

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

In the Matter of)	
)	
Review of the Spectrum Sharing Plan Among)	
Non-Geostationary Satellite Orbit Mobile)	IB Docket No. 02-364
Satellite Service Systems in the 1.6/2.4 GHz)	
Bands)	
)	
Amendment of Part 2 of the Commission's)	
Rules to Allocate Spectrum Below 3 GHz for)	ET Docket No. 00-258
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	

**REPLY OF NEXTEL COMMUNICATIONS, INC. TO
CONSOLIDATED OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Nextel Communications, Inc. (Nextel) replies to Globalstar LLC's Consolidated Opposition to Petitions for Reconsideration (Globalstar Opposition) of the *MSS Sharing Order*.¹ The Commission has required Nextel and hundreds of other licensees in the Broadband Radio Service (BRS) to relocate to the 2496-2500 MHz band.² Nextel and the other relocated BRS-1 licensees are legally entitled to comparable replacement spectrum for their geographically licensed BRS-1 spectrum. At a minimum, therefore, the new spectrum in the 2496-2500 MHz band should offer BRS-1 licensees the opportunity to deploy service consistent with the terms of their original licenses. By

¹ Nextel, Globalstar, and other parties have petitioned for reconsideration of the Commission's *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Amendment of Part 2 of the Commission's Rules*, 19 FCC Rcd 13356 (2004) (*MSS Sharing Order*).

² The Commission created a guard band of one megahertz in the 2495-2496 MHz band. MSS may be able to continue to operate in this one megahertz of spectrum, provided that the 2496-2500 MHz is allocated for terrestrial mobile and fixed use as the sole primary service in this band.

comparison, Globalstar's proposal for imposing draconian restrictions on BRS systems involuntarily relocated to the 2496-2502 MHz band would not only violate the Communications Act, but also contravene the Commission's longstanding policies on relocation. To provide BRS-1 with comparable replacement spectrum, the Commission should remove the MSS allocation from the 2496-2500 MHz band.

I. THE COMMISSION SHOULD PRESERVE BRS-1 AT 2496-2502 MHz AND DELETE GLOBALSTAR'S MSS DOWNLINK ALLOCATION AT 2496-2500 MHz

BRS and MSS systems cannot operate on a co-channel basis in the same geographic area without causing mutually harmful interference.³ While Globalstar has proposed that BRS operations at 2496-2500 MHz (part of BRS Channel 1 at 2496-2502 MHz (BRS-1)) either be removed or severely restricted, deletion of the MSS downlink allocation at 2496-2500 MHz is the solution that best advances the public interest.

A. Licensees Actively Use BRS-1 Today, and This Channel Will Continue to Play an Important Role in the Development of Wireless Broadband Services

The revised BRS band between 2496 MHz and 2690 MHz promises great public interest benefits. Now fully contiguous following the relocation of BRS-1, the BRS band provides an extraordinary opportunity for competitive providers to offer a variety of innovative, wireless broadband services to consumers in the United States. BRS-1 licensees actively use BRS-1 today, and this channel currently plays an important role in the provision of wireless broadband services in numerous large and small markets across

³ See, e.g., Nextel Communications Opposition to Petitions for Reconsideration of Globalstar LLC and Society of Broadcast Engineers, Inc., ET Docket No. 00-258, at 1 (Oct. 27, 2004) (Nextel Opposition); Globalstar Opposition at 8.

the country.⁴ BRS-1 is licensed in nearly every market in the United States, and this channel is used for subscriber-to-base communications in every frequency division duplex (FDD) wireless broadband system currently using BRS spectrum.⁵

In addition, the Commission's revised BRS allocation does not contain 152 MHz of spectrum, as Globalstar claims in its effort to portray the BRS band as "enormous" and BRS-1 as therefore dispensable.⁶ On the contrary, much of the spectrum cited by Globalstar is not designated for BRS, but rather for the Educational Broadband Service (EBS). While EBS licensees may choose to lease spectrum for BRS use, the Commission has imposed a number of eligibility, programming, and operational limitations on how EBS licensees operate. Moreover, the Commission has granted a great many BRS-1 licenses with territory located wholly outside of the top 35 MSAs. Therefore, any proposal that would preclude BRS-1 from operating outside of the top 35 MSAs would necessarily render void hundreds of lawfully granted BRS-1 licenses with geographic area licenses that happen to lie outside of the nation's top 35 MSAs.⁷

⁴ See, e.g., Sprint Opposition to Petitions for Reconsideration, ET Docket No. 00-258, at 6 n.16 (Oct. 27, 2004); Opposition of BellSouth Corporation *et al.*, ET Docket No. 00-258, at 5-6 (Oct. 27, 2004).

