

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

In the Matter of)	
)	
New ICO Satellite Services G.P.)	File Nos. SES-LIC-20071203-01646,
)	SES-AMD-20080118-00075, and
Application for blanket authority to operate)	SES-AMD-20080219-00172
Ancillary Terrestrial Component base stations)	
and dual-mode MSS-ATC mobile terminals)	Call Sign E070272
in the 2 GHz MSS bands)	

APPLICATION FOR REVIEW OF SPRINT NEXTEL CORPORATION

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February 17, 2009

Summary

The Commission should invalidate an order issued by the International Bureau (Bureau) in the final days of the prior administration that granted conditional authority to New ICO Satellite Services G.P. (ICO) to offer Ancillary Terrestrial Component (ATC) service. The Bureau's decision directly conflicts with Commission rules and precedent that unambiguously require ATC applicants to actually satisfy MSS coverage and commercial service gating criteria before they can be granted ATC authority. This decision must be reversed.

No one disputes that ICO's ATC application failed to meet the Commission's ATC gating criteria. While the Bureau acknowledged ICO's failure, it nonetheless granted ICO's ATC application conditioned on the outcome of various other proceedings, including one addressing the status of 2 GHz MSS during Broadcast Auxiliary Service (BAS) relocation. The Commission, however, has specifically rejected conditional grants of ATC authority and repeatedly held that it would only grant ATC applications after the ATC applicant satisfied that it met each of the gating criteria by the time of grant.

A Bureau cannot issue a decision that contradicts the licensing rules and policies adopted by the full Commission. Nor does a Bureau have the authority to act on any applications or requests which present novel questions of fact, law, or policy that cannot be resolved under outstanding precedents and guidelines. And while a Bureau may waive Commission rules for good cause shown, it may not do so if the waiver would undermine the rule's policy objective. In this case, the Bureau granted precisely the kind of speculative, premature application that the Commission has repeatedly and expressly prohibited.

On review, the Commission should reverse the Bureau's unlawful action in granting ICO ATC authority, confirm the MSS licensees' obligation to pay their fair share of BAS relocation costs, and prohibit ICO from commencing ATC service until it satisfies that obligation.

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APPLICATION FOR REVIEW OF SPRINT NEXTEL CORPORATION

Under section 1.115(b)(2)(i) of the rules of the Federal Communications Commission (Commission),¹ the Commission should invalidate an order issued by the International Bureau (Bureau) in the final days of the prior administration that granted conditional authority to New ICO Satellite Services G.P. (ICO) to offer Ancillary Terrestrial Component (ATC) service.² The Bureau's January 15, 2009 decision exceeded the scope of its delegated authority. Specifically, the Bureau's decision directly conflicts with Commission rules and precedent that unambiguously require ATC applicants to actually satisfy MSS coverage and commercial service gating criteria before they can be granted ATC authority. The Bureau cannot lawfully waive Commission-level requirements, and, in any case, had no basis in policy or fact to do so.

¹ 47 C.F.R. § 1.115(b)(2)(i).

² *New ICO Satellite Services G.P.*, File Nos. SES-LIC-20071203-01646, *et al.*, Order and Authorization, 24 FCC Rcd. 171 (IB 2009) (DA 09-38) (*Order*). Sprint Nextel filed a petition to deny ICO's ATC application. Petition to Deny of Sprint Nextel, File Nos. SES-LIC-20071203-01646, *et al.* (April 4, 2008) (*Sprint Nextel Petition*).

I. THE INTERNATIONAL BUREAU LACKED AUTHORITY TO GRANT ICO ATC AUTHORITY ON A CONDITIONAL BASIS

The Commission has held that it “*will not grant ATC authority until the applicant has demonstrated that it has actually satisfied each of the gating criteria.*”³ ICO failed to demonstrate that it met the gating criteria, but the Bureau granted ICO’s application anyway. This decision must be reversed.

