

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

In the Matter of
CITY OF BOSTON
and
SPRINT NEXTEL CORPORATION
Relating to Rebanding Issues in the 800 MHz
Band
PS Docket No. 07-69
Mediation No. TAM-11155

HEARING DESIGNATION ORDER

Adopted: April 4, 2007

Released: April 5, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

1. By this Hearing Designation Order, pursuant to Section 90.677(d)(2) and Section 0.191(f) of the Commission's Rules, we grant a Petition for De Novo Review (Petition), filed on December 28, 2006, by the City of Boston, Massachusetts (City of Boston), and commence a hearing proceeding before a Federal Communication Commission (Commission) Administrative Law Judge to resolve specific, disputed 800 MHz rebanding issues between the City of Boston and Sprint Nextel Corporation (Sprint Nextel). As discussed below, the issues relate to the reconfiguration of the City of Boston Police Department's 800 MHz communications system and the reconfiguration of the City of Boston's 800 MHz Trunking and Transportation system.

2. In 2004, the Commission adopted the first of several orders which, collectively, established a comprehensive plan for reconfiguration (rebanding) of the 800 MHz band. The Rebanding Orders recognized that, for years, licensees of public safety systems operating in the 800 MHz band, such as the City of Boston, had encountered increasing amounts of interference from commercial mobile radio service (CMRS) providers that also were operating in the 800 MHz band, particularly Sprint Nextel. The Rebanding Orders provided, among other things, that public safety licensees and CMRS licensees would be relocated to different parts of the 800 MHz band to provide adequate separation of their generally incompatible operations.

1 47 C.F.R. §§ 0.191(f), 90.677(d)(2).

2 Petition for De Novo Review filed by the City of Boston, Massachusetts (filed Dec. 28, 2006) (Petition).

3 See Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, WT Docket No. 02-55, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) (800 MHz Report and Order); Improving Public Safety Communications in the 800 MHz Band, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004); and Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005) (collectively, "Rebanding Orders").

4 800 MHz Report and Order, 19 FCC Rcd at 15045-15079 ¶¶ 142-207.

5 Id.

3. The complex rebanding scheme contemplated that Sprint Nextel would negotiate a Frequency Relocation Agreement (FRA) with each public safety licensee whose system was slated to be relocated.⁶ The FRA was required to establish the terms, conditions and costs of relocating the public safety system to its new channel assignment(s) at Sprint Nextel's expense, including the expense of retuning or replacing, as required, the public safety licensee's equipment.⁷ The Commission also directed that Sprint Nextel must provide public safety licensees with "comparable facilities" on their new channel(s), and a seamless transition to enable public safety operations to continue without interruption during the relocation process.⁸

4. To facilitate FRA negotiations, the Commission established a three-month voluntary negotiation period and a three-month mandatory negotiation period for Sprint Nextel to negotiate with each public safety licensee.⁹ If the parties are unable to negotiate an FRA by the end of the mandatory negotiation period, they are required to enter into mediation.¹⁰ If the parties are unable reach agreement by the end of the mediation period, the mediator refers the mediation record and a recommended resolution to the Commission's Public Safety and Homeland Security Bureau (PSHSB).¹¹ Within ten business days of such referral, the parties have the opportunity to file position statements on issues limited to those raised during mediation.¹² Thereafter, PSHSB conducts a *de novo* review of the mediation record, evaluates the parties' respective position statements and the mediator's recommended resolution, and issues an order disposing of all disputed issues.¹³ Thereafter, "any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge."¹⁴

5. The instant matter involves an appeal by the City of Boston of a PSHSB decision disposing of disputed issues following unsuccessful mediation between the City of Boston and Sprint Nextel.¹⁵ The *Boston Order* arose from two companion cases. The first case involved reconfiguration of the 800 MHz communications system of the Boston Police Department (BPD), and the second case involved reconfiguration of the City of Boston's 800 MHz Trunking and Transportation (BTT) system. In its *Boston Order*, PSHSB determined that the City of Boston's purchase of inventory-tracking and management software from MCM Technology LLC (MCM) in both the BPD and BTT cases was not a

⁶ *Id.* at 15078 ¶ 201.

⁷ *Id.*

⁸ *Id.* at 14986 ¶ 26.

⁹ Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan, *Public Notice*, 20 FCC Rcd 5159, 5160 (WTB 2005).

¹⁰ *800 MHz Report and Order*, 19 FCC Rcd at 15077 ¶ 201.

¹¹ Originally, the mediator was to forward the mediation record and a recommended resolution to the Chief of the Public Safety and Critical Infrastructure Division of the Commission's Wireless Telecommunications Bureau. See Wireless Telecommunications Bureau Announces Procedures for De Novo Review in the 800 MHz Public Safety Proceeding, *Public Notice*, 21 FCC Rcd 758 (WTB 2006) (*De Novo Procedures PN*). See also 47 C.F.R. § 90.677(d) (2005). However, on September 25, 2006, the Commission delegated this authority to the Public Safety and Homeland Security Bureau. See Establishment of Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

¹² *De Novo Procedures PN*, 21 FCC Rcd at 759 ¶ 4.

