Sprint
Together with NEXTEL

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March 18, 2008

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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, DC 20554

Re: New ICO Satellite Service G.P. Request for Milestone Extension
Call Sign S2651; IBFS File No. SAT-AMD-20071109-00155

Dear Ms. Dortch:

On November 9, 2007, New ICO Satellite Services G.P (ICO) requested that the Federal Communications Commission extend the launch milestone for its 2 GHz Mobile Satellite Service (MSS) system from November 30, 2007 to April 15, 2008, and its final milestone for commencing operations of this system from December 31, 2007 to May 15, 2008.[1] The Commission should condition any grant of ICO's request upon confirmation that ICO must reimburse Sprint Nextel Corporation (Sprint Nextel) for ICO's *pro rata* share of eligible Broadcast Auxiliary Service (BAS) relocation expenses.

ICO bears an obligation to either relocate eligible BAS facilities or reimburse Sprint Nextel for a portion of the cost of doing so. The Commission has repeatedly stated that "both Sprint Nextel and 2 GHz MSS licensees have equal obligations to relocate the 2 GHz BAS incumbents."[2] The Commission has also affirmed that "the underlying relocation rules . . . established for MSS entrants to undertake the relocation of BAS incumbents" remain unchanged.[3] Accordingly, the Commission should condition any

[1] New ICO Satellite Services G.P., Amendment to Milestone Extension Request, IBFS File No. SAT-AMD-20071109-00155 (Nov. 9, 2007) (amending previous ICO request for extension of milestone dates, IBFS File No. SAT-MOD-20070806-00110).

[2] *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).

[3] *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

extension of ICO's launch and operational milestones on fulfilling its BAS relocation responsibilities, specifically including reimbursing Sprint Nextel for the 1.9 GHz relocation expenses Sprint Nextel incurs for ICO's benefit.

ICO apparently has no intention of itself performing any portion of the work associated with BAS relocation. ICO has done nothing to relocate BAS licensees – not a single relocation agreement signed, not a single piece of equipment ordered, not a single BAS licensee relocated. Sprint Nextel has offered ICO numerous ways in which it could participate in the BAS relocation already underway; however, ICO has refused. Most recently, Sprint Nextel proposed to enter a contractual agreement with ICO that would have allowed the company to directly participate in the BAS relocation framework that Sprint Nextel has established. ICO has not responded.

The Commission should not allow ICO to avoid both its obligation to relocate BAS licensees and its obligation to bear its fair share of the cost of BAS relocation.[4] Sprint Nextel is entitled to receive *pro rata* reimbursement of eligible BAS clearing costs incurred during the 800 MHz reconfiguration period from ICO and other MSS licensees that enter the band prior to the end of that period. The Commission should confirm that ICO's commencement of operations to satisfy its proposed May 15, 2008 milestone – whether it be in the form of testing, market trials, or any transmissions – will constitute entering the 2 GHz band by that date for cost reimbursement purposes and thereby trigger ICO's obligation to reimburse Sprint Nextel for ICO's *pro rata* share of BAS relocation costs.

Opinion and Order and Further Notice of Proposed Rulemaking, FCC 08-73, 2008 FCC LEXIS 1896, ¶ 39 (rel. March 5, 2008) (*BAS Extension Order*), citing *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, ¶ 250 (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). Specifically, prior to beginning operations, ICO must relocate (i) the BAS incumbents in the top thirty markets and (ii) all fixed BAS links, regardless of market size. 47 C.F.R. § 74.690(e)(1)(i). The Commission recently stated that:

> As we noted in the *800 MHz R&O*, 'except as discussed below, those rules will remain in effect.' At no place in our rules, the *800 MHz R&O*, or subsequent orders have we stated that MSS was no longer obligated to relocate BAS in the top 30 markets and all fixed BAS prior to beginning operations.

BAS Extension Order ¶ 39 n.118 (citations omitted).

[4] Consistent with the Commission's cost-sharing rules, Sprint Nextel on February 4, 2008 transmitted 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. Sprint Nextel projects that ICO's total, cumulative obligation from this process will be approximately $100 million. In a February 12, 2008 letter to Sprint Nextel, 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.

The Commission recently extended Sprint Nextel's deadline for relocating BAS licensees to March 5, 2009, and stated that it would "hold open the option" of granting a further extension.[5] Accordingly, the Commission should further condition any grant of ICO's extension request on ICO reimbursing Sprint Nextel for its *pro rata* share of BAS relocation costs incurred through the ultimate completion of the process, consistent with the new March 5, 2009 BAS relocation completion deadline. Requiring ICO to pay its share of total BAS relocation costs is consistent with the Commission's finding that, because of unanticipated complexities beyond Sprint Nextel's control, BAS relocation will take more time to be completed. There is no public policy or other basis for any contrary finding; the Commission has consistently required new entrants into reallocated spectrum assignments to pay the cost of relocating incumbent licensees.[6] To do otherwise would arbitrarily grant ICO a windfall at Sprint Nextel's expense. Thus, in any grant of ICO's milestone extension request, the Commission should confirm that ICO will be required to pay its fair share of the total cost of relocating BAS operators in the top 30 markets and all fixed links.

In the *800 MHz Order*, the Commission directed 2 GHz MSS licensees to reimburse Sprint Nextel for their *pro rata* share of the eligible expenses that Sprint Nextel would incur in relocating BAS licensees above 2025 MHz prior to the 800 MHz "true up."[7] 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.[8] The Commission should adhere to its bedrock cost-sharing principle that licensees that benefit from the spectrum cleared by the first entrant must bear their fair share of the clearing costs.[9]

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[5] *BAS Extension Order* ¶ 29.

[6] *See Improving Public Safety Communications in the 800 MHz Band,* Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 111 (2005) (*800 MHz MO&O*); *800 MHz R&O* ¶ 261; *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).

[7] *800 MHz R&O* ¶ 261; *accord, 800 MHz MO&O* ¶ 111 ("Nextel, as the first entrant, is entitled to seek *pro rata* reimbursement of eligible clearing costs from subsequent entrants, including MSS licensees."). The Commission needs to adjust the current 800 MHz/BAS retuning true-up and reimbursement schedule to be consistent with its action in the *BAS Extension Order.*

[8] *See, e.g., 800 MHz MO&O* ¶ 111. On March 7, 2006, Sprint Nextel provided notice of its intent to seek reimbursement from both of the 2 GHz MSS licensees, ICO and TerreStar. *See* Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission (March 7, 2006), *available at*: <http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_ document=6518330529> (providing notice of Sprint Nextel's intent to seek reimbursement to the Commission and to representatives of both MSS licensees).

[9] *See supra* note 6.

In conclusion, any extension of ICO's satellite milestones should neither reduce nor eliminate ICO's financial liability to Sprint Nextel and its shareholders for a *pro rata* share of eligible BAS relocation expenses. In any grant of relief for ICO, therefore, the Commission should confirm that ICO must reimburse Sprint Nextel for ICO's *pro rata* share of eligible BAS relocation expenses through the completion of the BAS relocation and 800 MHz rebanding processes.

Respectfully submitted,

Lawrence R. Krevor /Neh

Lawrence R. Krevor
Vice President – Spectrum
Sprint Nextel Corporation

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 18th day of March, 2008, I caused true and correct copies of the foregoing letter to be mailed by first class U.S. mail, postage prepaid, to:

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Additionally, I caused true and correct copies of the foregoing letter to be mailed by electronic mail to:

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