

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

In the Matter of)	
)	
Application of New ICO Satellite)	File Nos. SES-LIC-20071203-01646,
Services G.P. for Blanket Authority for)	SES-AMD-20080118-00075, and
Ancillary Terrestrial Component Base)	SES-AMD-20080219-00172
Stations and Mobile Terminals for)	
2 GHz Mobile Satellite Service)	

FILED/ACCEPTED
APR 24 2008
Federal Communications Commission
Office of the Secretary

REPLY OF SPRINT NEXTEL CORPORATION

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

April 24, 2008

Executive Summary

New ICO Satellite Services G.P. (ICO) has only itself to blame for failing to take any steps to relocate incumbent broadcast auxiliary service (BAS) licensees in the 2 GHz band over the last seven years. ICO's failure to relocate a single BAS licensee since 2001 prevents ICO from offering Mobile Satellite Service (MSS) nationally and precludes it from offering end-user MSS in the vast majority of the United States. Without spectrum in which to operate, ICO's MSS operation remains entirely hypothetical and a far cry from the real-world service that it must provide as a prerequisite to receiving ancillary terrestrial component (ATC) authority. Having failed to clear the BAS spectrum and having refused to reimburse Sprint Nextel for ICO's fair share of BAS relocation expenses, ICO cannot offer MSS and therefore remains ineligible to receive ATC authority.

ICO claims that it only needs to "be capable of" providing MSS nationwide rather than actually offer service to receive ATC authority, but this response proves too much. If inchoate capability to provide MSS were alone sufficient to satisfy the gating requirement, then any MSS licensee – regardless of how weak its satellite signal, how intermittent its coverage, or how impossibly congested the underlying spectrum – could claim to have satisfied the commercial MSS offering requirement.

An abstract capacity to provide MSS at some point in the future is simply not the same as actually offering MSS to consumers. The Commission established its geographic coverage gating requirements to "help ensure that ATC remains an integrated operation that augments rather than replaces satellite-based MSS services." The geographic coverage requirement prevents MSS licensees from systematically underinvesting in their MSS systems by requiring MSS operators to offer actual MSS to customers throughout the United States. Waiving this

requirement would thwart the Commission's goal of integrating satellite and terrestrial operations while rewarding speculative interest in obtaining low- or no-cost access to billions of dollars of terrestrial wireless spectrum. That result cannot be reconciled with almost \$20 billion that wireless companies recently agreed to pay the federal government for newly licensed 700 MHz terrestrial spectrum.

Meanwhile, ICO's request that the Commission waive the vast majority of the technical rules that apply to their MSS ATC operations go far beyond what should be granted through the waiver process. ICO downplays how the waivers it requests would significantly raise the potential for interference to users of adjacent spectrum. For instance, ICO claims to need more relaxed power limits for non-mobile user devices to compete with the devices of terrestrial wireless operators, but fails to mention that terrestrial wireless operators actually must comply with substantially *more stringent* power limits than ICO wants. Similarly, ICO hides a request to increase out-of-band emissions *45,708 times as much as the current level* by using a different measuring bandwidth that conceals the magnitude of this extraordinary increase. The Commission should deny ICO's request for ATC authority and all associated requests for waiver of the Commission's ATC rules.

Table of Contents

**I. ICO Has Not Demonstrated that It Complies with the Commission’s
ATC Gating Criteria.....2**

**II. ICO Proposes Deviations from the Rules so Numerous and Extensive that
They Require a Notice-and-Comment Rulemaking Proceeding to Consider8**

**III. ICO Has Failed to Demonstrate that It Will Comply with the Requirement
that It Have a Ground Spare Satellite Within One Year of Commencing
Operations13**

IV. Conclusion15

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

In the Matter of)	
)	
Application of New ICO Satellite)	File Nos. SES-LIC-20071203-01646,
Services G.P. for Blanket Authority for)	SES-AMD-20080118-00075, and
Ancillary Terrestrial Component Base)	SES-AMD-20080219-00172
Stations and Mobile Terminals for)	
2 GHz Mobile Satellite Service)	

