Federal Communications Commission
Washington, D.C. 20554

November 12, 2015

DA 15-1303

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REF: City of Stamford, Connecticut – 800 MHz Rebanding Project

Dear Counsel:

By this letter, we approve, in part, a settlement advanced by Sprint Corporation and the City of Stamford, Connecticut (Stamford) in which the parties propose that Stamford pay Sprint $956,259.64 in full settlement of claims Sprint has against Stamford for Stamford's breach of the contract between Stamford and Sprint – the Frequency Reconfiguration Agreement (FRA) – for reconfiguration of Stamford's 800 MHz public safety communications system. We approve the settlement only in part because to do otherwise would be contrary to the provisions of the *800 MHz Report and Order* respecting Sprint's obligation to make an "anti-windfall" payment to the U.S. Treasury.

The November 28, 2007, FRA between Stamford and Sprint provided that Stamford's 800 MHz public safety communications system was to be replaced with an upgraded system, rather than retuned. Under the FRA, Sprint was to pay Stamford $4,869,010.95 – the estimated cost that Stamford would have incurred had it retuned, rather than replaced, its system. Of that sum, $3,744,010.95 was the cost of new radio equipment.

A material provision of the FRA is that Stamford is required to send to Sprint the used equipment that is being replaced as part of the upgrading of Stamford's system. This includes infrastructure equipment and subscriber radios. This provision is included in the FRA, *inter alia*, to ensure that the used equipment is not acquired by another 800 MHz licensee and submitted to Sprint for new replacement equipment. If Stamford fails to send the used equipment to Sprint, Stamford must pay Sprint the Product Typical Value (retail price) of a corresponding item of new equipment.

Stamford failed to send its used equipment to Sprint. Instead, Stamford contends that its rebanding contractor consigned the used infrastructure equipment to trash receptacles and donated the used subscriber radios to the City of Hartford, Connecticut (Hartford) – another 800 MHz

licensee.[1] Consequently, because the used equipment was not provided to Sprint, Sprint asserted that Stamford owed Sprint $3,260,080.62.[2]

In a June 2014 letter to the mediator assigned to Stamford's case by the 800 MHz Transition Administrator,[3] Stamford acknowledged that it had not provided Sprint with the used equipment and proposed to settle Sprint's claim for $956,259.64 – asserted to be the total sum that Stamford could afford to pay immediately. Subsequently, in July 2014, Sprint and Stamford sent the Transition Administrator a joint letter in which the parties proposed a modified settlement. The modified settlement still provided that Stamford would pay Sprint $956,259.64 in full settlement of all claims that Sprint had against Stamford, leaving an unfunded balance of $1,914,027.54. However, in lieu of Stanford paying the unfunded balance, the parties proposed that Sprint would receive rebanding program credit[4] based on a "1-to-1" proposal. That proposal contemplated Sprint receiving rebanding program credit for each replacement radio that Stamford purchased as part of its upgrade program, the assumption being that there was a 1:1 relationship between Stamford's replaced radios and the new radios Stamford purchased. The proposal made in the joint letter was conditioned: The Transition Administrator and its auditors[5] – or a Federal Communications Commission order – had to approve crediting Sprint with $1,914,027.54 without imposing conditions on the parties.

In August, 2014, the Transition Administrator declined to accept the proposed modified settlement, *supra*. It found that Stamford had not adequately documented that the infrastructure equipment had been destroyed, as Stamford claimed, and that the 1-to-1 proxy proposal was unacceptable without cost documentation. Sprint and the Transition Administrator held informal discussions in an attempt to resolve the issues raised in the Transition Administrator's disapproval of the proposed modified settlement. The discussions were unsuccessful.

In May of 2015, Sprint and Stamford filed a letter with the Commission requesting "guidance" or, in the alternative, a waiver, to permit the parties to resolve the issues raised by the Transition Administrator when it declined to approve the proposed modified settlement agreement. That letter included as an attachment an affidavit from Stamford's rebanding contractor attesting that, to the best of his knowledge, Stamford's replaced infrastructure equipment had been discarded in a dumpster trash receptacle and that he saw the dumpster removed from Stamford's property. The letter also included as an attachment a list of radio serial numbers developed by the City of Hartford, which list enumerated the subscriber radios that Stamford donated to the City of Hartford. These two sets of documentation, Sprint and Stamford contend, satisfy the Transition Administrator's concern

[1] Stamford subsequently retrieved an unspecified number of subscriber radios from the City of Hartford.