¹³ *Id.* at 258-59 ¶¶ 4, 10.

¹⁴ 47 C.F.R. § 90.677(d)(2).

¹⁵ City of Boston and Sprint Nextel, *Memorandum Opinion and Order*, 21 FCC Rcd. 14661 (PSHSB 2006) (*Boston Order*).

recoverable rebanding-related expense.¹⁶ PSHSB also denied the City of Boston's request in the BTT case to modify language in the Change Order procedures of its FRA to give either party unilateral authority to cease all performance under the FRA in the event that the other party disputed a change order request.¹⁷ The City of Boston, by its Petition, seeks review *de novo* of these disputed issues by an Administrative Law Judge.

6. Section 90.677(d)(2) of the Commission's rules allows either party to a rebanding dispute, as a matter of right, to appeal a Bureau decision on disputed issues referred to from mediation by petitioning for an evidentiary hearing before an Administrative Law Judge.¹⁸ The petition for a hearing must be filed within ten days of the effective date of the Bureau order. In the instant case, because the City of Boston is a party in a rebanding dispute, and has filed an appeal of a Bureau decision within ten days of the effective date thereof, we find that the Petition satisfies the requirements of Section 90.677(d)(2). Therefore, the Petition is hereby granted, and the disputed issues are designated for hearing.

7. Accordingly, IT IS ORDERED that the Petition for *De Novo* Review, filed on December 28, 2006, by the City of Boston, Massachusetts, IS GRANTED.

8. IT IS FURTHER ORDERED that, pursuant to Section 90.677(d)(2) of the Commission's Rules, 47 C.F.R. § 90.677(d)(2), the BPD and BTT cases, as described above, ARE DESIGNATED FOR HEARING before an Administrative Law Judge, at a time and place to be specified in a subsequent order, on the following issues:

- a. To determine, in the matter of the BPD case, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology, LLC, and, if so, the amount of such payment, and
- b. To determine, in the matter of the BTT case, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology, LLC, and, if so, the amount of such payment.
- c. To determine, in the matter of the BTT case, the appropriate contractual language to govern the change order process in the FRA entered into between the City of Boston and Sprint Nextel.

9. IT IS FURTHER ORDERED that the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues specified herein SHALL BE UPON the City of Boston.¹⁹

10. IT IS FURTHER ORDERED, pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), that, to avail themselves of the opportunity to be heard, the City of Boston and Sprint Nextel, by their respective counsel, SHALL EACH FILE with the Commission, in triplicate, within 20 calendar days of the mailing of this Hearing Designation Order, a written appearance stating that it will appear on the date fixed for hearing and present evidence on the issues specified in the Hearing Designation Order.

¹⁶ *Id.* at 14665 ¶ 16.

¹⁷ *Id.* at 14670-71 ¶¶ 31-32.

¹⁸ 47 C.F.R. § 90.677(d)(2). As we stated in the *De Novo Procedures* PN, *supra* n. 11, the evidentiary hearing before the Administrative Law Judge will be governed by Sections 1.201-1.364 of the Commission's Rules, 47 C.F.R. §§ 1.201-1.364. *De Novo Procedures* PN, 21 FCC Rcd at 760 ¶ 11 n.12

¹⁹ *See* 47 C.F.R. § 1.254.

11. IT IS FURTHER ORDERED, pursuant to Section 1.221(f), 47 C.F.R. § 1.221(f), that Sprint Nextel SHALL FILE the hearing fee specified in Section 1.1102(11) of the Commission's Rules, 47 C.F.R. § 1.1102(11), with its written appearance.

12. IT IS FURTHER ORDERED, pursuant to Section 1.1114(f) of the Commission's rules, 47 C.F.R. § 1.1114(f), that the City of Boston IS EXEMPT from filing, and need not file, in connection with this hearing proceeding, a hearing fee with its written appearance.

13. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, SHALL BE MADE A PARTY to this proceeding without the need to file a written appearance.

14. IT IS FURTHER ORDERED that copies of this Hearing Designation Order SHALL BE SENT, via Certified Mail - Return Receipt Requested, to: The City of Boston, c/o Robert H. Schwaninger, Jr., Esq., Schwaninger and Associates, P.C., 1331 H Street, N.W., Suite 500, Washington, DC 20005; and to Sprint Nextel, c/o Stacey Lantange, Esq., Drinker Biddle & Reath, LLP, 1500 K Street, N.W., Suite 1100, Washington, DC 20005-1209.

15. IT IS FURTHER ORDERED that this Hearing Designation Order or a summary thereof SHALL BE PUBLISHED at the earliest practicable date in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Associate Bureau Chief
Public Safety and Homeland Security Bureau