⁵ See Petition for Reconsideration, WCA, ET Docket No. 00-258, at 3 n.4 (Sep. 8, 2004).

⁶ Globalstar Opposition at 4.

⁷ For additional discussion of this point, *see infra* at Section II. Each BRS channel is separately licensed based on individual geographic service areas. As a result, a licensee that has received authority to operate on BRS-1 does not necessarily possess licenses on BRS E1, BRS E2 or other BRS channels. Indeed, for many BRS licensees, the only BRS license that they hold is the BRS-1 channel because that channel was separately licensed in the 2.1 GHz band. For these licensees, Channel BRS-1 constitutes 100% of their available BRS spectrum.

B. Globalstar Does Not Require Access to All of Its Currently Licensed S-band Spectrum

Globalstar continues to object to the proposed deletion of the MSS downlink allocation at 2496-2500 MHz based on an alleged operational need for the entire 2483.5-2500 MHz downlink band.⁸ This argument is not tenable. The Commission originally allocated 16.5 MHz to MSS downlink operations to support the prospective operations of *four* CDMA Big LEO MSS systems. More than a decade later, Globalstar is the only remaining CDMA Big LEO MSS licensee. Indeed in the *MSS Sharing Order*, the Commission held that “the sole remaining CDMA MSS operator should not expect to have unfettered access to . . . 16.5 megahertz [of spectrum] in the S-band.”⁹ Globalstar can serve its subscribers with significantly less than the 12.5 MHz of MSS downlink spectrum it would retain under Nextel’s solution (2483.5-2496 MHz);¹⁰ in fact, Globalstar has previously informed the Commission that it is only using 7.5 MHz of downlink spectrum to meet limited subscriber demand. Moreover, Iridium has confirmed the inefficiency of Globalstar’s operations with evidence that Globalstar requires five times as much spectrum as Iridium uses to support less than two-thirds the quantity of traffic that Iridium carries.¹¹ Here as elsewhere, Globalstar has failed to demonstrate that it has an actual need for more than 11.5 MHz of spectrum.

⁸ Globalstar Opposition at 10-14.

⁹ *MSS Sharing Order*, 19 FCC Rcd at ¶ 66.

¹⁰ Nextel Petition at 13 (recommending that the Commission eliminate the MSS allocation from the spectrum designated for BRS-1 use).

¹¹ See Letter from William D. Wallace to Marlene H. Dortch, IB Docket No. 02-364, at 1 (Feb. 26, 2004); Letter from Peter D. Shields to Marlene H. Dortch, IB Docket No. 02-364, Attachment at 7 (Mar. 17, 2004).

The Commission should also reject Globalstar's effort to use future Ancillary Terrestrial Component (ATC) operations to justify its spectrum claims.¹² The Commission's MSS allocation decisions should focus on what is needed for viable MSS systems. While the Commission's MSS ATC policy permits MSS licensees to increase spectrum efficiency through ancillary terrestrial reuse of their existing spectrum, possible future terrestrial operations cannot themselves serve as a legitimate basis for additional spectrum. Nor should the possibility of future ATC deployment by Globalstar prevent the Commission from deleting currently unused and unneeded spectrum in the Big LEO MSS downlink band. The public interest would not be served by establishing what would in effect be a contingent sub-allocation for ATC in this band.

II. GLOBALSTAR'S PROPOSAL FOR "GEOGRAPHIC SEPARATION" IS NOT FEASIBLE

Globalstar proposes to limit BRS operations at BRS-1 to the top 35 MSAs in the United States, as well as impose other technical restrictions.¹³ These proposed restrictions would harm many BRS-1 licensees and would disserve the public interest.

In making its "top 35 market" proposal, Globalstar seems unaware that BRS licensees do not have national blanket licenses, but rather are licensed on a geographic area basis like other commercial wireless licensees. Throughout the BRS band, the Commission has assigned licenses in 493 separate Basic Trading Areas (BTAs), subject to 193 Protected Service Areas (PSAs) occupied by pre-auction licensees (under the BRS reconfiguration these PSAs will become "geographic service areas" (GSAs)). A significant number of BRS-1 licenses fall entirely outside the top 35 markets, and under

¹² Globalstar Opposition at 11.

¹³ Globalstar Opposition at 9.

Globalstar’s proposal these licenses would lose all ability to provide service on that channel – a fact Globalstar ignores. Under Globalstar’s proposal, these licenses could no longer operate and, therefore, would lose all of their economic value.

