

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

In the Matter of )
Improving Public Safety Communications in the ) WT Docket No. 02-55
800 MHz Band )
Request for Interim Waiver of the June 26, 2008 )
Rebanding Deadline – National Capital Region )
Licensees )

ORDER

Adopted: June 30, 2008

Released: June 30, 2008

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

I. INTRODUCTION

1. In this Order, by delegated authority, we act on a request by Fairfax County, Virginia (Fairfax) on behalf of the fourteen 800 MHz public safety licensees in the National Capital Region (NCR) for waiver of the June 26, 2008 rebanding deadline to allow the completion of regional planning and submission of a master regional rebanding schedule. We grant the request to the extent set forth below.

II. BACKGROUND

2. In the 800 MHz Report and Order and subsequent orders in this proceeding, the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. These orders mandate that 800 MHz licensees in non-border areas must complete their rebanding by June 26, 2008. However, the Commission has also established a waiver process for licensees that are unable to complete rebanding by the deadline, and has delegated authority to the Public Safety and Homeland Security Bureau (PSHSB) to act on such waiver requests.

3. The 14 NCR licensees operate 800 MHz public safety systems in Washington DC and surrounding counties and cities in Maryland and northern Virginia. The NCR systems use both Channel 1-120 and NPSPAC channels, are among the most complex and heavily used 800 MHz public

1 The NCR licensees are Fairfax County, Virginia; City of Alexandria, Virginia; Arlington County, Virginia; City of Manassas, Virginia; Prince William County, Virginia; Fauquier County, Virginia; Loudoun County, Virginia; District of Columbia; Montgomery County, Maryland; Frederick County, Maryland; Charles County, Maryland; Prince Georges County, Maryland; Metropolitan Washington Airports Authority; and University of Maryland.

2 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, 19 FCC Rcd 14969 (2004) (800 MHz Report and Order); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004) (800 MHz Supplemental Order); Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005); Second Memorandum Opinion and Order, 22 FCC Rcd 10467 (2007); Third Memorandum Opinion and Order, 22 FCC Rcd 17209 (2007) (800 MHz 3rd MO&O).

3 800 MHz Report and Order, 19 FCC Rcd at 15130, ¶ 347. "Non-border" licensees are Wave 1-3 licensees and those Wave 4 licensees that have received rebanding frequency assignments from the 800 MHz Transition Administrator.

4 800 MHz 3rd MO&O, 22 FCC Rcd at 17223 ¶ 48.

safety systems in the country, and have a high degree of interoperability with one another. Consequently, the NCR licensees are planning for and intend to implement rebanding on a coordinated region-wide basis. Fairfax County has agreed to act as the regional coordinator of the NCR rebanding effort.

4. On May 24, 2007, Fairfax filed a request to extend the rebanding timetable for itself and the other NCR licensees.<sup>5</sup> Fairfax stated that the NCR licensees would require a substantial extension to conduct regional planning and complete rebanding due to the complexity of their systems and the need to preserve interoperability across all NCR jurisdictions during the transition.<sup>6</sup> On September 26, 2007, Fairfax asked the Commission to hold its request in abeyance pending development by Motorola, Inc. (Motorola) of a detailed master rebanding schedule for the region.<sup>7</sup>

5. On January 17, 2008, the Commission released a *Public Notice* that established procedures and provided guidance for submission of requests to waive the deadline.<sup>8</sup> 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.”<sup>9</sup> The Commission set March 17, 2008 as the deadline for licensees in Waves 1 and 2 to submit either an interim or a final request.<sup>10</sup>

6. On March 14, 2008, Fairfax filed a supplement to its prior NCR extension request.<sup>11</sup> In the supplement, Fairfax states that as NCR regional rebanding coordinator, it has entered into a regional planning funding agreement with Sprint Nextel Corporation (Sprint) and a subsequent regional project management agreement with Motorola, under which Motorola is developing (1) a database that will contain all interoperable subscriber templates used in NCR radios, and (2) a master schedule for rebanding of the interoperable components of the NCR systems.<sup>12</sup> Fairfax submits a timeline indicating that Motorola will provide the initial draft of the master schedule to the NCR licensees for review and comment in July 2008, and that the schedule will be finalized in November 2008.<sup>13</sup> Fairfax estimates that there are approximately 33,000 interoperable radios used by NCR licensees that will need to be rebanded pursuant to the coordinated regional rebanding plan.<sup>14</sup> Fairfax also states that individual NCR licensees have approximately 12,000 non-interoperable radios, which can be rebanded independently of – and

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<sup>5</sup> Petition for Waiver, filed March 24, 2007 (NCR Waiver Petition).

<sup>6</sup> *Id.* at 7-14. Fairfax requested an extension until July 2010 to complete Stage 1 (Channel 1-120) rebanding, and stated that an unspecified amount of additional time would be required for Stage 2 NPSAC rebanding.

