

“Sprint must demonstrate that public safety will not be adversely affected by the extension, that it has no reasonable alternative, and that the extension is otherwise in the public interest.”⁵ In addition, any extension granted to Sprint under this procedure must require Sprint to relinquish the channels on 60 days notice by the NPSPAC licensee that it requires the spectrum for testing purposes or to commence operations.⁶ Finally, the Commission delegated authority to the Public Safety and Homeland Security Bureau (PSHSB) to act on such waiver requests.⁷

4. On January 17, 2008, the Commission released a *Public Notice* that established procedures and provided guidance for submission of requests to waive the deadline.⁸ The Commission recommended that licensees seeking waivers provide the Commission with a proposed timetable for completion of rebanding. However, the Commission also recognized that some licensees might be unable to propose a timetable because they had not yet negotiated their Frequency Reconfiguration Agreements (FRAs) with Sprint. The Commission stated that such licensees should file interim waiver requests stating “when the licensee anticipates having an FRA and filing a final waiver request that will include a proposed timetable.”⁹ The Commission set March 17, 2008 as the deadline for licensees in Waves 1 and 2 and April 15, 2008 as the deadline for non-border licensees in Waves 3 and 4 to submit either an interim or a final request.¹⁰ The *Public Notice* established that “Sprint may file such waiver petition at any time after the corresponding NPSPAC petitions are filed, *i.e.*, it does not need to wait to file until the Bureau has acted on the corresponding NPSPAC petitions.”¹¹

5. On May 1, 2008, Sprint filed a blanket request for waiver to remain on Channel 1-120 channels until NPSPAC licensees that requested waivers of the June 26, 2008 deadline are ready to retune their systems.¹² Noting the large number of NPSPAC licensees that had filed requests to waive the deadline, Sprint contends that its waiver request satisfies the criteria set forth in the *800 MHz 3rd MO&O*. First, Sprint contends that no public safety entity will be harmed by grant of the instant waiver because Sprint will apply the “60-day rule,” *i.e.*, it will relinquish Channel 1-120 channels to any NPSPAC licensee within 60 days of being notified that the licensee is ready to use the channels.¹³ Sprint also contends that it has no reasonable alternative, because requiring it to vacate all of its Channel 1-120 channels prematurely would seriously degrade its service, including service that some public safety users rely upon.¹⁴ Sprint also argues that granting its request is in the public interest because it will promote the Commission’s objective of minimizing disruption to all incumbents during reconfiguration.¹⁵

6. On May 29, 2008, Spectrum Acquisitions, Inc. (SAI) filed an opposition to Sprint’s waiver

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 17223 ¶ 48.

⁸ Federal Communications Commission Provides Guidance for Submission of Requests for Waiver of June 26, 2008 Deadline for Completion of 800 MHz Rebanding, *Public Notice*, 23 FCC Red 664 (2008) (*Waiver Guidance Notice*).

⁹ *Id.* at 666.

¹⁰ *Id.* at 665.

¹¹ *Id.*

¹² Request for Waiver by Sprint Nextel Corporation, filed May 1, 2008 (Sprint Waiver Request).

¹³ Sprint Waiver Request at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

request.¹⁶ SAI argues that Sprint's blanket waiver request is an improper attempt to reverse the Commission's policy determinations in the *800 MHz 3rd MO&O* and to delay meeting its rebanding obligations.¹⁷ SAI also argues that to obtain relief, Sprint should be required to make a "particularized" showing by license, frequency, and region with respect to its need to remain on individual Channel 1-120 channels past the June 26 deadline.¹⁸

7. On June 11, 2008, Sprint filed a reply to SAI's opposition.¹⁹ Sprint argues that SAI lacks standing to contest Sprint's waiver request because SAI is not an 800 MHz licensee and has failed to show that it would be harmed by grant of Sprint's request.²⁰ Sprint also argues that SAI has distorted the record regarding the *800 MHz 3rd MO&O* because the Commission expressly contemplated that Sprint could file a waiver to remain in the Channel 1-120 band in the event NPSPAC licensees did not complete rebanding by June 26, 2008. Finally, Sprint asserts that it has met the criteria established by the Commission for granting Sprint's waiver request, and that SAI disregards the adverse impact that a spectrum shortfall would have on Sprint's customers.²¹

8. On June 17, 2008, PSHSB released a series of orders addressing approximately 500 requests by public safety licensees for waiver of the June 26, 2008 deadline to complete 800 MHz rebanding.²² In these orders, the Bureau granted waivers to numerous public safety licensees seeking extensions to complete rebanding on or before July 1, 2009, and granted partial relief to licensees requesting more lengthy extensions.²³ In addition, the Bureau granted interim relief to licensees requiring more time to submit proposed timetables because they are still in planning or negotiations. The Bureau directed these licensees to submit supplemental waiver requests with proposed timetables on or before July 18, 2008, after which the Bureau will evaluate the requests.²⁴

III. DISCUSSION

9. We address Sprint's waiver request under the waiver criteria set forth in the *800 MHz 3rd MO&O*. As a threshold matter, we agree with Sprint that SAI lacks standing to oppose Sprint's waiver request. In order to establish standing, SAI must demonstrate that it will suffer a "direct injury" resulting

¹⁶ Opposition to Sprint Nextel Waiver Request by Spectrum Acquisitions, Inc., filed May 29, 2008 (SAI Opposition).