Globalstar’s proposed restriction would effectively revoke hundreds of licenses that operate at BRS-1, including those purchased at auction and on the secondary market. The magnitude of this change is illustrated graphically below. Figure 1 shows all of the licensed BRS-1 BTA and PSA regions in the United States. Figure 2 includes only the BTAs and PSAs where BRS-1 operations would still be permitted under Globalstar’s

Figure 1:
BRS-1 Licenses Before Globalstar’s Proposal

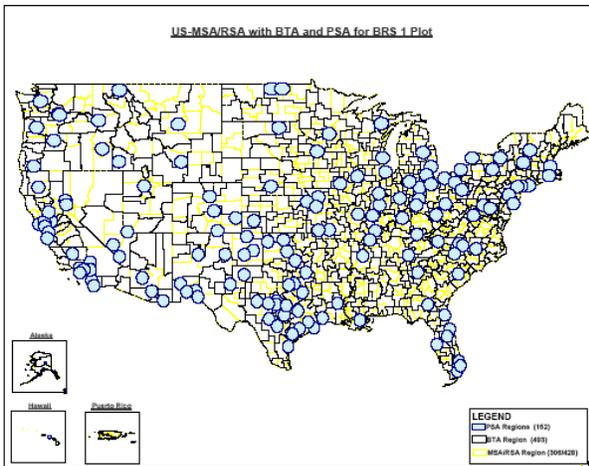
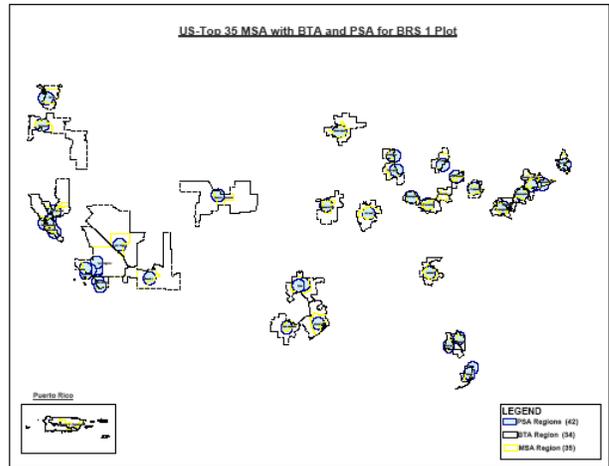


Figure 2:
BRS-1 Licenses After Globalstar’s Proposal



These figures accurately represent licensing data drawn from the FCC’s Universal Licensing System on October 17, 2004.

geographic limitation. As demonstrated above, Globalstar’s proposal would effectively revoke hundreds of BRS-1 licenses covering nearly half of the nation’s population and almost all – an astounding 95.6 percent – of the nation’s land mass.

Without access to the numerous key markets that fall below the “top 35” threshold, BRS-1 operators would face greatly reduced economies of scale, while suffering the increased costs of servicing the resulting patchwork of BRS-1 facilities. In

Nextel's case, the harm would be enormous: all told, Nextel would lose roughly 90% of its BRS-1 spectrum holdings under Globalstar's proposal. Perhaps worst of all, Globalstar's proposal would fall most heavily on the very areas with the greatest need for an additional broadband competitor: growing cities, burgeoning suburban zones, and underserved rural areas.

The effective license revocations resulting from Globalstar's proposed geographic restriction would constitute arbitrary and capricious decision-making in violation of the Administrative Procedure Act¹⁴ and would violate Sections 312 and 316 of the Communications Act, which prohibit the Commission from revoking or modifying its licensees' authorizations without first providing those licensees with a hearing and meeting other procedural requirements.¹⁵ In addition, the *de facto* license revocations would violate the U.S. Constitution by depriving BRS-1 licensees of all economic value in their affected licenses, without providing just compensation.¹⁶

Globalstar's proposed restrictions are also fundamentally inconsistent with the Commission's policies on incumbent licensee relocation, which, as numerous parties have noted in this proceeding, are designed to ensure that involuntarily relocated incumbents are left "no worse off than if relocation were not required."¹⁷ Globalstar misapplies this principle to BRS-1 incumbents, asserting that BRS-1 licensees need only be accorded sufficient capacity "to satisfy their needs at the time of relocation, rather than

¹⁴ 5 U.S.C. § 706.

¹⁵ 47 U.S.C. §§ 312, 316.

¹⁶ See US Const. Amend V; *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Penn Central Trans. Co. v. City of New York*, 438 U.S. 104 (1978).

