

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

In the Matter of)	
)	
Ron Gossett and Barbara Gossett and Sprint Nextel)	WT Docket No. 02-55
)	
Mediation No. TAM-50018)	

MEMORANDUM OPINION AND ORDER

Adopted: May 3, 2007

Released: May 4, 2007

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

I. INTRODUCTION

1. In this Order, we address a case referred to us for *de novo* review by the 800 MHz Transition Administrator, LLC (TA) involving the alleged failure by 800 MHz licensees Ron and Barbara Gossett (Gossetts) to perform under the terms of their Frequency Relocation Agreement (FRA) with Sprint Nextel Corporation (Sprint). Based on our review of the record in this case, we find that the Gossetts have consistently failed to meet their obligation of good-faith participation in the rebanding process and have forfeited their right to retuning of their facilities at Sprint's expense. We therefore find that Sprint is not responsible for the cost of retuning this facility, and that the Gossetts must retune station WPEH654 at their own expense or cease operation and surrender their license. If the Gossetts fail to either retune their station or surrender their license, they must show cause why the Commission should not modify the license pursuant to Section 316 of the Communications Act by assigning new frequencies and terminating their right to operate on their current frequencies.¹

II. BACKGROUND

2. The Gossetts are licensed under call sign WPEH654 for a single-site conventional 800 MHz system in Nashville, Tennessee. This station was scheduled for relocation in Wave 2, Stage 1 of the rebanding process. During the negotiation period for this wave, the Gossetts refused to participate in negotiations with Sprint, causing the TA to place the parties in early mediation.² In mediation, the Gossetts resisted efforts by the TA mediator to secure their participation.³ The mediator then recommended that the Commission require the Gossetts to either reband voluntarily under a proposal made by Sprint or be rebanded involuntarily without compensation.⁴ On June 29, 2006, shortly after the mediator's recommendation, the Gossetts signed an FRA with Sprint in which they agreed to retune their system by September 2006.⁵ However, the Gossetts failed to retune the system as required and proposed that Sprint do so instead.⁶ Sprint investigated this option but determined that the tower owner would not

¹ 47 U.S.C. §316.

² TA Mediator Recommended Resolution, filed January 18, 2007 (2007 RR) at 2.

³ *Id.* at 2-3 *citing* TA Mediator Recommended Resolution, filed May 22, 2006 (2006 RR).

⁴ *Id.* at 2-3.

⁵ *Id.* at 3.

⁶ Proposed Resolution Memorandum of Sprint Nextel Corporation, filed November 14, 2006 (Sprint PRM) at 6, 3.

allow access to the site because the Gossetts were in arrears on their lease.⁷ Sprint then proposed that the Gossetts cancel their lease and offered to pay the fees for such cancellation. The Gossetts refused this offer.⁸

3. On November 10, 2006, the TA once again placed the parties into mediation at Sprint's request.⁹ The Gossetts refused to participate in the mediation and declined to file anything in the record.¹⁰ On January 18, 2007, after over two months of continued non-cooperation by the Gossetts, the mediator forwarded the mediation record, along with an updated recommended resolution, to the Public Safety and Homeland Security Bureau.

4. Sprint contends the Gossetts have repeatedly breached their duty of good faith imposed by the Commission. Sprint argues that during the negotiation and mediation period, the Gossetts withheld essential system information, failed to cooperate in negotiations and mediation, and refused to respond to Sprint's repeated good-faith efforts to resolve this matter.¹¹ Sprint contends that since the Gossetts signed the FRA, they have continued their pattern of non-cooperation by failing to implement the agreement, rejecting Sprint's proposal to cancel their license, and failing to participate in further mediation.¹²

5. The TA mediator agrees with Sprint that the Gossetts have breached their duty of good faith.¹³ The mediator recommends that the Commission issue an order requiring the Gossetts to show cause why their license for call sign WPEH654 should not be cancelled as a result of their failure to negotiate or participate in mediation in good faith.¹⁴

III. DISCUSSION

6. Based on the record before us, we find that the Gossetts have breached their duty of good faith as defined by the Commission's orders in this proceeding. The Commission stated explicitly that although it could not predict what "good faith" may be for all parties in all circumstances, it envisioned that it extends to making a counteroffer to a reasonable offer, rather than refusing an offer outright¹⁵ The record is clear that they have repeatedly failed to respond to requests to provide information, have not responded to good faith negotiation offers by Sprint, and have failed to cooperate in the mediation process. This complete absence of cooperation and responsiveness is sufficient by itself to support a

⁷ *Id.* at 3.