REPLY OF SPRINT NEXTEL CORPORATION

New ICO Satellite Services G.P. (ICO) has only itself to blame for its ineligibility to receive Ancillary Terrestrial Component (ATC) authority. ICO cannot obtain ATC authority unless it demonstrates that it will make room for its Mobile Satellite Service (MSS) operation by either clearing the Broadcast Auxiliary Service (BAS) licensees or paying a fair share of the BAS relocation costs. Since 2001 when ICO received its license and undertook an obligation to relocate BAS from the 2 GHz band, ICO 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. 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, ICO cannot deploy MSS and, therefore, is ineligible to receive ATC authority. ICO's Consolidated Opposition and Response does nothing to reverse this conclusion.¹

ICO's proposed technical rule changes are too numerous and extensive for mere waiver. ICO envisions a wholesale revision of the technical protections that ATC must offer. If ICO

¹ Consolidated Opposition and Response of New ICO Satellite Services G.P. (Apr. 17, 2008) (ICO Opposition).

wants to implement ATC, it should follow the rules that the Commission adopted in the public interest, rather than try to belatedly rewrite three-quarters of the MSS ATC technical rules carefully designed to prevent harmful interference to existing and future adjacent-channel operations that are slated for assignment through competitive bidding.

I. ICO Has Not Demonstrated that It Complies with the Commission’s ATC Gating Criteria

To receive ATC authority, ICO must make commercial MSS available throughout the United States.² Section 25.149 of the Commission’s rules requires an ATC applicant to first provide MSS throughout the United States.³ In adopting section 25.149, the Commission held 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.”⁴ Failure to offer MSS to end users renders an MSS licensee ineligible for ATC authority.⁵ In this case, ICO has not cleared BAS incumbents from the band, nor has ICO committed to pay Sprint Nextel to perform this function on its behalf; therefore, ICO cannot certify that it will offer MSS, and ICO is ineligible to receive ATC authority.

In its Opposition, ICO all but concedes that it owes Sprint Nextel a *pro rata* share of eligible BAS relocation expenses. ICO does not deny that it bears an obligation to either relocate eligible BAS facilities or reimburse Sprint Nextel for a portion of the cost of doing so. ICO also does not dispute that it has triggered its BAS reimbursement obligation by entering the 2 GHz

² 47 C.F.R. § 25.149(b)(3); *see* ICO Opposition at 4-5.

³ 47 C.F.R. § 25.149(b)(1).

⁴ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 1962, ¶ 75 (2003) (*MSS-ATC Order*) (emphasis added).

⁵ *See, e.g.*, 47 C.F.R. § 25.149(b)(3).

band. And ICO does not claim that Sprint Nextel has improperly estimated ICO's *pro rata* share at roughly \$100 million.⁶ ICO's sole gambit to receive ATC authority without meeting the ATC gating requirements is to convince the Commission that either the ATC rules do not mean what they say, or that those rules should be waived as immaterial to public interest. Both attempts fall flat.

Section 25.149 of the Commission's rules requires MSS licensees to offer MSS as a prerequisite to receiving ATC authority. "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."⁷ Undaunted by the plain text, ICO claims that its MSS system need only "be *capable of*" providing MSS nationwide (including Puerto Rico and the U.S. Virgin Islands).⁸ In ICO's view, a licensee meets the nationwide coverage requirement as long as it has an orbiting MSS satellite, even if that satellite is incapable of providing service to end users in the vast majority of the United States. ICO is wrong. It must offer real service to end users; the theoretical possibility of one day offering MSS is not enough.

⁶ Because ICO will occupy 10 megahertz of the 35 megahertz of cleared BAS spectrum, ICO 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 ICO. *See* Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 02-55 (March 7, 2006).

⁷ 47 C.F.R. § 25.149(b)(1)(i) (emphasis added).

⁸ ICO Opposition at 5 (emphasis in original).