¹⁷ *Amendment to the Commission's Rules Regarding a Plan for Sharing Costs of Microwave Relocation*, 11 FCC Rcd 8825, 8843 (1996).

to match the overall capacity of the system.”¹⁸ Globalstar’s analysis ignores the crucial distinction that the Commission’s relocation policies make between (i) point-to-point microwave licenses and (ii) geographic area licenses that support point-to-multipoint wireless services to end users.

When relocating incumbent microwave links, the Commission ensures only that licensees can continue providing the same quality and quantity of point-to-point services as offered at the time of relocation. Where the Commission has involuntarily relocated geographic-area licensees, the Commission has worked to preserve the overall communications capacity of these licensees’ systems. For instance, in fashioning the relocation framework for incumbent Specialized Mobile Radio (SMR) licensees in the upper 200 channels of the 800 MHz band, the Commission determined that these licensees must be relocated to comparable systems that provide them with “equivalent channel capacity,” not just with the bandwidth necessary to carry the level of traffic at the time of relocation.”¹⁹ The Commission added that if a different channel configuration is adopted in the new band, “it must have the same overall capacity as the original configuration.”²⁰ The Commission recently applied this relocation policy to public safety and private wireless licensees to be relocated in conjunction with the Commission’s comprehensive 800 MHz band realignment.²¹ The Commission also followed this

¹⁸ Globalstar Opposition at 6.

¹⁹ *Upper 200 Order*, 12 FCC Rcd at 19112-13.

²⁰ The Commission defined channel capacity as “the same number of channels with the same bandwidth that is currently available to the end user.” *Id.* at 19112-13.

²¹ *See Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Report and Order, WT Docket 02-55, FCC 04-168, __ FCC Rcd __ ¶ 252 (rel. Aug. 6, 2004).

approach in the late 1990s when it relocated point-to-multipoint Digital Electronic Messaging Service (DEMS) licensees from the 18 GHz band to the 24 GHz band.²² In that proceeding, the Commission acted to ensure that DEMS licensees would enjoy equivalent capacity and reliability of service in their new spectrum band. To meet this goal, the Commission compensated for the reduced signal propagation at 24 GHz by assigning these licensees four times as much spectrum in that new band.²³

Accordingly, the Commission should ensure that BRS-1 licensees have the same system capacity at 2496-2502 MHz as they did at 2.1 GHz. To do so, the Commission must remove the MSS downlink allocation and other incumbent operations from the 2496-2500 MHz band segment.

III. BAS CHANNELS A8-A10 MUST BE RELOCATED, WITH AWS LICENSEES AT 2150-2162 MHz BEARING THE COST OF THIS EFFORT

In its Opposition, Globalstar raises the possibility that no BAS stations are currently operational in BAS Channel A10, and it argues that wholesale BAS relocation in this band is unnecessary.²⁴ Globalstar is mistaken. BAS Channel A10 is operational in many markets. And if new services are ever to operate in the 2496-2500 MHz band, BAS Channels A8-A10 must be digitized and repacked. AWS licensees at 2150-2162 MHz should bear the financial costs of digitizing and repacking BAS Channels A8-A10.

²² *Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service (DEMS) from the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service*, Order, 12 FCC Rcd 3471, ¶ 14 (1997), *recon. denied*, 13 FCC Rcd 15147, ¶ 59 (1998) (*DEMS Order*)

²³ *DEMS Order*, 13 FCC Rcd at ¶ 59.

²⁴ Globalstar Opposition at 14-15.

The negotiated framework Nextel proposed in its Opposition represents the most cost-effective method for relocating BAS Channel A8-A10 licensees and providing them with comparable spectrum. Of course, nothing in Nextel's contingent proposal to digitize and partially repack Channels A8-A10 would preclude another licensee from digitizing and repacking BAS Channels A8-A10 more quickly than Nextel has proposed. Indeed, any other licensee – whether another BRS-1 licensee or a prospective Big LEO MSS ATC operator, such as Globalstar – could digitize and repack these BAS Channels if it wishes to implement a new service above 2486 MHz more quickly than Nextel has proposed. No matter which party takes on this relocation effort, however, the financial costs of this transition must be borne principally by AWS auction winners in the 2150-2162 MHz band and by Globalstar should it choose to implement MSS ATC.

IV. CONCLUSION

The Commission should reject the arguments set forth in Globalstar's opposition and remove the outdated MSS downlink allocation from the 2496-2500 MHz band segment.

Respectfully submitted,

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