



Federal Communications Commission
Washington, D.C. 20554
DA 07-641

February 12, 2007

James B. Goldstein
Director – Spectrum Reconfiguration
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

RE: WT Docket No. 02-55

Dear Mr. Goldstein:

This responds to the January 9, 2007 letter of Sprint Nextel (Sprint),¹ requesting clarification and guidance on certain issues relating to the *STA Public Notice* released in this proceeding by the Public Safety and Homeland Security Bureau (Bureau) on December 20, 2006 as well as certain other related matters.²

In the *STA Public Notice*, the Bureau provided guidance on circumstances in which Sprint would be obligated to pay for retuning of certain public safety radio facilities authorized pursuant to Special Temporary Authorization (STA).³ Sprint seeks confirmation that Sprint will obtain credit against its anti-windfall payment obligation for its expenditures in such cases.⁴

Sprint seeks further guidance on whether “various types of non-primary 800 MHz licenses held by public safety licensees, other than STAs,” are also eligible for retuning. Sprint cites several examples of authorizations with secondary status held by public safety licenses, including mobile-only authorizations, FB2T temporary site licenses, and secondary licenses for offset channels. With respect to each of these categories, Sprint requests guidance on “(1) whether these various types of licenses should be retuned under the reconfiguration project; (2) whether Sprint Nextel is required to pay for relocation of licensees holding such temporary authorizations; and (3) whether Sprint Nextel will receive credit for the costs of relocating public safety operations under temporary authorizations against its windfall payment obligation.”⁵

¹ Letter dated January 9, 2007, from James B. Goldstein, Sprint Nextel Corporation, to David L. Furth, Associate Chief, Public Safety and Homeland Security Bureau (Sprint Letter).

² Public Safety And Homeland Security Bureau Provides Guidance For Public Safety Licensees With Regard To License Application And Special Temporary Authorization Procedures And Payment Of Frequency Relocation Costs For Public Safety Facilities Added During 800 MHz Band Reconfiguration, *Public Notice*, DA 06-2555 (rel. December 20, 2006) (*STA Public Notice*).

³ *Id.*

⁴ Sprint Letter at 1-2.

⁵ *Id.* at 2.

We offer the following guidance on these issues below. In so doing, we do not prejudge the facts of any specific case that may come before the Bureau, and we note that the views stated in this letter are those of the Bureau and are not binding on the Commission.⁶ Nevertheless, we believe that providing guidance on the issues raised in the Sprint letter will facilitate rebanding negotiations and the timely completion of the band reconfiguration process.

Credit for STA Relocation Costs

In the *STA Public Notice*, we stated that “as a general rule, Sprint must pay the cost of relocating facilities that are authorized on a licensee’s old frequency band before the end of the [800 MHz application] freeze in the applicable region, including facilities authorized by STAs or waivers granted during the freeze.”⁷ Although the *STA Public Notice* also stated that Sprint is not required to pay to relocate “facilities authorized by STA on pre-rebanding frequencies after the freeze has ended,” it provided that “in exceptional cases,” a public safety licensee may request that Sprint be responsible for payment of relocation costs.⁸ Sprint notes that in such cases, the *STA Public Notice* does not expressly state “that these funds are creditable against [Sprint’s] potential anti-windfall payment obligation,” and seeks clarification on this point.⁹

We clarify that in any instance where we determine (by rule, adjudication, or waiver) that Sprint is responsible for payment of a public safety licensee’s reasonable relocation costs, Sprint may claim credit for such costs under the procedures established by the Commission’s orders in this proceeding.¹⁰ This includes instances where we have granted a waiver request by a public safety licensee that Sprint be responsible for relocation costs of post-freeze facilities authorized by STA.

Mobile-Only Authorizations

Sprint seeks clarification with respect to retuning of public safety facilities operating under “mobile-only” authorizations. Sprint cites the example of a “state [that] holds a statewide ‘mobile-only’ license under which it is building a system that it intends to be reconfigured along

⁶ Advisory information from Commission staff does not constitute an official action binding the Commission whether by way of clarification or otherwise. *See, e.g.,* Mary Ann Salvatoriello, *Memorandum Opinion and Order*, 6 FCC Rcd 4705, 4708 (1991); Texas Media Group, Inc., *Memorandum Opinion and Order*, 5 FCC Rcd 2851, 2852 (1990), *aff’d sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991); Hinton Telephone Company, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625, 11637 (1995).

