

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

In the Matter of
Improving Public Safety Communications in the
800 MHz Band.
WT Docket No. 02-55

DECLARATORY RULING

Adopted: October 12, 2017

Released: October 12, 2017

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this Declaratory Ruling, pursuant to delegated authority, we relieve Sprint Corporation (Sprint) of its potential obligation to make an anti-windfall payment to the U.S. Treasury in connection with the Commission's 800 MHz rebanding initiative. The Commission imposed the anti-windfall payment obligation to ensure that Sprint did not reap an economic windfall from the award of spectrum in the 1.9 GHz band that Sprint received in exchange for undertaking the financial obligation to support 800 MHz rebanding. We have now determined that the anti-windfall payment provision should be lifted, as Sprint has expended sufficient funds in fulfilling its 800 MHz rebanding commitments to preclude the windfall that the provision was intended to prevent. We make this assessment, pursuant to a directive from the Commission, based on the report of the 800 MHz Transition Administrator, which determined that Sprint's creditable expenses in connection with the rebanding initiative have exceeded \$2,796,548,000 (\$2.8 billion). We issue this ruling because there is no longer any economic or policy reason to keep the anti-windfall provision in place. This order, however, does not alter other rebanding-related obligations and license conditions applicable to Sprint until rebanding is completed.

II. BACKGROUND

2. In its 2004 800 MHz Report and Order, the Commission adopted a plan for reconfiguring the 800 MHz band in order to resolve inherent and increasing interference problems that had been plaguing public safety and other licensees authorized to operate in that part of the spectrum. The plan, which

1 Sprint Nextel Corp., Petition for Declaratory Ruling, Memorandum Opinion and Order and Order of Proposed Modification, 29 FCC Rcd 11549, 11555, para. 23 (2014) (Modification Order) (instructing the 800 MHz Transition Administrator to provide a true-up report to the Chief of the Public Safety and Homeland Security Bureau "and, if the Bureau Chief determines the report contains no material exceptions, the Bureau may issue a declaratory ruling that Sprint does not owe an anti-windfall payment").

2 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 (2004) (800 MHz Report and Order).

3 Modification Order, 29 FCC Rcd at 11557, para. 23.

4 The Transition Administrator (TA) is an independent entity established by the Commission, on the recommendation of 800 MHz rebanding stakeholders, to oversee the rebanding project. 800 MHz Report and Order, 19 FCC Rcd at 14986, para. 27.

5 See 800 MHz Report and Order, 19 FCC Rcd at 14972-74, paras. 2-4.

incorporated essential elements of a proposal developed by Sprint (then Nextel Corporation) and a broad coalition of commercial and public safety organizations,⁶ assigned to Sprint the responsibility for paying the costs of relocating licensees operating high-site, non-cellular systems in the upper portion of the 800 MHz band, where they were susceptible to interference from Sprint and other cellular-architecture, multi-site systems, to a position lower in the 800 MHz band where such interference would be less likely (a process that has come to be known as 800 MHz rebanding).⁷ Sprint, as the largest commercial spectrum holder in the band, agreed to undertake this key role so that the growing interference problems that had enmeshed 800 MHz incumbents in increasingly ineffective *ad hoc* solutions, could be resolved on a more long-term basis.⁸

3. In recognition of the role Sprint would play in facilitating the public interest benefit of 800 MHz rebanding, coupled with the costs that Sprint would bear as a result (both in terms of the spectrum it would relinquish and the financial commitments it would incur), the Commission agreed to modify certain Sprint licenses to allow it to operate on a nationwide basis on ten megahertz of spectrum in the 1.9 GHz band (comprised of two paired blocks at 1910-1915 MHz and 1990-1995 MHz).⁹ In exchange, Sprint agreed to (1) pay incumbents' costs to relocate to other portions of the 800 MHz band, (2) relinquish certain of its own 800 MHz and 700 MHz band spectrum rights, (3) pay the costs of reconfiguring its own systems, and (4) bear the costs of relocating incumbents in the 1.9 GHz band segment.¹⁰