⁸ *Id.* at 3-4.

⁹ See Request for Mediation from Julian H. Edwards filed October 31, 2006 and Notice of Commencement of Mediation dated November 10, 2006.

¹⁰ 2007 RR at 3-4.

¹¹ Sprint PRM at 4.

¹² *Id.* at 4-6.

¹³ 2007 RR at 6-9.

¹⁴ *Id.* at 9-10.

¹⁵ Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25153 ¶ 73 (2004) (*800 MHz Supplemental Order*); see also 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, 15076, n.524 (2004) as amended by Erratum, 19 FCC Rcd 19651 (2004), and Erratum, 19 FCC Rcd 21818 (2004) (Among the factors relevant to a good-faith determination are: (1) whether the party responsible for paying the cost of band reconfiguration has made a bona fide offer to relocate the incumbent to comparable facilities; (2) the steps the parties have taken to determine the actual cost of relocation 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).

finding that the Gossetts are not entitled to recovery of any of their retuning costs from Sprint. Moreover, the Gossetts' continued pattern of non-cooperation threatens to impede the rebanding process. Reconfiguration of the 800 MHz band is of imperative importance and we will not allow it to be threatened by intransigent licensees. Therefore, we require the Gossetts, at their own expense, to retune station WPEH654 to the frequencies specified by the TA and to complete such retuning within thirty days of the release date of this Order. Alternatively, the Gossetts shall cease operation and surrender their license within thirty days of the release date of this Order.

7. If the Gossetts fail to abide by the terms of this Order, because such action would threaten public safety communication, we propose, pursuant to Section 316(a) of the Communications Act, 47 U.S.C. §316(a) to modify the license of station WPEH654 to authorize it to operate on the replacement channels designated for it by the TA and to remove their authorization to operate on their current frequencies. Pursuant to Section 316(b) of the Communications Act, 47 U.S.C. §316(b), and Section 1.87(c) of the Commission's rules, 47 C.F.R. §1.87(c), we afford the Gossetts and any other similarly affected licensees and opportunity to protest this proposed modification. Because the proposed modification to WPEH654 involves the safety of life and property, we require the Gossetts to file any protest within forty days of the release date of this Order.

IV. ORDERING CLAUSES

8. Accordingly, pursuant to the authority of Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.332, Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 90.677, of the Commission's rules, 47 C.F.R. § 90.677, it is **ORDERED** that the issues submitted by the Transition Administrator to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau for *de novo* review **ARE RESOLVED** as stated herein.

9. **IT IS FURTHER ORDERED** that no later than thirty days after the release date of this order, Ron and Barbara Gossett shall cease operations on their current frequencies and shall either (1) retune Station WPEH654 to the frequencies specified by the TA, or (2) surrender their license to the Commission.

10. **IT IS FURTHER ORDERED**, that if Ron and Barbara Gossett fail to comply with the above clause, pursuant to Section 316(a) of the Communications Act, 47 U.S.C. §316(a), Ron and Barbara Gossett **SHALL SHOW CAUSE** why their authorization for station WPEH654 should not be modified by assigning new frequencies specified by the TA and terminating their right to operate on their current frequencies.

11. **IT IS FURTHER ORDERED**, that pursuant to Section 1.87(a) of the Commission's Rules, 47 C.F.R. §1.87(a), Ron and Barbara Gossett, may, no later than forty days after release date of this Order, file a written statement showing with particularity why its license should not be modified as proposed.

12. If the Gossetts or any other party raise a substantial and material question of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Commission's rules. 47 C.F.R. §1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statements are filed within forty days of the release date of this Order, the licensee will be deemed to have consented to a modification as proposed and a final Order will be issued if the modification is found to be in the public interest.

13. **IT IS FURTHER ORDERED**, that a copy of this *Memorandum Opinion and Order* shall be sent **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED**, to the following:

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FEDERAL COMMUNICATIONS COMMISSION

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