⁷ *STA Public Notice* at 3.

⁸ *Id.*

⁹ Sprint Letter at 1-2.

¹⁰ Costs submitted for credit must be approved as reasonable by the Transition Administrator per normal procedures. *See* Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 15073-74 ¶ 198 (2004). *See also* Supplemental Order and Order on Reconsideration, WT Docket No. 02-55, 19 FCC Rcd 25120, 25152 ¶ 71 (2004).

with other state-held primary NPSPAC licenses.”¹¹ Sprint also notes that in the *Chevron* decision, the Bureau held that Sprint was not obligated to pay for retuning of Chevron’s mobile-only facilities due to their secondary status.¹²

The treatment of mobile-only authorizations depends on the specific facts presented in each case. In *Chevron*, we concluded that Chevron’s secondary mobile-only authorizations in the Channel 1-120 segment of the 800 MHz band were not subject to mandatory retuning under the Commission’s orders.¹³ However, we consider *Chevron* to be distinguishable in some situations involving public safety mobile-only authorizations.

First, *Chevron* does not apply to public safety mobile-only operation on NPSPAC mutual aid channels. These mutual aid channels are shared by all public safety licensees (both NPSPAC and non-NPSPAC) on a co-equal, primary basis. They are predominantly used on a unit-to-unit basis, *i.e.*, one mobile or portable unit communicates to another without an intervening repeater station. Although this is a form of mobile-only use, it is distinct from the mobile-only operations at issue in *Chevron* because Chevron was separately licensed for mobile-only operations on a secondary basis,¹⁴ while any public safety licensee may use the NPSPAC mutual aid channels without a channel-specific or location-specific license, and operate on a shared, primary basis. Moreover, unlike the mobile-only operation at issue in *Chevron*, the NPSPAC mutual aid channels provide a critical foundation for interoperability among 800 MHz public safety licensees. Based on these factors, we believe that maintaining the ability of public safety licensees to access NPSPAC mutual aid channels is within the scope of rebanding required by the Commission’s orders. Thus, if a public safety licensee that is being rebanded has radios that can access the current NPSPAC mutual aid channels, Sprint is responsible for retuning the radios to access the new NPSPAC mutual aid channels in the reconfigured band, and Sprint will receive credit for the reasonable cost of such retuning.

Second, some public safety licensees have mobile-only authorizations that allow them to operate on non-mutual aid NPSPAC channels. In one example cited by Sprint, a NPSPAC licensee holds a statewide mobile-only license in addition to other primary licenses.¹⁵ In other cases, public safety licensees may have mobile-only licenses to enable first responders to “roam” onto the NPSPAC systems of other jurisdictions with which they have mutual-assistance agreements, thus enhancing interoperability with the host system as well as their home systems.¹⁶

¹¹ Sprint Letter at 2-3.

¹² *Id.*, citing Chevron USA, Inc. and Sprint Nextel, *Memorandum Opinion and Order*, WT Docket No. 02-55, 21 FCC Rcd 11313 (PSHSB 2006) (*Chevron*).

¹³ *Chevron* at ¶¶ 10-12.

¹⁴ In *Chevron*, other licensees had primary licenses on the same channels that Chevron used on a secondary, mobile-only basis. *Chevron* at ¶ 11.

¹⁵ See Sprint Letter at 2.

¹⁶ For example, jurisdictions in the greater Washington, DC area have such an agreement for interoperability of their 800 MHz systems.

We believe that for public safety licensees to lose the capabilities afforded by these mobile-only authorizations as a result of rebanding could deprive them of “comparable facilities” contemplated by the Commission’s orders. Therefore, we believe that Sprint should generally be required to pay for retuning of mobile-only facilities in the NPSPAC band and to obtain credit for its costs to do so.¹⁷ Again, we find *Chevron* to be distinguishable in this regard. *Chevron* did not involve the communications of public safety agencies charged with the protection of lives and property, nor did it involve interoperability in the NPSPAC band with other public safety agencies. In addition, our decision in *Chevron* did not result in a net loss of accessible channels to Chevron, because it had the option of continuing to operate on its pre-rebanding mobile-only channel on a secondary basis. However, public safety licensees operating in the current NPSPAC band on a mobile-only basis will not have this option, because they will no longer have access to this band after band reconfiguration is completed. Thus, unless the NPSPAC channels are retuned, public safety licensees’ channel capacity will be diminished.

