

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

In the Matter of
Improving Public Safety Communications in the
800 MHz Band
WT Docket No. 02-55

ORDER

Adopted: May 20, 2009

Released: May 20, 2009

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

1. By this Order, we approve the transfer of control of the 800 MHz Transition Administrator LLC (TA LLC) from BearingPoint, Inc., debtor-in-possession (BE), to Baseline Wireless Services LLC (BWS). The transfer is occurring in conjunction with the acquisition in bankruptcy of certain of BE's assets by Deloitte LLP (Deloitte), and will facilitate Deloitte's replacement of BE within the structure the 800 MHz Transition Administrator (TA) in a smooth transition that will further the Commission's goal of timely reconfiguration of the 800 MHz band.

2. Background. In July 2004, the Federal Communications Commission adopted a Report and Order in this docket which reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band. In the 800 MHz R&O, the Commission established the TA as an independent entity to oversee the reconfiguration process. Subsequently, on the recommendation of major stakeholders in the 800 MHz band, the Commission selected the team of BE, Squire Sanders & Dempsey LLP (SSD), and Baseline Telecom, Inc. (BTI) (the TA Entities) to perform the TA functions. The TA Entities then formed the TA LLC, a legal entity of which BE is the sole owner, to enter into the necessary contracts with each of the TA Entities and other parties. Thus, BTI and BE, respectively, currently provide engineering and project management services under subcontracts with the TA LLC, while SSD provides legal services to the TA LLC pursuant to an engagement letter.

3. On February 18, 2009, BE and certain of its affiliates (collectively, Sellers) filed separate voluntary petitions for relief under Chapter 11 of Title 11, United States Code (Bankruptcy Code) with the United States Bankruptcy Court for the Southern District of New York (Court). On March 23, 2009, the Sellers, as debtors-in-possession, entered into an agreement (Purchase Agreement) with Deloitte by which Deloitte will acquire substantially all of the assets of BE's North American Public Services

1 Improving Public Safety Communication in the 800 MHz Band, WT Docket No. 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004) (800 MHz R&O), as amended by Erratum, DA 04-3208, 19 FCC Rcd 19651 (2004), Second Erratum, DA 04-3459, 19 FCC Rcd 19651 (2004); and Third Erratum, 19 FCC Rcd 21818 (2004).

2 The stakeholders were Nextel Communications, Inc. (Nextel), the Association of Public Safety Communications Officials-International (APCO), the Industrial Telecommunications Association (ITA), Southern LINC; and the United Telecom Council (UTC). See 800 MHz R&O, 19 FCC Rcd 15070-75 ¶¶ 190-200.

3 See Wireless Telecommunications Bureau Concurs With Search Committee Selection of a Transition Administrator, Public Notice, 19 FCC Rcd 21923 (WTB 2004).

business unit. The TA LLC and the Amended and Restated Professional Services Subcontract Agreement between the TA LLC and BE (Subcontract) both are assets of BE's North American Public Services business unit subject to purchase by Deloitte.⁴ On April 17, 2009, the Court entered an order (Sale Order) approving the sale of such assets to Deloitte. BE and Deloitte closed the sale of the North American Public Services business unit on May 8, 2009. As noted below, however, Deloitte did not acquire the TA LLC at closing.

4. On May 7, 2009, BWS, BE, SSD, Deloitte, and the TA LLC (Joint Parties) jointly filed a letter with the Public Safety and Homeland Security Bureau seeking Commission consent to the transfer of control of the TA LLC from BE to BWS.⁵ The Joint Parties stated that the practical consequence of Deloitte's acquisition of BE's assets would be that Deloitte's subsidiary, Deloitte Consulting LLP, would replace BE as a subcontractor to the TA LLC, and would assume the Subcontract with certain minor amendments.⁶ The Joint Parties note that Deloitte is not acquiring the TA LLC because "due to the role of Deloitte & Touche LLP, a subsidiary of Deloitte LLP, as an auditor for certain stakeholders in the 800 MHz reconfiguration program, neither Deloitte LLP nor any of its subsidiaries can acquire the membership interests of TA LLC."⁷ Accordingly, the Joint Parties state that BWS has agreed to acquire the TA LLC and represent that "pursuant to the terms of the [bankruptcy court] Order, Deloitte LLP will instruct BE to transfer its membership interest in TA LLC to BWS upon grant of the Commission's consent to this request."⁸

5. The Joint Parties represent that "the transfer of control of the TA LLC will not materially or substantively affect the respective roles, responsibilities or use of the TA Entities."⁹ In particular, they assert that there will be no change in BE's substantive role, "as assumed by Deloitte Consulting LLP, other than with respect to the change in the ownership of TA LLC and with respect to [issuance of formal recommendations regarding] the Letter of Credit."¹⁰ To ensure continuity of operations in the 800 MHz reconfiguration program, Deloitte has assured the Commission that it will "avoid any programmatic disruptions by making offers to all BE personnel associated with the Reconfiguration."¹¹ Deloitte has

⁴ Due to an error in the wording of the Purchase Agreement, the TA LLC's membership interests initially were not included as part of the assets that were sold to Deloitte. However, the Order remedied the omission and the TA LLC membership interests were included.

