

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Improving Public Safety Communications in the
800 MHz Band
Maricopa County, Arizona Rebanding
WT Docket No. 02-55

ORDER

Adopted: May 18, 2016

Released: May 18, 2016

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. Under consideration is the Request for Bureau Review (Request) filed by Sprint Corporation (Sprint) on April 9, 2016 and responsive pleadings. For the reasons set out below, we deny the Request, in part and grant the Request, in part.

II. BACKGROUND

1. Sprint's Request "asks that the Bureau direct the County either to complete its rebanding to the point of releasing pre-rebanding frequencies by the end of June 2016 or, if not, forfeit all unpaid FRA funds that relate to the County's partial upgrade." Sprint concedes that the Public Safety and Homeland Security Bureau's (Bureau) granting such relief would constitute a "revision to the FRA" - the Frequency Reconfiguration Agreement contract to which Sprint and Maricopa are parties. The Request also asks "that that the Bureau intervene directly and immediately and remain directly involved in this oversight of the County until the pre-rebanding frequencies have been cleared."

2. Maricopa, in opposition, argues that the FRA is governed by the law of the State of Arizona and that the relief sought by Sprint can only be granted by the Superior Court of Maricopa County or the Federal District Court located in Maricopa County, and not by the Commission. Maricopa accuses Sprint of misrepresentation in several respects, contends that Maricopa's undertakings for completion of various rebanding steps were only estimates, not firm commitments, and faults Sprint for

1 Opposition of Maricopa County, Arizona (Opposition), April 29, 2016; Reply to Opposition, filed May 6, 2016 by Sprint.

2 Request at 15.

3 Id.

4 Id. at 16.

5 Opposition at 2.

6 See, e.g., id. at 1 ("The Sprint Request . . . is based upon numerous factual misrepresentations to the Commission.")

7 Opposition at 1.

not initiating mediation to resolve the parties' differences.<sup>8</sup> Maricopa asks the Bureau to dismiss the Request.<sup>9</sup>

3. Sprint's reply pleading consists principally of unsupported descriptions of the dealings between the parties in the rebanding process. Sprint contends that Maricopa is intentionally delaying rebanding and directing its resources instead to completing an upgrade of its system, contrary to the Commission's requirement that upgrades must not delay rebanding.<sup>10</sup> Sprint claims the alleged delay is interfering with Sprint's plans to deploy 800 MHz broadband service in Phoenix.<sup>11</sup> Finally, Sprint notes that the instant controversy is not the first time that the Commission has had to deal with delays on Maricopa's part.<sup>12</sup>

### III. DISCUSSION

4. As an initial matter, we find that it would be inappropriate for the Bureau to dictate that the parties' FRA contract be modified as Sprint requests. The interpretation or reformation of private contracts revolve around questions of state or federal law, matters which the Commission historically and consistently has left to courts of appropriate jurisdiction.<sup>13</sup> We therefore are denying the Request to the extent that it requests reformation of the parties' FRA. The fact that a court of appropriate jurisdiction is the proper forum for part of the relief sought by Sprint does not leave us without an option to act here. Sprint also has requested that the Bureau "intervene directly and immediately and remain directly involved in this oversight of the County until the pre-rebanding frequencies have been cleared."<sup>14</sup> We find that portion of the Request has merit. Accordingly, to keep all informed of the status of Maricopa's rebanding, Maricopa shall file, each week, beginning May 23, 2016, a detailed report of progress made since the prior week and of any factors impeding prompt completion of rebanding. The report shall be filed in the PSHSB800 mailbox, with copies to Sprint, the 800 MHz Transition Administrator and the undersigned. Sprint may, but is not required to, comment on Maricopa's filing within 1 week of the filing of the Maricopa report.

5. In the event the report, *supra*, is not timely filed, is less than complete, or does not demonstrate adequate progress, the Bureau may require the filing of briefs addressing the issue of whether Maricopa, Sprint, or both, have failed to exhibit the "utmost good faith" in promptly concluding rebanding of Maricopa's 800 MHz system. Parties are reminded that an unfounded allegation that another party has failed to act in utmost good faith is, itself, a violation of the utmost good faith standard.<sup>15</sup>

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<sup>8</sup> Opposition at 2-3.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> Reply at 11.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 11 n.10 citing *Maricopa County, Arizona, Further Request for Extension of Time*, Order, 29 FCC Rcd 9186 (PSHSB 2014) ("Short of finding bad faith on Maricopa's part, however, there is little the Bureau can do to remedy the problem that Maricopa has created. We will not, however, equate negligence with bad faith in this instance.")

<sup>13</sup> See, e.g., *Caribbean SMR, Inc.*, Order, 16 FCC Rcd 15663, 15664-65 (WTB 2001) citing *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 6 Com. Reg. 685 (1997).

<sup>14</sup> Request at 16.

<sup>15</sup> *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15078-79 (2014).

**IV. DECISION**

6. We decline to reform the parties' FRA for the reasons cited *supra*. Based on the record, however, we believe that rebanding of Maricopa's system will be facilitated by closer Bureau oversight. To that end, Maricopa shall file the weekly reports described *supra* beginning on May 23, 2016. The reports may be discontinued on completion of rebanding. We will carefully monitor progress of the County's rebanding, including whether needed information is promptly exchanged between the parties and whether work stoppages have occurred without adequate justification.

**V. ORDERING CLAUSES**

7. It is therefore ORDERED that the Request for Bureau Review filed April 9, 2016 by Sprint Corporation IS GRANTED to the extent discussed herein and DENIED in all other respects.

8. It is FURTHER ORDERED that, beginning May 23, 2016, Maricopa County, Arizona, SHALL FILE with Sprint Corporation, the 800 MHz Transition Administrator, and the undersigned, a weekly report of the progress of rebanding, including any factors impeding prompt completion of rebanding. The report also shall be filed in the PSHSB800 mailbox.

9. It is FURTHER ORDERED that Sprint Corporation may file comments on Maricopa County, Arizona's reports *supra*. Such comments shall be filed within 1 week of the filing of the reports.

10. 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.

FEDERAL COMMUNICATIONS COMMISSION

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