A. ICO Failed to Meet the Commission-Mandated ATC Gating Criteria, but the Bureau Granted ICO ATC Authority Notwithstanding Contrary Commission Rules and Orders.

No one disputes that ICO’s ATC application failed to meet the Commission’s ATC gating criteria. Among other flaws, ICO failed to show that its satellite service is, or soon will be, commercially available throughout the United States, Puerto Rico, and the U.S. Virgin Islands.⁴ ICO did not and cannot make this showing because it has not satisfied its Broadcast Auxiliary Service (BAS) relocation obligations. Under these obligations, which are set forth in the Commission’s rules and are conditions to ICO’s MSS license, ICO must either relocate 2 GHz BAS licensees itself before commencing commercial service or reimburse Sprint Nextel for ICO’s *pro rata* share of the costs of relocating BAS licensees.⁵ ICO has made no effort to

³ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Order on Reconsideration, 18 FCC Rcd. 13590, ¶ 12 (2003) (*2003 Reconsideration Order*) (emphasis added); *see also* 47 C.F.R. § 25.149(e).

⁴ 47 C.F.R. §§ 25.149(b)(1), (b)(3). Section 25.149(b)(1)(i) specifically requires a 2 GHz MSS ATC applicant to “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.”

⁵ *See Order* ¶ 24 (describing MSS reimbursement obligations as well as “the obligation of the MSS entrants to relocate the BAS licensees” and “the rules that bar 2 GHz MSS systems from commencing operation prior to nationwide relocation of fixed BAS stations and relocation of all BAS and CARS stations in the top thirty Nielsen markets”); *Sprint Nextel Petition* at 2-5; Letter from Lawrence Krevor, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 3-6 (Oct. 8, 2008) (*Sprint Nextel October 2008 Letter*).

relocate BAS licensees, has refused to participate in the BAS relocation process in any way, and has failed to accept its well-established reimbursement obligations to Sprint Nextel.⁶

The Bureau acknowledged ICO's failure to satisfy the MSS commercial-availability gating requirement and declined to waive this requirement.⁷ Nonetheless, the Bureau granted ICO's ATC application conditioned on the outcome of various other proceedings, including one in which the Commission is considering proposals to allow MSS licensees to commence commercial MSS operations prior to the completion of the BAS relocation, as well as a request filed by Sprint Nextel that seeks to quiet the MSS licensees' objections to their independent obligation to relocate BAS operations from their spectrum or reimburse the party that performs and finances this work.⁸

⁶ The two 2 GHz MSS licensees must reimburse Sprint Nextel for the costs associated with relocating (i) all fixed BAS licensees nationwide and (ii) all fixed and mobile BAS licensees in the nation's top-thirty broadcast television markets. *See 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). ICO holds an authorization for twenty megahertz of 2 GHz MSS spectrum, ten megahertz of which lies in the 1990-2025 MHz band that Sprint Nextel is clearing of BAS licensees. Under the terms of the *800 MHz Order*, ICO is liable for two-sevenths or 28.57 % (10 MHz / 35MHz) of all BAS expenses eligible for reimbursement. *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*); *see also, e.g., id.* at 112 (“[W]e have not been shown how this equitable apportionment process intrudes on the rights of any affected licensee. We therefore deny that part of the TMI/TerreStar petition for reconsideration that seeks reversal of the reimbursement procedures established in the *800 MHz R&O*”).

⁷ *Order*, DA 09-38, ¶¶ 32-33. The Bureau correctly rejected ICO's argument that the commercial-availability gating criterion can be satisfied by merely commencing commercial service *somewhere* in the United States. *Id.* ¶ 32.

⁸ *See Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 4393, ¶¶ 49-56 (2008) (*BAS MO&O and FNPRM*) (seeking comment on amending “top 30 market” rule, a market-by-market approach for MSS entry, and MSS – BAS interference issues); *Sprint Nextel October 2008 Letter* (requesting confirmation of MSS licensee reimbursement obligations); Sprint Nextel

B. The Bureau's January 15, 2009 Grant of ICO's MSS ATC Application Exceeded the Bureau's Delegated Authority and Must Be Reversed.