⁵ Letter to David L. Furth, Acting Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, from Alan J. Boyer (Baseline Telecom, Inc. and Baseline Wireless Services, LLC), John DeGrotte (Bearing Point, Inc.) Eugene A. Procknow (Deloitte LLP), Robert B. Kelly (Squire Sanders & Dempsey LLP) and Brett Haan (800 MHz Transition Administrator, LLC), May 7, 2009 (Joint Letter).

⁶ *Id.* at 1.

⁷ *Id.* Exhibit C to the Joint Letter contains a more detailed recitation of the reasons Deloitte cannot acquire membership in the TA LLC. Deloitte and BE have requested confidential treatment of Exhibits A and C to the Joint Letter. *See* Letter to David L. Furth, Acting Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, from Scott Silverstein, Assistant General Counsel, Deloitte LLP, May 7, 2009.

⁸ Joint Letter at 3.

⁹ *Id.* at 3.

¹⁰ *Id.* The parties state that "[i]n order to comply with federal and state requirements concerning auditor independence, Deloitte will not make formal recommendations to the Commission as to whether the Commission should approve proposed decreases (or increases) in the 800 MHz Letter of Credit. Deloitte will perform an analysis of such proposals and provide that information to the Commission which remains ultimately responsible for acting on such requests."

¹¹ The offers are subject to "Deloitte Consulting's customary internal hiring procedures." Deloitte Consulting has agreed that "BE personnel associated with the Reconfiguration who are hired by Deloitte Consulting will only be

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certified that, “to its knowledge, it has no financial interest in any of the existing 800 MHz licensees” and has disclosed financial information related to its commercial relationships with Sprint Nextel Corporation (Sprint) and its affiliates. It also has represented that it will adhere to the “principles and procedures established in the Amended Independence Management Plan being developed by Deloitte Consulting, BTI and SSD.”¹² Finally, the parties have included Sprint’s written consent to the proposed transaction as an attachment to the Joint Letter.¹³

6. *Discussion.* We have evaluated the proposed transaction in light of the BE bankruptcy and conclude that it provides the optimum means of ensuring that Deloitte will assume substantially all of BE’s programmatic responsibilities in a smooth transition without adverse effect on 800 MHz band rebanding or participating licensees. The assignment of the TA LLC from BE to BWS alters the legal structure of the TA but will not affect the duties performed by each of the TA Entities. Deloitte, a company with substantial management experience and resources, will provide the project management services to the TA that were previously furnished by BE using the same or substantially the same staff previously employed by BE.¹⁴ Also as before, BTI and SSD will continue to provide their respective engineering and legal services to the TA.

7. We are also satisfied with Deloitte’s proposed role in connection with future requests by Sprint for reductions to the Letter of Credit. Although Deloitte will not be recommending whether the Commission should decrease or increase the Letter of Credit - a task previously assigned to BE - we do not regard this change as material because, as the parties point out, the ultimate decision concerning the letter of credit rests with the Commission and Deloitte will provide the data and analysis necessary to support the Commission’s decision.¹⁵ In sum, we conclude that the proposed transaction is consistent with the Commission’s goals in establishing the Transition Administrator and is otherwise in the public interest.¹⁶

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transferred from the Reconfiguration with the permission of the Program Manager and/or the Deputy Program Manager.” *Id.*

¹² *Id.* The Amended Independence Management Plan will be developed within thirty days of the closing of the contemplated transaction and submitted to the Commission for approval. In the interim, Deloitte Consulting will be bound by the provisions of the existing Independence Management Plan. *See id.* at 3-4 n.6.

¹³ *Id.* at Ex. B.

¹⁴ Deloitte LLP has agreed it will not replace the current Program Manager or Deputy Program manager absent thirty days advance notice to the Commission, and that, if any successor Program Manager or Deputy Program Manager is unacceptable to the Commission, Deloitte LLP will replace such successor manager within thirty days. *See id.* at 3 n.5.

¹⁵ Joint Letter at 3 n.4.

¹⁶ We expect that all members of the Transition Administrator team or their respective parents (Deloitte LLP, SSD and BTI) will provide letters of guarantee to the Commission that will replace the guarantee previously given by BE. We further remind Deloitte Consulting that, should it wish to make further changes to its subcontract with the TA LLC, it should provide a draft of the changes to the Commission in advance of making the changes and, if appropriate, request the Commission’s consent for a change of Use (as such term is defined in the Tri-Party Agreement, dated June 6, 2005, by and among Nextel Operations, Inc., the TA LLC, and U.S. Bank N.A).

8. *Ordering Clause.* Accordingly, IT IS ORDERED that the Federal Communications Commission HEREBY CONSENTS to the transfer of control of the 800 MHz Transition Administrator LLC from Bearing Point, Inc., debtor-in-possession, to Baseline Wireless Services LLC.

FEDERAL COMMUNICATIONS COMMISSION

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