The Commission adopted the mandatory nationwide geographic coverage requirement precisely to prevent 2 GHz MSS licensees from receiving ATC authority without actually offering MSS to end users in the United States. In the *MSS ATC Order*, the Commission explained that if an MSS licensee were to create “dead zones” in its MSS coverage by intentionally failing to expend the time, energy and financial resources necessary to put MSS operations within the reach of commercial end users, it would not qualify for ATC authority. Indeed, the Commission held that an MSS licensee that creates MSS “dead zones” by failing to offer satellite channels to a customer at a given location “would *necessarily* violate the band-specific requirements for ubiquitous or nearly ubiquitous geographic coverage.”⁹

The Commission has thus already anticipated ICO’s specious “capability” argument and rejected it. After all, if the inchoate capability to provide MSS were alone sufficient to satisfy the gating requirement, then any MSS licensee – regardless of how weak its satellite signal, how intermittent its coverage, or how impossibly congested the underlying spectrum – could claim to have satisfied the commercial MSS offering requirement of section 25.149.¹⁰ In ICO’s case,

⁹ *MSS-ATC Order*, 18 FCC Rcd. 1962, ¶ 74 (emphasis added).

¹⁰ In this sense, ICO has always had the *capability* to provide MSS since it first received its license seven long years ago, and ICO would not have needed to bother with constructing, building, launching, and operating a satellite that can actually put a useable signal in the hands of fee-paying customers. Along the same lines, while the presence of BAS in the 2 GHz MSS band may make a commercial MSS more costly or time consuming to provide, the presence of BAS in the 2 GHz MSS band does not render MSS “technically impossible” for purposes of section 25.149. See 47 C.F.R. § 25.149. In creating an exception to the nationwide coverage requirement for times when MSS is not technically possible to provide, the Commission was responding to concerns regarding the inability of geostationary Earth orbit satellites to provide MSS to all of Alaska. *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, ¶¶ 35-36 (2005) (*MSS-ATC Recon Order*). The Commission pointedly did *not* allow MSS licensees to claim that any financial, logistical, or technical obstacle to the commercial operation of a 2 GHz MSS system allowed it to escape from the nationwide coverage requirement. If simply failing to expend the time and money necessary to relocate BAS in the 2 GHz band, for instance, somehow made

every uncleared BAS market is a “dead zone” that ICO could clear and offer MSS, but has repeatedly chosen not to do so. First, ICO failed to relocate incumbents itself despite seven long years of opportunity. Second, ICO rejected offers to participate in the BAS relocation process. Third, ICO is refusing to reimburse Sprint Nextel a *pro rata* share of BAS relocation expenses.

Expending time and money on BAS relocation is as much a part of actually providing commercially viable MSS as building and launching a satellite. The Commission can no sooner excuse ICO’s refusal to participate in clearing the spectrum where it intends to operate than it can excuse ICO’s failure to launch a satellite. ICO, however, asks for just this type of relief in demanding that the Commission waive its commercial availability gating requirement.¹¹ The Commission should reject ICO’s waiver request. This requirement to offer continuous, national MSS to end users represents the essential prerequisite of ATC authority. Granting a waiver of ICO’s MSS coverage obligation would thwart the entire premise of ATC and “undermine the underlying policy objectives” of the Commission’s MSS ATC framework.¹² In requiring MSS operators to actually offer MSS, the Commission concluded that ATC is not a “stand-alone system,” and ATC is meant only “to enhance MSS coverage, enabling MSS operators to extend service into areas that they were previously unable to serve.”¹³ 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

offering MSS not “technically possible,” then almost any eventuality would allow MSS licensees to receive MSS ATC without actually offering commercial MSS.

¹¹ ICO Opposition at 5-7.

¹² See *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Order and Authorization, 15 FCC Rcd. 3385, ¶ 14 (IB 1999); see also *Northeast Cellular Telephone Co., LP v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹³ *MSS-ATC Recon Order*, 20 FCC Rcd 4616, ¶ 33.

method.¹⁴ The Commission, therefore, established its geographic coverage gating requirements to “help ensure that ATC remains an integrated operation that augments rather than replaces satellite-based MSS services.”¹⁵ In short, the Commission requires satellites that are offering real commercial MSS to customers in the United States. Promises and hoped-for MSS capabilities are – and must remain – insufficient.