The Bureau lacked authority to grant ICO ATC authority because ICO failed to meet the Commission's commercial-availability gating precondition to ATC authorization. In requiring MSS operators to actually offer nationwide MSS, the Commission made clear that ATC is not a "stand-alone system" and is meant only "to enhance MSS coverage, enabling MSS operators to extend service [using terrestrial transmission equipment] into areas that they were previously unable to serve[by satellite]." ⁹ The Commission further stated that, if it could not rely on the "integrity" afforded by the mandatory MSS coverage requirement, the Commission should assign the terrestrial MSS spectrum through auctions or some other method. ¹⁰ The Commission, therefore, established its commercial-availability gating requirement to "help ensure that ATC remains an integrated operation that augments rather than replaces satellite-based MSS services." ¹¹

The Commission has repeatedly stressed that the gating criteria are essential preconditions to receiving ATC authorization. ¹² As recently as October 2008, Commissioner

Letter from Lawrence Krevor, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 8 (June 25, 2008) (seeking adjustments to true-up schedule and confirmation of MSS licensee reimbursement obligations).

⁹ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Memorandum Opinion and Order and Second Order on Reconsideration, 20 FCC Rcd. 4616, ¶ 33 (2005).

¹⁰ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 1962, ¶ 66 (2003) (*MSS ATC Order*) ("Without the integrity afforded by these MSS ATC service-rule requirements, an alternative licensing or distribution mechanism should be used.").

¹¹ *Id.* ¶ 74.

¹² *See, e.g., MSS ATC Order*, 18 FCC Rcd. 1962, ¶ 66 ("We view full and complete compliance with each of the requirements as essential to the integrity of our 'ancillary' licensing regime."); *2003 Reconsideration Order*, 18 FCC Rcd. 13590, ¶ 10 ("We find that the public interest will

(now Acting Chairman) Michael Copps and Commissioner Jonathan Adelstein each wrote separately to emphasize just how central adoption of mandatory preconditions or “gating criteria” was to their decision to permit ATC. Then-Commissioner Copps wrote that “I do want to emphasize that my decision in this matter does not change my long-held belief that ancillary terrestrial component service by satellite providers *must remain ancillary* – in other words, when it comes to ATC, the tail cannot be allowed to wag the dog.”¹³ Commissioner Jonathan Adelstein agreed: “*I write separately to reaffirm my commitment to the integrity of our rules that require Mobile Satellite Service (MSS) licensees to comply with gating requirements, which I have always strongly supported. As I’ve previously stated, we should not allow an MSS system with an ancillary terrestrial component to evolve into a terrestrial system with an ancillary mobile satellite component.*”¹⁴ In short, meeting the ATC gating criteria prior to ATC authorization was and remains central to the ATC policy that the full Commission adopted.

Furthermore, the Commission has specifically rejected the conditional grant approach taken by the Bureau in this proceeding. In a 2003 rulemaking order granting a reconsideration petition filed by a group of terrestrial wireless carriers, the Commission reversed a prior Commission order which would have permitted the grant of ATC applications on the condition that the MSS licensee *subsequently* satisfy the commercial-availability requirement or other

best be served by not granting an MSS operator’s ATC application until we are satisfied that the MSS operator is in compliance with each of the gating criteria.”); *Globalstar Licensee LLC*, File No. SAT-MOD-20080516-00106, Order and Authorization, 23 FCC Rcd. 15975, ¶ 18 (2008) (FCC 08-254) (*Globalstar Order*). (“an ATC is ancillary to the MSS system it supports, and, therefore, MSS operators must fulfill the gating criteria in each band in which they seek to provide ATC.”).

¹³ *Globalstar Order*, Statement of Commissioner Michael J. Copps, FCC 08-254 at 21 (emphasis in original).

