticut Ave. NW, Suite 1200  
Washington, DC 20036

David L. Donovan  
Bruce Franca  
Association for Maximum Service  
Television, Inc.  
4100 Wisconsin Ave., NW  
Washington, DC 20016

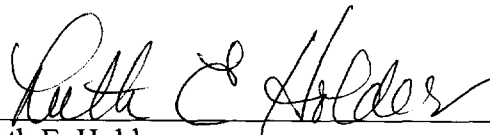
Dennis Schmitt  
New ICO Satellite Services G.P.  
2300 Carillon Point  
Kirkland, WA 98033

Douglas I. Brandon  
Vice President for Regulatory Affairs  
TerreStar Networks Inc.  
12010 Sunset Hills Road, 9th Floor  
Reston, VA 20191

John P. Janka  
Jeffrey A. Marks  
Latham & Watkins LLP  
555 Eleventh St. NW, Suite 1000  
Washington, DC 20004

Jonathan D. Blake  
Brandon D. Almond  
Covington & Burling LLP  
1201 Pennsylvania Ave., NW  
Washington, DC 20004-2401

Marsha J. McBride  
Lawrence A. Walke  
National Association of Broadcasters  
1771 N Street, NW  
Washington, DC 20036

  
Ruth E. Holder