[2] If the replaced equipment had been provided to Sprint, Sprint would have owed Stamford a final payment of $483,930.33. Because the cost of new equipment exceeded the final payment amount, Sprint contended that Stamford owed it $3,260,080.62, *i.e.,* the $3,744,010.95 cost of new radio equipment, *supra*, minus the $483,930.33 unpaid final payment.

[3] The 800 MHz Transition Administrator *inter alia* provides mediation services to resolve rebanding disputes between Sprint and rebanding licensees and evaluates the acceptability of agreements between Sprint and rebanding licensees. Its actions are directed by, and reviewable by, the Federal Communications Commission.

[4] Under the rebanding program, Sprint receives credit for Transition Administrator-approved payments made to each rebanding licensee, which credit, when aggregated, is added to the amount that Sprint must expend in rebanding-related activities in order to avoid making an anti-windfall payment to the U.S. Treasury.

[5] The Transition Administrator's determination of whether Sprint has met the threshold for avoiding an anti-windfall payment to the Treasury is subject to an independent audit.

about absence of documentation of the destruction of the infrastructure equipment and the number of subscriber radios donated to the City of Hartford.

The letter, *supra*, also contained a cost reconciliation based on the referenced documentation:

TABLE 1

(a) Equipment value as specified in the FRA:	$ 3,744,010.95
(b) Less used equipment received by Sprint:[6]	$ (389,792.84)
(c) Less used equipment documented:[7]	$(1,268,278.35)
(d) Total Stamford equipment supported:	$ 1,658,071.19
(e) Unsupported equipment (line (a) minus line (d)):	$ 2,085,939.76
(f) Less final Stamford payment withheld by Sprint:	$ (483,930.93)
(g) Balance, *i.e.,* amount owed by Stamford:	$ 1,602,008.83
(h) Less settlement amount:	$ (956,259.64)
(i) Costs for which Sprint claims credit:	$ 645,749.19

In the referenced letter, Sprint states that it "needs to know that the money it paid under the Stamford FRA is fully creditable even without the return of the equipment required by the contract."

As noted, *supra*, Stamford donated a quantity of subscriber radios to Hartford. It now has been established that Hartford, in connection with its rebanding, sent a subset of those donated radios to Sprint and, in return, received a quantity of replacement subscriber radios from Sprint. Hartford then "re-donated" a subset of the radios that Stamford donated to Hartford. The "re-donation" was made to the State of Florida for use by Lafayette County, Florida. The State of Florida also used the donated Stamford radios to obtain replacement radios from Sprint. Hence, in two known instances, Sprint would have paid twice for the same subscriber radios, once in the Stamford rebanding, and again in connection with the Hartford and Lafayette County rebandings. Were we to allow Sprint to claim rebanding program credit for the twice-counted radios, that would result in an unwarranted increase in the amount claimed by Sprint in calculation of Sprint's anti-windfall payment.

The Transition Administrator reviewed the documents provided by the parties concerning the 275 radios donated by Stamford, determined that the radios were exchanged for new radios by Hartford and Lafayette County, but found no evidence of intent to commit fraud connected with the transactions. Although Sprint suggested that the cost of the new radios provided to Hartford and Lafayette County could be recovered from those two licensees, the Transition Administrator observed that to do so it would be necessary to re-open the Hartford FRA. As an alternative, the Transition Administrator recommends that – if the Stamford/Sprint proposed settlement is approved by the Commission – the cost of 275 replacement radios should be deducted from Sprint's request for

[6] Stamford had located some of the used equipment that had not been destroyed or donated to Hartford and sent that equipment to Sprint.