In some instances, public safety licensees use NPSPAC channels on other licensees’ systems by arrangement with the “host” licensee without obtaining their own authorization from the Commission to use the channels.¹⁸ As in the cases described above, maintaining the ability of public safety licensees to access these channels after rebanding is important to maintaining existing interoperability arrangements. Accordingly, such licensees are entitled to recover the cost of retuning their radios to provide equivalent capability in the new NPSPAC band if they demonstrate that prior to rebanding, (a) the licensee had an agreement with the host licensee allowing it to use the host licensee’s system, and/or (b) the licensee made significant actual use of the host licensee’s system. If these criteria are met, Sprint must retune the radios to the new NPSPAC band and the reasonable cost of the retuning will be credited to Sprint.

“FB2T” Temporary Site Licenses

Sprint asks about the status of FB2T temporary station licenses for rebanding purposes. This license classification allows licensees to activate base stations at temporary locations under certain circumstances, and is generally intended for base station facilities that are not intended to be operated permanently at a fixed location.¹⁹ For example, a licensee that loses a primary site because of a tower collapse may activate a temporary base station at a replacement site pursuant to an FB2T license until the primary site can be reactivated. FB2T licenses are also often used for mobile command center base stations that can be deployed in major emergencies. Whether Sprint is responsible for retuning such facilities will depend on the specific facts and circumstances of each case. If the FB2T facility is intended for short-term use only, *i.e.*, a year

¹⁷ This should not add significantly to the cost of rebanding in most cases, because the relevant secondary channels can be programmed into the radios at the same time that they are being retuned on their primary channels.

¹⁸ This form of shared use is allowed under Section 90.179 of the Commission’s rules. See 47 C.F.R. § 90.179.

¹⁹ See 47 C.F.R. § 90.137. Sprint notes that the Commonwealth of Pennsylvania has used FB2T licenses for part of its statewide public safety system. Sprint Letter at 2 n.6. However, public safety licensees planning permanent facilities at fixed locations should not use FB2T authorizations for this purpose, but should follow the STA and licensing procedures set forth in the *STA Guidance PN*.

or less, it typically will not require retuning and we will therefore not hold Sprint financially responsible.²⁰ On the other hand, mobile command centers are an integral part of many public safety systems and are used on a recurring basis to respond to emergencies. To ensure that public safety licensees maintain this capability after rebanding, we will generally hold Sprint financially responsible for retuning such facilities.

Offset Channel Authorizations

In some areas in which no regular 800 MHz channels are available, licensees have obtained authorizations to operate on “offset” channels that lie between and overlap regular 800 MHz channels. Offset authorizations may be granted by STA, waiver, or permanent license, and may be primary or secondary in nature. Sprint seeks clarification of the rebanding status of offset facilities authorized on a secondary basis.

The determination of whether Sprint is required to pay for retuning of secondary offset facilities will be determined on a case-by-case basis depending on the particular facts present. Key factors in such determinations may include how long the offset facility has been part of the licensee’s system, and the degree to which it is an integral and necessary part of the licensee’s overall system. If the licensee can demonstrate that not retuning the offset facility would significantly degrade or compromise the system’s operation in comparison to its pre-rebanding operation, this will weigh in favor of the facility being retuned at Sprint’s expense.

Conclusion

In providing the guidance set forth in this letter, we do not pre-judge the facts of any specific case that may come before the Bureau or the Commission. Nevertheless, we expect Sprint and public safety licensees to use good faith efforts to apply the guidance provided in this letter in their ongoing negotiations. To facilitate such negotiations, this letter will be placed in the 800 MHz proceeding docket.

FEDERAL COMMUNICATIONS COMMISSION

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

²⁰ STAs may also be used for short-term facilities that are not intended to become permanent, *e.g.*, facilities used for time-limited special events such as the Olympics or the Super Bowl. Such facilities also are not entitled to retuning at Sprint’s expense.