¹⁴ *Globalstar Order*, Statement of Commissioner Jonathan S. Adelstein, FCC 08-254 at 22 (emphasis added).

substantial satellite service gating criteria. The Commission stated that, instead of issuing conditional licenses, it will “*grant[] ATC applications only after we are satisfied that each of the gating criteria has in fact been met, or will be met at the same time that the application is granted.*”¹⁵ The Commission reasoned that this approach would make the ATC licensing process easier to administer and would reduce the likelihood of controversy or litigation regarding the timing of an MSS applicant’s initiation of commercial ATC service.¹⁶

Accordingly, the Bureau’s instant decision to conditionally grant ICO MSS ATC authority based on the outcome of one or more proceedings to be decided sometime in the indefinite future directly conflicts with the Commission’s prior ruling and is therefore *ultra vires*.

First, a Bureau cannot issue a decision that contradicts the licensing rules and policies adopted by the full Commission.¹⁷ In this case, the Bureau granted ICO ATC authority without a showing of actual compliance with the applicable gating criteria as expressly required by section 25.149(e) of the Commission’s rules and Commission orders.¹⁸ The Bureau exceeded its delegated authority by issuing an order “in conflict with . . . [Commission] regulation [and] case precedent.”¹⁹ Consequently, the Bureau’s decision must be reversed.

¹⁵ 2003 Reconsideration Order, 18 FCC Rcd. 13590, ¶ 10 (emphasis added); *see also* 47 C.F.R. § 25.149(e).

¹⁶ 2003 Reconsideration Order, 18 FCC Rcd. 13590, ¶ 10.

¹⁷ *See, e.g., Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C.*, Order on Reconsideration, 17 FCC Rcd. 16100, ¶ 6 (WTB 2002) (“It is axiomatic that a delegated authority decision cannot conflict or otherwise reverse the decision of the full Commission.”); *Advanced Communications Corp.*, Memorandum Opinion and Order, 11 FCC Rcd. 3399, ¶ 18 n.31 (1995).

¹⁸ 47 C.F.R. § 25.149(e).

¹⁹ 47 C.F.R. § 1.115(b)(2)(i) (Commission review of action taken pursuant to delegated authority is warranted where the Bureau’s action “is in conflict with statute, regulation, case precedent, or established Commission policy”); *see also* 47 C.F.R. § 0.331(a)(2) (Bureau has no authority to act on petitions or requests that “present new or novel questions of law or policy which cannot be resolved under outstanding Commission precedents and guidelines”).

Second, a Bureau does not have the authority to act on any applications or requests which present novel questions of fact, law, or policy that cannot be resolved under outstanding precedents and guidelines.²⁰ In this case, the Bureau conditioned grant of ICO's MSS ATC authority on the result of one or more still-pending rulemaking proceedings that the Commission may address in the future.²¹ Either ICO has met its MSS coverage obligation or not. If the Bureau cannot reach that determination based on existing facts, law, or policy, then the Bureau lacks the authority to conditionally grant ICO's MSS ATC authorization.

Third, although a Bureau may waive Commission rules for good cause shown, it may not do so if the waiver would undermine the rule's policy objective.²² In this case, the purpose of the Commission's repeated insistence that MSS ATC applicants unambiguously satisfy the ATC gating criteria prior to receiving ATC authority was to preclude "speculative, prematurely filed ATC applications."²³ The Bureau, however, granted ICO's MSS ATC application conditioned on the outcome of an inchoate rulemaking proceeding that is months, if not years, away from resolution. By granting ICO authority based on a decision the Commission may (or may not) reach in the uncertain future, the Bureau's January 15, 2009 *Order* granted precisely the type of "speculative, premature application" that the full Commission has repeatedly sought to prohibit since first adopting rules governing ATC in 2003.