Under the Commission rules and the terms of its MSS license, moreover, ICO may not provide commercial MSS in *any* geographic portion of the United States – and therefore cannot satisfy its ATC gating requirements – until it meets its BAS relocation obligations by either relocating BAS licensees itself or paying its fair share of the relocation costs. The Commission has made clear that “both Sprint Nextel and 2 GHz MSS licensees have equal obligations to relocate the 2 GHz BAS incumbents.”¹⁶ Indeed, MSS licensees may not presently commence satellite service until they have relocated all BAS licensees in the top 30 markets and all fixed BAS links in all markets.¹⁷

¹⁴ *MSS-ATC Order*, 18 FCC Rcd 1962, ¶ 66 (“Without the integrity afforded by these MSS ATC service-rule requirements, an alternative licensing or distribution mechanism should be used.”).

¹⁵ *Id.* ¶ 74. The Commission has stated further that with this gating requirement it “intend[s] to prohibit an MSS licensee from deploying an ATC base station that uses all of the MSS system’s available frequencies to the exclusion of the satellite signals.” *Id.*

¹⁶ *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*, Order, 23 FCC Rcd. 575, ¶ 2 (2008).

¹⁷ 47 C.F.R. § 74.690(e)(1)(i). In its recent order extending the deadline for BAS relocation, the Commission proposed to eliminate the top 30 market rule as of January 1, 2009 and sought comment on a market-by-market approach for MSS licensees’ rollout of MSS and ATC service as BAS systems are cleared from the 2 GHz band. *See 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, WT Docket No. 02-55, FCC 08-73, 2008 FCC LEXIS 1896, ¶¶ 55-56 (rel. March 5, 2008) (*BAS Extension Order*). Sprint Nextel will respond to this request for comment more fully at a later date. For now it is enough to note that authorizing ATC service absent a national MSS offering would: (1) discourage MSS licensees from eliminating MSS “dead

ICO has also indicated that it will not satisfy its obligation to reimburse Sprint Nextel for ICO's *pro rata* share of eligible BAS relocation costs. Paying its fair share of eligible BAS relocation costs is not only required by the Commission's well-established cost-sharing principles,¹⁸ *but also a condition of ICO's MSS license*. 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."¹⁹ This condition on ICO's

zones" left in uncleared markets; (2) encourage MSS licensees to under-invest in satellite operations and maintenance in favor of offering more profitable terrestrial services in the MSS spectrum; and (3) eliminate any incentive for MSS licensees to cooperate with Sprint Nextel and the broadcast licensees in clearing the 2 GHz band. In short, waiving the nationwide coverage rule would allow MSS ATC to become a terrestrial service with an ancillary satellite service attached to it, just as the service's detractors had predicted it would.

¹⁸ See 800 MHz MO&O ¶ 111; *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 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).

¹⁹ *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 *ICO Services Limited*, Order, 16 FCC Rcd. 13762, ¶ 8 n.31 (2001) (granting ICO an MSS license and stating that ICO'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.

MSS license is still in place, with the Commission earlier this year affirming that “the underlying relocation rules . . . established for MSS entrants to undertake the relocation of BAS incumbents” remain unchanged.²⁰

ICO cannot shirk its relocation obligations and its obligation to reimburse Sprint Nextel while at the same time certifying that it will commence MSS to satisfy the Commission’s ATC gating factors. Under the Commission’s rules, longstanding policies, and the terms of ICO’s license, ICO may not offer commercial MSS if it fails to comply with its BAS relocation obligations. Until it demonstrates that it will comply with these obligations and actually offer MSS to end users, ICO is ineligible for ATC authority.

II. ICO Proposes Deviations from the Rules so Numerous and Extensive that They Require a Notice-and-Comment Rulemaking Proceeding to Consider

ICO’s proposed rule waivers are so significant, numerous, and extensive that the Administrative Procedures Act (APA) prohibits awarding ATC authority to ICO without a notice-and-comment rulemaking proceeding. While the Commission has authority to waive its rules for “good cause” where particular facts would make strict compliance inconsistent with the public interest,²¹ “sound administrative procedure contemplates waivers . . . granted only pursuant to a relevant standard . . . [which is] best expressed in a rule that obviates discriminatory approaches.”²² ICO may not use the instant application proceeding to seek reconsideration of the technical framework set forth for 2 GHz ATC in the *MSS ATC Order*.

The same cost-sharing principles and MSS license conditions that apply to ICO’s reimbursement obligation apply to ICO’s obligation to Sprint Nextel.

