

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

In the Matter of)	
)	
Gemini International, Inc. and Sprint Nextel)	WT Docket No. 02-55
)	
Mediation No. TAM-31019)	

ORDER

Adopted: January 14, 2008

Released: January 14, 2008

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

1. *Introduction.* In this Order, we require Gemini International, Inc. (Gemini) to retune its 800 MHz conventional Specialized Mobile Radio (SMR) station WPEX853 or surrender its license within thirty days of the release date of this Order. We take this action pursuant to our earlier *Memorandum Opinion and Order (Gemini Order)* regarding the disposition of Gemini's license in the 800 MHz rebanding process.¹

2. *Background.* Gemini holds an 800 MHz SMR license for a single-site, one-channel conventional system in Puerto Rico that is subject to rebanding under the Commission's 800 MHz rebanding orders. In the *Gemini Order*, we found that Gemini violated the good faith requirements of Section 90.677(c) of the Commission's rules² by failing to provide sufficient information about its SMR facility to allow meaningful negotiation and mediation of its retuning costs and other details of retuning its station.³ The record disclosed that Gemini did not determine the actual cost of retuning its station, did not provide Sprint with the information necessary to conclude a Frequency Reconfiguration Agreement with Gemini, and did not respond to Sprint's *bona fide* offer by making a counter-offer.⁴ We found that Gemini's refusal to heed the Commission's rules and follow the Transition Administrator (TA) mediator's direction to conform to those rules exhibited a lack of good faith.⁵ Because of Gemini's failure to act in good faith, we found that Gemini forfeited any right to payment for reconfiguration and must bear its own retuning costs or surrender its license.⁶ To date, Gemini has neither retuned its facilities nor surrendered its license.

3. *Discussion.* Because we did not provide a date certain for Gemini to abide by the terms of the *Gemini Order*, we now require Gemini to retune station WPEX853 at its own expense to replacement channels designated by the TA and to complete such retuning within thirty days of the release date of this Order. Alternatively, we require Gemini to cease operation and surrender its license within thirty days of

¹ Gemini International, Inc. and Sprint Nextel, WT Docket 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 6651 (PSHSB 2007) (*Gemini Order*).

² 47 C.F.R. § 90.677(c).

³ *Gemini Order*, 22 FCC Rcd at 6565 ¶15.

⁴ *Id.*

⁵ *Id.* at 6565-6566 ¶ 16.

⁶ *Id.*

the release date of this Order. We take this action in order to make the channels currently licensed to Gemini available for rebanding by public safety in accordance with the Commission's orders.

4. If Gemini fails 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 of 1934 as amended,⁷ to modify Gemini's license for station WPEX853 by deleting the pre-rebanding frequencies from the license. Pursuant to Section 316(b) of the Act⁸ and Section 1.87(c) of the Commission's rules,⁹ we afford Gemini an opportunity to protest this proposed modification. Because the proposed modification to WPEX853 involves the safety of life and property, Gemini must file any protest within forty days of the release date of this Order.¹⁰

5. *Ordering Clauses.* 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 90.677, of the Commission's rules, 47 C.F.R. § 90.677, it is **ORDERED** that no later than thirty days after the release date of this Order, Gemini International, Inc. shall cease operations on its current frequencies and shall either (1) retune Station WPEX853 to the frequencies specified by the TA, or (2) surrender its license to the Commission.

6. **IT IS FURTHER ORDERED**, that if Gemini International, Inc. fails to comply with the above clause, pursuant to Section 316(a) of the Communications Act, 47 U.S.C. §316(a), Gemini International, Inc. **SHALL SHOW CAUSE** why its authorization for station WPEX853 should not be modified by terminating its right to operate on its current frequencies.

7. **IT IS FURTHER ORDERED**, that pursuant to Section 1.87(a) of the Commission's Rules, 47 C.F.R. §1.87(a), Gemini International, Inc. 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.

8. If Gemini or any other party raises 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.

⁷ 47 U.S.C. § 316(a).

⁸ 47 U.S.C. § 316(b).

⁹ 47 C.F.R. § 1.87(c).

¹⁰ See Ron and Barbara Gossett, WT Docket 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 8522 (PSHSB 2007).

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

Gemini International, Inc.
300 W. 49th Street
New York, NY 10019
Attn: Sheldon Weaver

Laura H. Phillips, Esq.
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FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
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