As noted above, ICO is nowhere close to demonstrating that it can satisfy the commercial availability and satellite coverage gating criteria because it has failed to comply with its BAS relocation and reimbursement obligations; on the contrary, about 65 percent of BAS incumbents

²⁰ 47 C.F.R. § 0.261(b); *see also, e.g., Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd. 5517, ¶ 28 (2002).

²¹ *Order*, DA 09-38, ¶¶ 33-34.

²² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990).

²³ *2003 Reconsideration Order*, 18 FCC Rcd. 13590, ¶ 10.

have not yet transitioned from ICO's MSS spectrum and ICO has done *nothing* to fulfill its independent obligation to relocate BAS or reimburse Sprint Nextel or taxpayers for the cost of doing so.²⁴ Although ICO has proposed that MSS licensees be allowed to commence commercial MSS before all BAS licensees are relocated, *the Commission* is still considering this proposal in a pending proceeding.²⁵ Until that proceeding is completed, and until ICO satisfies all of its BAS relocation and reimbursement obligations, it remains ineligible for a grant of ATC authority. By filing an application that falls so far short of the Commission's requirements, ICO has submitted precisely the type of "speculative, prematurely filed ATC application[]" that the Commission sought to discourage in establishing its ATC licensing policies.²⁶ The Commission accordingly should reverse the Bureau's *Order* and dismiss ICO's application, or, in the alternative, hold the application in abeyance until such time as ICO demonstrates full compliance with the gating criteria as well as its obligation to reimburse Sprint Nextel for ICO's *pro rata* share of BAS relocation costs that Sprint Nextel has incurred on ICO's behalf.

II. ICO MAY NOT COMMENCE ATC SERVICE UNTIL IT COMPLIES WITH ITS BAS RELOCATION AND REIMBURSEMENT OBLIGATIONS

ICO must comply with its BAS relocation and reimbursement obligations. The Bureau's rationale in support of conditional grant, in its entirety, is as follows:

With respect to Sprint Nextel's objections related to relocation reimbursement, Sprint, ICO, and TerreStar have raised these matters in other Commission proceedings, including several docketed proceedings. *To avoid prejudicing the outcome of this dispute, we are issuing ICO's ATC authority subject to the*

²⁴ See, e.g., Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 1 (Feb. 2, 2009) (noting that approximately 33 percent of broadcasters have transitioned their BAS operations to frequencies above 2025 MHz).

²⁵ See note 7, *supra*.

²⁶ *2003 Reconsideration Order*, 18 FCC Rcd. 13590, ¶ 10.

*outcome of this dispute, the resolution of which will occur in another proceeding.*²⁷

Even if this condition were validly within the scope of the Bureau's authority to issue, which it is not, the condition is so vague as to be unenforceable. The condition fails to describe how, when, and under what circumstances the Commission could define or enforce the ambiguous condition.²⁸ For example, what remedy would the Commission undertake if ICO were to commence operating ATC facilities and subsequently lose its request to commence service before all BAS licensees are retuned or its transparent attempt to evade its retuning reimbursement obligations? The simple fact is that the Bureau's January 15, 2009 decision is so patently *ultra vires* and procedurally defective that the Bureau made little attempt to provide any explanation for its actions or to point to any facts or rationale in the record of this proceeding that could justify or support its action.

As Sprint Nextel has explained in this and other pending proceedings, ICO is required to reimburse Sprint Nextel for its full, *pro rata* share of the costs of BAS relocation.²⁹ ICO has long had an independent obligation to relocate BAS licensees to the new 2 GHz band plan, yet for eight years it has failed to carry out that obligation or take any constructive steps toward that goal.³⁰ Sprint Nextel, by contrast, has worked closely with the broadcast industry and devoted extensive efforts, at the cost of hundreds of millions of dollars, toward transitioning BAS

²⁷ *Order*, DA 09-38, ¶ 34 (emphasis added).