²⁰ *BAS Extension Order*, FCC 08-73, ¶ 39, citing *800 MHz R&O*, 19 FCC Rcd. 14969, ¶ 250.

²¹ 47 C.F.R. §1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir.1969).

²² *WAIT Radio*, 418 F.2d at 1159.

The Commission adopted this framework in a rulemaking proceeding, after interested parties such as ICO received prior notice and an opportunity to comment as section 553 of the APA requires.²³ An agency that adopts rules in this manner must follow its own rules.²⁴ As courts have repeatedly found, an agency seeking to repeal or modify a rule promulgated by means of the APA's notice-and-comment procedures must use those same procedures to accomplish the modification or repeal.²⁵ As then-Judge Scalia aptly summarized, "while an adjudication can overrule an earlier adjudication, the APA clearly provides that a rule can only be repealed by rulemaking."²⁶ An agency thus may not "circumvent" the APA's rulemaking procedures by using an adjudication such as ICO's ATC application proceeding as an indirect means to overturn or amend its own rules.²⁷

In this case, the Commission has already opted to use the rulemaking process to adopt a comprehensive technical framework for the provision of ATC in the 2 GHz band. Rejecting

²³ 5 U.S.C. § 553.

²⁴ See, e.g., *United States v. Larionoff*, 431 U.S. 864, 872 (1977) (no judicial deference owed to agency interpretation that is "plainly erroneous or inconsistent with the regulation") (citation omitted); *Am. Fed'n of Gov't Employees v. Fed. Labor Relations Auth.*, 777 F.2d 751, 759 (D.C. Cir. 1985) ("administrative agencies are generally 'under an obligation to follow their own regulations, procedures, and precedents'"; accordingly, "unless and until it amends or repeals a valid legislative rule or regulation, an agency is bound by such a rule or regulation") (citations omitted).

²⁵ *American Federation*, 777 F.2d at 759; see also *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 446 (D.C. Cir. 1982), *aff'd & reh'g denied sub nom. Process Gas Consumers Group v. Consumer Energy Council*, 463 U.S. 1216 & 463 U.S. 1250 (1983) ("the APA expressly contemplates that notice and an opportunity to comment will be provided prior to agency decisions to repeal a rule").

²⁶ *American Federation*, 777 F.2d at 760 (Scalia, J., concurring).

²⁷ *Patel v. INS*, 638 F.2d 1199, 1204 & n.5 (9th Cir. 1980) (agency's use of adjudication to add a new criterion to a rule adopted in a notice-and-comment rulemaking "was an improper circumvention of rulemaking procedures" and was therefore an "abuse of discretion"); see also *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 100 (1995) (agency may not adopt "a new position inconsistent with . . . existing regulations.").

ICO's effort to use its ATC application proceeding to circumvent the protections of the APA would affirm the stable regulatory environment necessary for the widespread development of services in other frequency bands.

ICO does not seek minor changes or deviations from the complex and inter-related interference protections, but instead wants to rewrite almost *three-quarters* of the applicable MSS ATC rules. Specifically, ICO requests that the Commission waive eleven out of the fifteen technical requirements in section 25.232 that apply to ICO's ATC operations. ICO tries to justify this expansive waiver request based on its desire to "conform the ATC rules to industry standard regulations for terrestrial-based services."²⁸ Granting ICO's request, however, would undermine the detailed analysis and rulemaking development that the Commission undertook in developing the MSS ATC rules and – just as important – would upend the Commission's decision to restrict technical rule changes to only those that "produce no greater potential interference" than permitted under the current MSS ATC rules.²⁹

Contrary to ICO's claims, the changes ICO proposes materially raise the potential for interference to other communications services in adjacent spectrum. For example, ICO proposes that the Commission waive section 25.252(a)(1) and permit ICO to increase its ATC base station out-of-channel and out-of-band emissions (OOBE) from -100.6 dBW/4 kHz to a $43 + 10 \log (P)$ attenuation requirement. When adjusted to the one megahertz measurement bandwidth ICO is requesting in its waiver of section 25.252(c)(4), this deviation would permit MSS ATC base stations to radiate OOBE **2290 times** (33.6 dB) stronger than currently permitted in the spectrum at least one megahertz from ICO's frequency block. In the first one megahertz outside their frequency block, based again on its proposed waiver of 25.252(c)(4), ICO proposes that its base

²⁸ *ICO Opposition* at 8.