4. To ensure that this license modification would not result in a windfall gain for Sprint, the Commission weighed the value of the 1.9 GHz spectrum authorizations that Sprint was to receive against the value of the spectrum Sprint would relinquish, with the following results: the 1.9 GHz authorizations were valued at \$4.85548 billion,¹¹ while the 800 MHz band spectrum that Sprint agreed to relinquish was assessed at \$2.05900 billion.¹² This left a balance of \$2.79648 billion (\$2.8 billion) as the net benefit Sprint gained prior to paying the cost of relocating 800 MHz licensees, the cost of clearing 1.9 GHz incumbents, and internal expenses associated with relocating its own facilities. Because these relocation costs could not be predicted in advance,¹³ the Commission ruled that in the event Sprint's actual costs

⁶ *Id.* at 14974, para. 4.

⁷ *Id.* at 14977, para. 11.

⁸ *Id.* at 15016, para. 75; 15064, para. 177.

⁹ *Id.* at 14974-75, para. 5.

¹⁰ *Id.* at 14988-89, paras. 32-35.

¹¹ *Id.* at 15112, para. 297, n.704. The Commission calculated this amount by estimating the then-current market value of the 1.9 GHz spectrum at \$1.70 per MHz-pop and multiplying that value by 285,620,000, the total year 2000 population for the United States including possessions.

¹² *Improving Public Safety Communications in the 800 MHz Band*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, 25136, para. 36 (2005) (*800 MHz Supplemental Order*). In the *800 MHz Report and Order*, the Commission initially valued the 800 MHz spectrum to be relinquished by Sprint at \$1.67 billion, but the Commission revised its valuation to \$2.05900 billion in the *800 MHz Supplemental Order*. While Sprint was also required to relinquish 700 MHz Guard Band spectrum rights in forty-two markets (*id.* at 25126, para. 8), the Commission assigned no monetary value to this spectrum, which it determined added only *de minimis* value to the overall bundle of spectral and financial benefits that Sprint was contributing. *800 MHz Report and Order*, 19 FCC Rcd at 15121, para. 324.

¹³ *800 MHz Report and Order*, 19 FCC Rcd at 15124, para. 329; *Modification Order*, 29 FCC Rcd at 11553, para. 16 n.37.

proved to be lower than the \$2.8 billion net benefit, Sprint would be required to pay the difference to the U.S. Treasury as an anti-windfall payment.¹⁴

5. In the *800 MHz Report and Order*, the Commission contemplated that the determination whether Sprint owed an anti-windfall payment would be made after 800 MHz rebanding was complete, *i.e.*, after all 800 MHz licensees had been relocated and the incumbents cleared from the 1.9 GHz band.¹⁵ However, on January 22, 2013, Sprint requested that the Commission make the anti-windfall determination before the 800 MHz rebanding was complete.¹⁶ At that time, Sprint presented information suggesting that by the conclusion of rebanding, its total rebanding expenses would very likely exceed \$2.8 billion.¹⁷ Despite Sprint's assertion of this likelihood, the Commission was unwilling to make the requested determination based on Sprint's anticipated expenditures and therefore in the 2014 *Modification Order* it denied Sprint's request as premature.¹⁸ The Commission held, however, that the anti-windfall issue could be disposed of before completion of rebanding once Sprint's documented expenses reached the \$2.8 billion threshold.¹⁹

