



# PUBLIC NOTICE

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## REMINDER TO 800 MHZ “WAVE THREE” CHANNEL 1-120 LICENSEES OF THEIR BAND RECONFIGURATION NEGOTIATION AND MEDIATION OBLIGATIONS

### WT Docket No. 02-55

Pursuant to the *800 MHz Report and Order* and subsequent orders in this docket<sup>1</sup>, the mandatory negotiation period for 800 MHz Channel 1-120 licensees in Wave 3 of the band reconfiguration process ends on July 2, 2006.<sup>2</sup> Licensees in this wave who do not complete negotiation of frequency reconfiguration agreements with Sprint Nextel Corporation (Sprint Nextel) by the July 2 deadline will be referred to mandatory mediation of disputed issues under the Alternative Dispute Resolution procedures established by the 800 MHz Transition Administrator (TA).<sup>3</sup> Pursuant to those procedures, the mediation process must be concluded within thirty working days. If the parties to mediation fail to reach a mediated agreement, the TA will forward the record to the Chief of the Public Safety and Critical Infrastructure Division (PSCID), along with a recommended resolution of the dispute.<sup>4</sup> The Chief of PSCID will then rule on the disputed issues *de novo*.<sup>5</sup> Either party may appeal the Chief’s decision; such appeals will be designated for a hearing before a Commission Administrative Law Judge.<sup>6</sup>

<sup>1</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*); *Improving Public Safety Communications in the 800 MHz Band*, *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*) and *Improving Public Safety Communications in the 800 MHz Band*, *Memorandum Opinion and Order*, WT Docket 02-55, 20 FCC Rcd 16015 (2005).

<sup>2</sup> See “Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration Will Commence January 3, 2006, in the NPSAC Regions Assigned to Wave 3,” *Public Notice*, DA 05-3134, released December 2, 2005 (*Wave 3 Starter PN*). Under the band reconfiguration plan, each of the fifty-five National Public Safety Planning Advisory Committee (NPSAC) regions is assigned to one of four basic “prioritization waves” with staggered approximate starting dates. See “Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator’s 800 MHz Regional Prioritization Plan,” *Public Notice*, DA 05-619, released March 11, 2005. The three-month voluntary negotiation period for Channel 1-120 licensees in Wave 3 began on January 3, 2006, and the three month mandatory negotiation period for these licensees began April 3, 2006. See *Wave 3 Starter PN*.

<sup>3</sup> *800 MHz Report and Order*, ¶ 201. For the TA’s ADR procedures, see <http://800ta.org/content/PDF/policy/ADRplan.pdf>.

<sup>4</sup> *800 MHz Report and Order*, ¶ 201.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, ¶ 194. Parties may also appeal any decisions of the ALJ. See 47 C.F.R. § 1.301.

The Wireless Bureau reminds Wave 3 800 MHz licensees subject to the above procedures of the following obligations imposed by the *800 MHz Report and Order*:

- ◆ In all negotiations and mediation between 800 MHz licensees and Sprint Nextel, the parties must negotiate in the utmost good faith. Among the factors relevant to a good faith determination are: (1) the steps the parties have taken to determine the actual cost of relocation to comparable facilities; (2) whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities; and (3) whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party.<sup>7</sup> Refusal by any party to enter into mandatory negotiations or participate in mediation is presumptively a failure to negotiate in good faith.
- ◆ Licensees in mediation must comply with the schedules, procedures, and directions of the TA or the TA's designated mediator.<sup>8</sup>
- ◆ Any licensee that fails to negotiate or mediate in good faith is potentially subject to Commission sanctions, including involuntary relocation and license modification to the extent necessary to implement band reconfiguration consistent with the *800 MHz Report and Order*. The cost of implementing such modification will be borne by the licensee.<sup>9</sup>
- ◆ Licensees that enter mediation with Sprint Nextel are entitled to reimbursement of "reasonable, prudent and necessary costs and expenses" associated with reaching a mediated frequency reconfiguration agreement. However, licensees who fail to reach a mediated agreement must bear their own costs in further administrative or judicial appeals of band reconfiguration issues, including *de novo* review by PSCID and appeal of any such review before an ALJ.<sup>10</sup>

We urge the parties to be mindful of these obligations and potential costs as they participate in the mediation process, and we encourage them to exercise their best efforts to reach a mutually acceptable agreement through mediation.

Information on the 800 MHz band reconfiguration process may be obtained by accessing the TA web site at [www.800ta.org](http://www.800ta.org). For additional information, visit the WTB web site at [www.800mhz.gov](http://www.800mhz.gov). If you have questions after consulting these resources, call WTB at 1-877-480-3201 and select option 2, or use the WTB web site [esupport.fcc.gov](http://esupport.fcc.gov) to e-mail questions.

Action by the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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<sup>7</sup> *800 MHz Report and Order*, ¶ 201 n.524.

<sup>8</sup> *Id.*, ¶ 201.

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

<sup>10</sup> *Id.*, ¶ 194. We note that a petition for reconsideration addressing cost responsibility is pending before the Commission. See Petition for Reconsideration, filed by Schwaninger & Associates, P.C. on January 3, 2006.