²⁹ 47 C.F.R. § 25.252 at Note.

stations radiate OOB *45,708 times stronger* (46.6 dB) than currently allowed. Granting these requests would materially increase the potential for harmful interference to TerreStar and the future AWS-2 J block and AWS-3 licensees by substantially increasing the noise these adjacent channel operations would receive.³⁰ ICO also proposes an almost four-fold increase in base station power³¹ and a five-fold or more increase in the power for non-mobile user devices.³² The notion that these radical changes do not alter the potential for harmful interference is simply not credible.

ICO claims that its proposed waivers would allow its ATC system to operate with similar parameters as used by other terrestrial networks, but ICO conveniently forgets to tell the Commission that it intends to operate some of its transmitters *at significantly higher power* than those of the terrestrial cellular networks. In particular, ICO requests that non-mobile user stations be permitted to transmit with transmitter power levels of two watts *without a limit on*

³⁰ ICO has indicated that it intends to operate its base stations in the 2180-2190 MHz band. The AWS-3 license block is proposed to operate at 2155-2175 MHz, the AWS-2 J block is proposed to operate at 2175-2180 MHz, and TerreStar would operate in the portion of the 2 GHz MSS band not occupied by ICO (*i.e.*, 2190-2200 MHz). TerreStar similarly has expressed concern that “the ATC base station out of band emission limit proposed by ICO on a waiver basis for Section 25.252(a)(1) of the rules may, in some circumstances, adversely affect communications between TerreStar’s handsets and its satellite.” TerreStar Comments, IBFS File Nos. SES-LIC-20071203-01646, *et al.*, at 3 (Apr. 4, 2008). ICO tries to downplay the significance of this increase by arguing that it is comparable to that already permitted for other Commercial Mobile Radio Service (CMRS) licensees; however, the Commission has an outstanding rulemaking proceeding reviewing the OOB requirements for the AWS-3 band. ICO’s waiver request should be handled through a similar and parallel rulemaking proceeding so that the interference aspects of its proposed changes can be considered jointly with the issues raised in the AWS-3 proceeding. In addition, TerreStar has not requested waiver of Section 25.252(a)(1) in its MSS ATC application. TerreStar Networks, Inc., Amendment, IBFS File No. SES-AMD-20070907-01253, at Attachment 3 to Attachment Description (Sept. 7, 2007). If TerreStar can operate its MSS ATC without the drastic increases in base station OOB that ICO demands, ICO can too.

³¹ Sprint Nextel Petition to Deny, IBFS File Nos. SES-LIC-20071203-01646, *et al.*, at 5 n.9 (Apr. 4, 2007).

³² *Id.* at 6 n.10.

the antenna gain or EIRP of these stations. Neither the PCS nor AWS rules currently permit such power levels and unlimited antenna gains for non-mobile user stations.³³

ICO attempts to justify this power increase by claiming that it is needed to support broadband data services and PCMCIA data cards with bandwidths up to five megahertz and antenna gains of 5-6 dBi.³⁴ PCS licensees, however, have already managed to offer broadband data services and PCMCIA data cards to millions of consumers despite a 2 watt EIRP power limit,³⁵ and AWS-1 licensees are investing billions of dollars to deploy five-megahertz broadband data services despite a 1 watt EIRP power limit.³⁶ If the nation's leading wireless carriers can operate a successful wireless data business under more rigorous power limits, why does ICO require a special, more permissive rule?