6. In the *Modification Order*, the Commission found that Sprint had documented \$1.17 billion in creditable 800 MHz rebanding expenses through the end of calendar year 2013 and \$550.35 million in creditable expenses for clearing of 1.9 GHz incumbents, for a total of \$1.657 billion.²⁰ The Commission stated that once Sprint provided the TA with additional evidence to demonstrate that Sprint's total incurred creditable expenses had reached the \$2.8 billion threshold, the TA "shall conduct the anti-windfall true-up calculation and shall issue an audited true-up report within six months."²¹ The Commission further instructed the TA "to provide the true-up report to the Chief of the Public Safety and Homeland Security Bureau, and, if the Bureau Chief determines the report contains no material exceptions, the Bureau may issue a declaratory ruling that Sprint does not owe an anti-windfall payment."²²

7. On June 2, 2017, the TA filed an audited financial statement with the Commission documenting that Sprint had incurred total creditable 800 MHz rebanding expenses of \$ 2.345034 billion from the inception of the program through the end of calendar year 2016.²³ This amount, combined with

¹⁴ *Id.* at paras. 329-330.

¹⁵ *800 MHz Report and Order*, 19 FCC Rcd at 15124, paras. 329-330.

¹⁶ Sprint Nextel Corporation Petition for a Declaratory Ruling, filed Jan. 22, 2013 (Sprint Petition). The petition also asked the Commission to remove a provision in the *800 MHz Report and Order* that required Sprint to maintain an \$850 million minimum balance in the letter of credit that secured Sprint's performance, and to reduce the balance to \$457 million. The Commission granted that request. *Modification Order*, 29 FCC Rcd at 11557, para. 25.

¹⁷ Sprint Petition at 3, Appendix A.

¹⁸ *Modification Order*, 29 FCC Rcd at 11554-55 para. 17.

¹⁹ *Id.* at 11555, para. 18.

²⁰ *Id.* at 11555, para. 17.

²¹ *Id.* at 11557, para. 23. The Commission stated that for Sprint to demonstrate that it had exceeded the \$2.8 billion threshold, it would need to document \$1.143 billion in additional creditable expenses beyond the \$ 1.657 billion in documented creditable expenses Sprint had submitted as of the date of the *Modification Order*.

²² *Id.*

²³ 800 MHz Transition Administrator: 800 MHz Statement of Program Expenditures for the Year Ended December 31, 2016 and for the Period from August 6, 2004 (Inception) Through December 31, 2016, filed June 2, 2007, at 11, 17 (2016 Financial Statement). The TA stated that the 2016 Financial Statement, which includes an independent audit of Sprint's 800 MHz rebanding expenses, is intended to serve as the true-up report called for by the *Modification Order*. *Id.* at 4.

Sprint's previously documented expenses of \$500.35 million to clear the 1.9 GHz band, brings Sprint's total creditable expenses to \$ 2.845384 billion, which exceeds the \$2.8 billion anti-windfall threshold.

III. DISCUSSION

8. We are satisfied that the TA has correctly determined, based on documentation provided by Sprint and independently audited financial statements commissioned by the TA, that Sprint has exceeded \$2.8 billion in creditable expenses associated with rebanding 800 MHz licensees and clearing the 1.9 GHz band of incumbents. As Sprint therefore cannot reap the financial windfall that the anti-windfall provision of the *800 MHz Report and Order* was designed to prevent, we find that there is no policy or economic rationale for maintaining that provision. Therefore, we declare that Sprint is no longer liable for making an anti-windfall payment to the Treasury. This declaratory ruling does not affect Sprint's other ongoing rebanding obligations established by the *800 MHz Report and Order* and subsequent orders, including the obligation to keep in force a letter of credit in an amount sufficient to complete 800 MHz rebanding should Sprint default or encounter unexpected financial reversals.²⁴

IV. ORDERING CLAUSE

9. Accordingly, IT IS DECLARED that Sprint Corporation has satisfied the anti-windfall conditions contained in the *800 MHz Report and Order*, and any obligation to make an anti-windfall payment thereunder to the U.S. Treasury is hereby terminated.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes
Chief, Public Safety and Homeland Security Bureau

²⁴ *800 MHz Report and Order*, 19 FCC Rcd at 14987, para 30.