²⁸ In contrast, the Commission imposed a much clearer and enforceable condition on ICO regarding its compliance with the MSS spare satellite requirement. *Order*, DA 09-38, ¶ 69a (“ATC operation pursuant to this authorization shall not commence until ICO has firm arrangements in place to meet the requirement, in Section 25.149(b)(2)(ii) of the Rules, to have a spare satellite available not later than one year after commencement of ATC operations.”).

²⁹ *See, e.g., Sprint Nextel Petition* at 2-5; *Sprint Nextel October 2008 Letter*.

³⁰ The Commission itself has found that “there was no record of meaningful negotiations or relocation activities having taken place between MSS and BAS at the time the Sprint Nextel relocation plan was adopted” in 2004. *BAS MO&O and FNPRM*, 23 FCC Rcd. 4393, ¶ 31.

licensees.³¹ Requiring ICO to fund its fair share of the cost of clearing BAS incumbents is the only rational outcome under the Commission's policies. Under the Commission's bedrock relocation principles, ICO must share the cost of relocating BAS licensees because it benefits directly from Sprint Nextel's band-clearing efforts. The Commission's orders regarding BAS relocation in the 2 GHz band require ICO to reimburse Sprint Nextel for its *pro rata* share of eligible BAS relocation costs, which Sprint Nextel estimates to be approximately \$100 million.

Notwithstanding the Commission's rules and policies, ICO has refused to accept its reimbursement obligations.³² Sprint Nextel consequently reiterates its request that the Commission reaffirm these obligations, and requests further that ICO be barred from offering ATC service until ICO satisfies its reimbursement obligations.

³¹ See, e.g., Letter from Trey Hanbury, Sprint Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55, at 1 (Oct. 1, 2008) ("As promised, Sprint Nextel and the broadcast community met the market-entry demands of the Mobile Satellite Service (MSS) licensees. Building on months of close collaboration among the 2 GHz BAS manufacturers, installers, licensees, and Sprint Nextel, the MSS-priority markets that together cover more than 40 million Americans are now cleared of BAS operations below 2025 MHz. The only parties absent from this process were – once again – the two MSS licensees, who long ago entered the 2 GHz band through licensing, building, testing, and, in ICO's case, operating their satellite systems, but continue to do nothing to help relocate the BAS systems that encumber the twenty megahertz of BAS spectrum that their MSS systems occupy."). As Sprint Nextel has described, its relocation efforts included meeting ICO's timetable for clearing ICO's priority markets. See Consensus Plan of Sprint Nextel, MSTV, NAB, and SBE, WT Docket No. 02-55, at 5-9 (Dec. 6, 2007).

³² On February 4, 2008, Sprint Nextel sent a letter to ICO regarding its *pro rata* share of BAS relocation expenses. In this letter, Sprint Nextel provided ICO with an initial interim billing estimate for ICO'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 12, 2008 letter to Sprint Nextel, however, ICO stated that it is "impossible to know" whether or when MSS licensees must reimburse Sprint Nextel, notwithstanding the clear findings to the contrary in the Commission's orders.

III. CONCLUSION

The Commission should invalidate the Bureau's grant of ATC authority to ICO. ICO's application did not satisfy the Commission's gating requirements, and the January 15, 2009 Bureau-level decision impermissibly contradicts the Commission's unambiguous rules and decisions prohibiting grant of ATC authorizations conditioned on the satisfaction of the gating criteria. For years, ICO has sought to evade its BAS relocation and reimbursement responsibilities. Its evasion of these responsibilities is inextricably linked with its inability to provide nationwide, commercial MSS and thereby satisfy an essential gating requirement for receiving ATC authority. On review, the Commission should reverse the Bureau's unlawful action in granting ICO ATC authority, confirm the MSS licensees' obligation to pay their fair share of BAS relocation costs, and prohibit ICO from commencing ATC service until it satisfies that obligation.

Respectfully submitted,

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February 17, 2009

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 17th day of February, 2009, I caused true and correct copies of the foregoing Application for Review of Sprint Nextel Corporation to be mailed by first class U.S. mail, postage prepaid, to:

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