For its faults, ICO's Opposition supplements its waiver request with more technical information and offers a number of useful clarifications. For example, ICO indicates its

³³ *Id.* at 7 & n.13. As indicated in Sprint Nextel's Petition to Deny, Section 24.232(c), as modified in 2008, limits mobile/portable broadband PCS stations to 2 watts EIRP power. See *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27 and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, FCC 08-85 (rel. Mar. 21, 2008). Section 27.50(d)(4) limits fixed, mobile, and portable (hand-held) stations operating in the AWS-1 (1710-1755 MHz band) to 1 watt EIRP. EIRP is determined by combining the transmitter power output with the antenna gain and subtracting out any antenna feed line losses. Because ICO has indicated that it might use antennas with a gain of 5-6 dBi, the actual EIRP generated by their non-mobile devices would be at least 5-6 dB higher than permitted under the PCS rules. Furthermore, because ICO has requested only a transmitter power limit, and specifically neither an antenna gain or EIRP limit, grant of the waiver could result in EIRP levels significantly more than 5-6 dB above the levels permitted for PCS or AWS transmitters.

³⁴ ICO Opposition at 13.

³⁵ 47 C.F.R. § 24.232(c).

³⁶ 47 C.F.R. § 27.50(d)(2). While ICO tries to justify the non-mobile device power increase based on the BRS-EBS rules, 47 C.F.R. § 27.50(h)(2), which permit non-mobile user transmitters to operate with 2 watts transmitter output power, ICO's mobile transmit band (2000-2020 MHz) is much closer in frequency and propagation characteristics to the PCS mobile transmit band (1850-1910 MHz) and AWS-1 mobile transmit band (1710-1755 MHz) than to the BRS/EBS band (2496-2590 MHz).

requested mobile terminal power limit is 2 watts EIRP rather than the 2 watts/MHz EIRP limit discussed in the Petition to Deny.³⁷ ICO also indicates that it intends to operate its mobile transmit operations at 2010-2020 MHz.³⁸ If ICO complies with these clarifications, the potential for overload interference to H-block, G-block and AWS-1 mobile receivers would be materially reduced.³⁹ Without specific licensing conditions, however, there is no assurance that ICO would comply with the clarifications and mitigation measures described in its opposition.⁴⁰

III. ICO Has Failed to Demonstrate that It Will Comply with the Requirement that It Have a Ground Spare Satellite Within One Year of Commencing Operations.

Sprint Nextel agrees with Inmarsat Global Limited (Inmarsat) that ICO does not currently satisfy the Commission's ground spare satellite gating requirement and has failed to demonstrate how it will satisfy that requirement in the near future.⁴¹ Under the Commission's rules, ICO

³⁷ ICO Opposition at 13-14.

³⁸ ICO Opposition at 11 n.40.

³⁹ TerreStar shares Sprint Nextel's concerns about the likelihood that ICO's proposed waiver of the user device power limits would increase the potential for receiver overload interference. TerreStar Comments at 3. TerreStar's MSS ATC base station receivers, which would operate at 2000-2010 MHz, as well as AWS-2 J block base station receivers would be subject to an increased likelihood of overload interference. While ICO tries to make hay from perceived inconsistencies in Sprint Nextel's analysis of receiver overload interference, these claims are of no moment and easily refuted by the facts. In the AWS-3 rulemaking proceedings, for instance, Sprint Nextel never claimed that frequency separation would not be required between uplink and downlink operations, but rather that the AWS-3 licensees should fully internalize the 2.5 megahertz of separation that Sprint Nextel indicated would be required to avoid harmful interference. In this case, preventing harmful interference between MSS ATC uplinks at 2000-2010 MHz and AWS-2 downlinks at 1995-2000 MHz would require similar, roughly 2.5 megahertz frequency separations if TerreStar (now likely to occupy the 2000-2010 MHz band) were to request the same waivers of OOB and power limits that ICO has sought.

⁴⁰ If the Commission were to waive its rule limiting the mobile or non-mobile power levels for MSS devices, any such grant would have to be conditioned on ICO's user devices operating only at 2010-2020 MHz. This would be necessary to prevent harmful interference to adjacent downlink channels in other services from the abnormally powerful devices that ICO appears intent on deploying in its spectrum.