¹⁷ SAI Opposition at 6-8.

¹⁸ *Id.*

¹⁹ Letter from Regina M. Keeney, on behalf of Sprint Nextel Corp., to Marlene H Dortch, Secretary, FCC (dated June 11, 2008) (Sprint Reply).

²⁰ Sprint Reply at 2.

²¹ *Id.* at 1-3.

²² Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Order*, DA 08-1427 (PSHSB rel. June 17, 2008) (*Wave 1 Interim Waiver Order*); DA 08-1428 (PSHSB rel. June 17, 2008) (*Wave 1 Waiver Order*); DA 08-1429 (PSHSB rel. June 17, 2008) (*Wave 2 Interim Waiver Order*); DA 08-1430 (PSHSB rel. June 17, 2008) (*Wave 2 Waiver Order*); DA 08-1431 (PSHSB rel. June 17, 2008) (*Wave 3 Interim Waiver Order*); *Order*, DA 08-1432 (PSHSB rel. June 17, 2008) (*Wave 3 Waiver Order*); *Order*, DA 08-1433 (PSHSB rel. June 17, 2008) (*Wave 4 Interim Waiver Order*); *Order*, DA 08-1434 (PSHSB rel. June 17, 2008) (*Wave 4 Waiver Order*).

²³ See *Wave 1 Waiver Order* at ¶¶ 4-12; *Wave 2 Waiver Order* at ¶¶ 4-13; *Wave 3 Waiver Order* at ¶¶ 4-9; *Wave 4 Waiver Order* at ¶¶ 4-9.

²⁴ See *Wave 1 Interim Waiver Order* at ¶¶ 5-8; *Wave 2 Interim Waiver Order* at ¶¶ 5-9; *Wave 3 Interim Waiver Order* at ¶¶ 5-8; *Wave 4 Interim Waiver Order* at ¶¶ 5-9.

from grant of the Sprint waiver request.²⁵ SAI fails to meet this standard because it is not an 800 MHz licensee, has not previously participated in this proceeding, and does not even allege that it would be injured by grant of the Sprint waiver request. Simply filing an opposition against Sprint's waiver request on the grounds that granting the request would be inconsistent with the *800 MHz 3rd MO&O* does not confer standing. Nevertheless, we exercise our discretion to consider SAI's opposition as an informal objection.

10. Turning to the merits, we first address whether grant of the requested waiver will cause harm to public safety. Sprint contends that no public safety entity will be harmed and that rebanding will not be delayed because Sprint is prepared to provide replacement Channel 1-120 spectrum to any NPSPAC licensee within 60 days of being notified that the licensee is ready to retune.²⁶ Indeed, Sprint asserts that it is ahead of most public safety licensees in its readiness to make Channel 1-120 channels available.²⁷ We agree with Sprint that grant of the waiver will not harm public safety. Application of the 60-day rule ensures that all NPSPAC licensees will promptly obtain replacement spectrum from Sprint in the Channel 1-120 block when they are ready to use it. We also note that no public safety licensee has opposed Sprint's request.

11. We are also persuaded that Sprint has demonstrated the absence of any reasonable alternative as required by the *800 MHz 3rd MO&O*. Sprint states that requiring it to vacate Channel 1-120 channels before public safety is prepared to use them would degrade Sprint's service, including service that some public safety users rely upon.²⁸ Sprint also states that relocating its facilities to the 900 MHz band will not be sufficient to make up for this spectrum shortfall and that building additional cell sites is too time-consuming and costly. We agree that in light of the large number of NPSPAC licensees that will require additional time to complete their relocation to the Channel 1-120 band, Sprint does not have the practical ability to eliminate this shortfall through use of the 900 MHz band or construction of additional cell sites. Although Sprint originally claimed that it could deal with spectrum shortfalls resulting from the rebanding process, the shortfall has proven to be more difficult and pronounced than Sprint anticipated. The fact that the Commission established a waiver procedure for Sprint in the *800 MHz 3rd MO&O* indicates that it did not intend to leave Sprint without recourse under these circumstances.

12. Additionally, we reject SAI's argument that Sprint should be required to make a particularized showing of a spectrum shortfall with respect to each license, frequency, and region that is the subject of an individual waiver request filed by a NPSPAC licensee. The *800 MHz 3rd MO&O* did not impose such a requirement, and compelling Sprint to file hundreds of individualized waiver requests would cause needless delay and administrative burden for both Sprint and the Commission.