<sup>7</sup> Letter from Erin C. Ward, Assistant County Attorney, Fairfax County, VA, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed September 26, 2007.

<sup>8</sup> 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 Rcd 664 (2008) (*Waiver Guidance Notice*).

<sup>9</sup> *Id.* at 666.

<sup>10</sup> *Id.* at 665.

<sup>11</sup> National Capital Region Supplement to Petition for Waiver of the Commission’s June 26, 2008 800 MHz Rebanding Program Completion Date, filed March 14, 2008 (NCR Supplement). Each of the other NCR licensees filed in support of the request.

<sup>12</sup> NCR Supplement at 2-3.

<sup>13</sup> *Id.*, Attachment 2.

<sup>14</sup> *Id.* at 4.

potentially earlier than -- the regional coordination process.<sup>15</sup>

### III. DISCUSSION

#### A. NCR Regional Waiver Request

7. The Commission has stated that requests for waiver of the June 26, 2008 deadline “will be subject to a high level of scrutiny. Licensees will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.”<sup>16</sup> We have reviewed the NCR waiver request and supplemental filings in accordance with this standard.

8. As noted above, the NCR systems have an unusually high degree of complexity and interoperability with one another. Nearly three quarters of the radios used by NCR licensees are interoperable with other NCR systems.<sup>17</sup> Moreover, the NCR licensees rely heavily on a wide variety of specialized templates programmed into individual radios to support different levels of interoperability depending on the nature and scope of each jurisdiction’s involvement in responding to a given emergency.<sup>18</sup> Because of the complex interoperability relationships among the NCR systems, rebanding in the National Capital Region requires very careful planning and coordination, and each of the NCR licensees has only limited ability to control the rebanding timetable for the interoperable components of its system.<sup>19</sup> The NCR licensees have proactively addressed this challenge by agreeing to a regional approach to rebanding under the leadership of Fairfax County, and by supporting Motorola’s efforts to develop a master schedule.

9. Because the NCR licensees and Motorola are still in the process of developing the master rebanding schedule for the region, we treat the NCR waiver request as an interim request for relief until the NCR licensees can submit a waiver request that includes a proposed timetable for completion of rebanding. Based on the progress reported to date in Motorola’s development of the master schedule, we grant the NCR licensees an extension until September 30, 2008, to submit their regional waiver request and proposed timetable. We recognize that Motorola’s target date for finalizing the NCR master schedule is not until November 2008, but we believe that the development of the master schedule should be sufficiently far along by September 30 for the NCR licensees to be able to propose milestone dates for completion of the major steps in the regional rebanding process. Upon filing of a waiver request, the interim relief granted by this order to the NCR licensees will extend until the Bureau acts on the request. We will also allow the NCR licensees to amend their waiver request after September 30, 2008 to revise their proposed milestone dates should such revision be warranted based on subsequent changes to the master schedule.

#### B. Rebanding Timetables for Individual NCR Licensees

10. While the NCR rebanding process will largely be planned and executed on a regional basis, individual NCR licensees are also responsible for timely completion of rebanding of the non-interoperable components of their systems that are not dependent on regional rebanding (*e.g.*, retuning/replacement of the approximately 12,000 non-interoperable radios used in NCR systems). Most NCR licensees have already executed their individual FRAs with Sprint,<sup>20</sup> but some licensees are still

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<sup>15</sup> *Id.*

<sup>16</sup> FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, *Public Notice*, 22 FCC Red 17227, 17232 (2007).

<sup>17</sup> NCR Supplement at 4.

<sup>18</sup> *Id.* at 2; *see* NCR Waiver Petition at 5-7.

<sup>19</sup> *Id.* at 8-12.

<sup>20</sup> The following NCR licensees have executed individual FRAs with Sprint: Fairfax County, City of Alexandria, Prince William County, Fauquier County, Loudoun County, Arlington County, District of Columbia, Prince George’s County, and University of Maryland.

engaged in planning and negotiations. In order to ensure that rebanding by all individual NCR licensees occurs on a timetable consistent with the regional rebanding process, we direct each NCR licensee to submit a licensee-specific waiver request by September 30, 2008 that includes a proposed timetable for rebanding the non-interoperable components of its system.<sup>21</sup> In this regard, we expect NCR licensees not to propose timetables for individual rebanding that exceed the amount of time proposed for NCR regional rebanding, and we encourage all NCR licensees to complete rebanding of the non-interoperable components of their systems more quickly if possible.

#### IV. ORDERING CLAUSE

11. 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 Fairfax County on behalf of the National Capital Region licensees is GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>21</sup> See *Waiver Guidance Notice*, 23 FCC Rcd at 665-666. If an NCR licensee has not completed FRA negotiations with Sprint by September 30, its proposed timetable may include the amount of additional time that the licensee estimates is reasonably required to negotiate its FRA.