[7] Includes (a) discarded Stamford infrastructure equipment supported by affidavit, (b) radios donated by Stamford, less Stamford radios turned in to Sprint by Stamford or other licensees, (c) approximately 90 radios sent to Sprint that could not be evaluated because the shipping box was contaminated by an apparently corrosive substance.

program credit, together with the duplicate labor cost associated with those radios.[8] If the cost of the 275 radios, plus associated labor, were not deducted from Sprint's request for program credit, Sprint would be twice-credited, once for the radios provided to Stamford and, again, for the radios provided to Hartford and Lafayette County.

With the foregoing as background, we turn to the question of whether we should approve the proposed settlement, with an adjustment made to account for the twice-counted radios. Were we to approve the settlement, Sprint would be able to claim program credit for $645,749.19, less the cost of the 275 radios[9] and the $100,800 labor cost associated with those radios.

We find that the documentation offered by Stamford for the proposition that the replaced infrastructure equipment was destroyed and that its replaced radios were donated to Hartford satisfactorily shows that was the case. Accordingly, the amount owed by Stamford is reduced, as shown in Table 1, *supra* to $1,268,278.35

Were we to approve the parties' proposed settlement, and Sprint is found liable for an anti-windfall payment, that raises the possibility that the Treasury could receive substantially less than it otherwise would be entitled to, *i.e.,* $645,749.19 minus the cost of the 275 radios and the labor cost associated with those radios. If, however, Sprint exceeds the anti-windfall threshold, as it claims it will, without relying on the unsupported costs from the Stamford settlement, then the issue of providing Sprint program credit in the context of the proposed settlement agreement becomes moot.

Sprint and Stamford agree that Sprint has a cause of action against Stamford for the unsupported costs in Stamford's rebanding project. Had Sprint exercised its rights fully to recover the $1,602,008.83 balance that Stamford owes Sprint, the issue of the acceptability of the proposed settlement would not be before us. We do not fault Sprint's business decision to compromise the amount it is owed. However, linking the proposed settlement to the Commission making the excess over the compromise amount creditable to Sprint could, as noted above, result in the U.S. Treasury receiving less than it otherwise would if Sprint had to make an anti-windfall payment. That is a risk inconsistent with the *800 MHz Report and Order* and one we lack the authority to assume.

Sprint and Stamford couched their letter in terms of the Commission providing them guidance, or in the alternative, granting them a waiver to pursue the requested settlement. We evaluate that waiver request according to Section 1.529 of the Federal Communications Commission rules which states, in pertinent part:

> The Commission may grant a request for waiver if it is shown that:
> (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
> (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly

[8] The Transition Administrator estimates that at least $480,000 in labor cost was associated with the totality of radios supplied to Stamford – 1,315 units. The 275 radios represent approximately 21% of the 1,315 radios supplied. Therefore, the labor cost associated with the 275 radios is $480,000 times 0.21 = $100,800.

[9] Sprint contends that information on the cost of the radios is proprietary but that it will disclose that information to the Commission upon request. We have not yet requested the information but may do so in the future.

> burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[10]

The purpose of requiring Sprint to make an anti-windfall payment if its rebanding, and other related costs, did not equal or exceed the value of the 1.9 GHz spectrum that was supplied to Sprint as part of rebanding was to avoid Sprint being unjustly enriched – at the Treasury's expense – as a consequence of the rebanding program. That purpose would be frustrated were we to allow Sprint to add to its rebanding costs, the amount it elected to forgive Stamford. The purpose of the requirement would not be served were we to allow Sprint to evade it. Thus, the parties have not satisfied the first prong of the waiver standard.

Although the circumstances surrounding the Stamford transaction are unique and unusual – at least as to the rebanding program – it would be inequitable and unduly burdensome to the public – not the parties – were we to allow Sprint to add, as a rebanding cost, the amount that it proposes to forgive Stamford. Such an allowance would be contrary to the public interest. And, Sprint had a reasonable alternative: collect the full amount owed by Stamford.

Accordingly, we deny the waiver requested by the parties but approve the Sprint/Stamford settlement, conditioned, however, on Sprint not claiming program credit for the difference between the balance Stamford owes Sprint and the settlement amount offered by Stamford.

This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

Sincerely,

Michael J. Wilhelm
Deputy Chief
Policy and Licensing Division
Public Safety and Homeland Security Bureau

cc: 800 MHz Transition Administrator

[10] 47 C.F.R. § 1.529