13. Finally, we find that grant of the requested waiver is otherwise in the public interest. We disagree with SAI's contention that grant of the waiver constitutes a reversal of the Commission's determination that public safety's spectrum needs take precedence over Sprint's network capacity needs. In fact, our approach ensures that the spectrum needs of NPSPAC licensees will always take precedence because they will receive their replacement Channel 1-120 channels without delay when they are ready to use them. Moreover, while grant of the waiver to Sprint will help it to avoid unnecessary disruption of its network and customer service, Sprint must still accept any shortfall that may result when it relinquishes Channel 1-120 spectrum that is needed by public safety.

²⁵ See Hispanic Information Telecommunications Network, *Memorandum Opinion and Order*, 18 FCC Rcd 23872, 23879 ¶ 19 (2003) (“[t]o establish standing, a petitioner must make specific allegations of fact sufficient to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury”).

²⁶ Sprint Waiver Request at 3.

²⁷ *Id.*

²⁸ *Id.*

14. We therefore allow Sprint to continue existing operations on Channel 1-120 channels that are designated for assignment to licensees covered by the waiver orders granting relief to NPSPAC licensees,²⁹ subject to the following limitations. First, Sprint must relinquish any Channel 1-120 channel to the NPSPAC licensee with prospective rights to the channel on 60 days notice by the NPSPAC licensee that it requires the channel for testing purposes or to commence operations. Second, to the extent a Channel 1-120 channel is not needed to relocate a NPSPAC licensee, Sprint must still vacate the channel if (1) the corresponding spectrum 15 MHz higher in the 821-824/866-869 MHz band is clear in the region and is therefore available for use by Sprint,³⁰ or (2) the channel is licensed for new post-rebanding NPSPAC facilities.³¹

15. Additionally, as a condition of the waiver, we require Sprint to take the following steps to protect NPSPAC licensees that relocate to the Channel 1-120 block from harmful interference while Sprint continues to operate on Channel 1-120 channels:³²

- Sprint must provide appropriate co-channel protection to relocating NPSPAC licensees pursuant to Section 90.621(b) of the Commission's co-channel protection rules.³³
- Sprint must provide adjacent-channel protection to relocating NPSPAC licensees in accordance with the standard adopted by the Commission in the *800 MHz Second Memorandum Opinion and Order* based on the petition filed by NPSPAC Region 8 (New York Metropolitan Area).³⁴
- Until Sprint has vacated all Channel 1-120 channels in a particular NPSPAC region, Sprint must protect relocating NPSPAC licensees in the region in accordance with the "interim" interference standard specified by the Commission in the *800 MHz Supplemental Order*.³⁵ In addition, Sprint must employ the additional protection methods identified in the *800 MHz Supplemental Order* to protect relocating NPSPAC licensees that do not meet the signal strength threshold under Commission's interim rule but that do meet the threshold under the Commission's final interference rules.³⁶
- In the event of an interference complaint, Sprint will strictly adhere to the Commission's mandated interference response timelines and requirements specified in Section 90.674 of the Commission's rules.³⁷

²⁹ This relief will also be extended automatically to the extent that NPSPAC licensees receive additional extensions.

³⁰ Because Sprint uses 25 kHz spaced channels, while NPSPAC uses 12.5 kHz spaced channels, Sprint may continue to operate on any Channel 1-120 channel that is not needed by public safety until the corresponding 25 kHz spaced channel is cleared in the 821-824/866-869 MHz band.

³¹ In such cases, Sprint must vacate upon 60 days notice from the new NPSPAC licensee of readiness to use the channel. See *800 MHz 3rd MO&O*, 22 FCC Rcd at 17216 ¶ 23.

³² These conditions are similar to the conditions during the transition that govern interference protection of NPSPAC licensees that have not yet relocated from the former NPSPAC band (821-824/866-869 MHz) as Sprint commences operations in that band. See Letter from David L. Furth, Associate Chief, Public Safety and Homeland Security Bureau, and Joel D. Taubenblatt, Acting Deputy Chief, Wireless Telecommunications Bureau, to Larry Krevor, Vice President-Spectrum, Sprint Nextel Corp., WT Docket 02-55, 23 FCC Rcd 7416 (PSHSB/WTB 2008).

³³ See 47 C.F.R. §90.621(b).

³⁴ See *800 MHz Second Memorandum Opinion and Order*, 22 FCC Rcd at 10486 ¶¶ 51-52.

³⁵ See *800 MHz Supplemental Order*, 19 FCC Rcd at 25137-38 ¶ 39.

³⁶ *Id.* at 25139-40 ¶ 42.

³⁷ 47 C.F.R. § 90.674.

IV. ORDERING CLAUSE

16. Accordingly, pursuant to the authority of Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the request for waiver of the June 26, 2008 deadline submitted by Sprint Nextel Corporation IS GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

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