⁴¹ Inmarsat Petition to Deny at 3-5 (Apr. 4, 2008).

must “maintain a spare satellite on the ground within one year of commencing operations.”⁴²

This ground spare must be ready for launch in the event that there is a failure of ICO’s in-orbit satellite. The fundamental policy rationale for this gating requirement is to provide for redundancy to ensure continuous MSS to the public.⁴³

As Inmarsat points out, ICO has neither a ground spare under construction nor a binding contract for the construction of a ground spare.⁴⁴ While ICO has indicated that it is exploring possibilities for its second satellite and is considering whether to contract with the manufacturer of its first satellite or utilize a different manufacturer, this activity hardly demonstrates that it will meet this gating requirement in the near future. ICO claims in its opposition that it “intends to execute a satellite construction contract that provides for completion of construction within a year of ICO’s commencement of ATC operation,” but this timeline appears entirely unrealistic.⁴⁵ Given the typical timeframe for satellite construction, it will likely be years before any ground spare is ready for launch.

ICO claims that the Commission has twice before granted ATC authority to MSS licensees in similar circumstances.⁴⁶ In fact, these cases are inapposite to ICO’s ATC request. The case of Globalstar LLC (Globalstar) involved an NGSO licensee’s requirement to maintain an *in-orbit* spare satellite.⁴⁷ Globalstar already had non-operational in-orbit satellites that it could restore and use as in-orbit spares; moreover, Globalstar had ground spares that could be launched and then serve as in-orbit spares. Given those facts, the Commission found that

⁴² 47 C.F.R. § 25.149(b)(2)(ii).

⁴³ See *MSS ATC Order*, 18 FCC Rcd. 1962, ¶¶ 83-84.

⁴⁴ Inmarsat Petition at 3-4.

⁴⁵ ICO Opposition at 4.

⁴⁶ *Id.* at 3-4.

⁴⁷ *Globalstar LLC*, Order and Authorization, 21 FCC Rcd. 398, ¶¶ 35-36 (IB 2006).

Globalstar had satisfied this NGSO gating criterion.⁴⁸ In the case of Mobile Satellite Ventures Subsidiary LLC (MSV), MSV already had a first-generation MSS satellite in orbit (launched in 1996) and was in the process of constructing its next-generation satellite.⁴⁹ The Commission found that “it would [not] be reasonable to expect or require MSV to construct a duplicate of its aging first-generation satellite for th[e] purpose” of meeting this gating requirement.⁵⁰ In contrast, ICO has just recently launched its 2 GHz MSS satellite without any firm plan for a ground spare. On this basis alone, the Commission should deny its ATC application.

IV. Conclusion

The Commission should deny ICO’s ATC application and its associated waiver requests. ICO’s MSS ATC application shortchanges the requirement for satellite service, relies on improper procedures, seeks regulatory advantages not available to terrestrial operators, and increases the risk of harmful interference to adjacent-band licensees. To protect competition, ensure compliance with the Commission’s cost sharing policies, and prevent harmful

⁴⁸ *Id.*

⁴⁹ *Mobile Satellite Ventures Subsidiary LLC*, Order and Authorization, 19 FCC Rcd. 22144, ¶¶ 22-25 (IB 2004).

⁵⁰ *Id.* ¶ 25. The Commission granted MSV ATC authority for its first-generation satellite and required that MSV complete its second-generation ground spare within six months after launch of the second-generation satellite. In the event that MSV completed preparations for commencing commercial ATC operation sooner than six months prior to the milestone deadline for launching its second-generation MSS satellite, the Commission stated that it would consider a request for a limited waiver extending the one-year deadline for obtaining a ground spare.

interference to existing and planned terrestrial operations, the Commission should deny ICO's MSS ATC application.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

A handwritten signature in cursive script that reads "Lawrence R. Krevor". The signature is written in black ink and is positioned above a horizontal line.

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

April 24, 2008

Declaration

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

Executed on April 24, 2008


Richard B. Engelman
Director, Spectrum Resources
Government Affairs
Sprint Nextel Corporation

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 24th day of April, 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

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

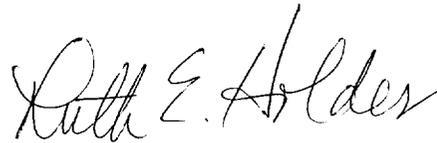
Suzanne Hutchings Malloy
Senior Vice President, Regulatory Affairs
New ICO Satellite Services G.P.
815 Connecticut Avenue NW, Suite 610
Washington, DC 20006

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

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

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

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



Ruth E. Holder