

**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)	

ORDER

Adopted: June 24, 2009

Released: June 24, 2009

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

I. INTRODUCTION

1. By this *Order*, pursuant to delegated authority, we (1) postpone the 800 MHz rebanding financial reconciliation “true-up” date from July 1, 2009, to December 31, 2009, and (2) require the 800 MHz Transition Administrator, LLC (TA) to file a report by November 2, 2009, with its recommendation on whether the true-up date should occur on December 31, 2009, or be further postponed.

II. BACKGROUND

2. The true-up was established in the *800 MHz Report and Order*¹ to assess the total creditable rebanding costs incurred by Sprint Nextel Corporation (Sprint) for both 800 MHz rebanding and relocating of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz band, and to compare these costs to the value of the 1.9 GHz spectrum that the Commission awarded to Sprint. If the true-up shows the value of the 1.9 GHz spectrum to exceed Sprint’s combined 800 MHz and BAS relocation costs, Sprint must pay the difference in an “anti-windfall” payment to the U.S. Treasury.²

3. The *800 MHz Report and Order* originally required Sprint to complete 800 MHz rebanding in non-border areas within thirty-six months³ and provided that that the true-up would occur within six months thereafter.⁴ The thirty-six month period expired on June 26, 2008, at which time neither 800 MHz rebanding nor BAS relocation was complete.⁵ Accordingly, on June 25, 2008, Sprint requested that the true-up be postponed indefinitely until both 800 MHz rebanding and BAS relocation were complete.⁶ Noting that both rebanding projects had been subject to unforeseen complexity and

¹ Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15124 ¶ 330 (2004) (*800 MHz Report and Order*).

² *Id.*

³ *Id.* at 14977 ¶ 11.

⁴ *Id.* at 15124 ¶ 330.

⁵ Improving Public Safety Communications in the 800 MHz Band, *Fourth Memorandum Opinion and Order*, 23 FCC Rcd 18512, 18514 ¶ 9 (2008) (*Fourth Memorandum Opinion and Order*).

⁶ *Id.*, 23 FCC Rcd at 18512 ¶ 1.

delay, Sprint contended that conducting the true-up as scheduled would be premature and would fail to account for significant rebanding costs that Sprint had yet to incur.⁷

4. In its December 2009 *Fourth Memorandum Opinion and Order*, the Commission granted Sprint's request in part and extended the true-up date until July 1, 2009.⁸ The Commission found that circumstances had changed since the establishment of the initial true-up schedule, and that neither 800 MHz rebanding nor BAS relocation had progressed sufficiently to justify conducting the true-up as originally scheduled. However, the Commission declined to postpone the true-up indefinitely, noting that Sprint could incur sufficient creditable costs before the completion of rebanding to allow the true-up to proceed.⁹ The Commission therefore extended the true-up date until July 1, 2009, and directed the TA to file a report by May 1, 2009, with its recommendation on whether rebanding had progressed sufficiently that the true-up should be conducted on July 1, 2009, or whether it should be further postponed.¹⁰ The Commission also delegated authority to the Bureau to consider and grant further extensions of the true-up deadline based on the TA's recommendation.¹¹

5. The TA filed its report on May 1, 2009, recommending that the true-up be postponed until December 31, 2009.¹² The TA stated that while "there has been an incremental increase in the 800 MHz reconfiguration expenditures" since the release of the *Fourth Memorandum Opinion and Order*, "additional rebanding expenditures need to be made to provide a meaningful report of Sprint Nextel's total rebanding costs for both 800 MHz rebanding and for the relocation of BAS licensees."¹³ The TA therefore proposed that the true-up date be postponed until December 31, 2009, and that the TA file a report by November 1, 2009, with its further recommendation on whether rebanding has made sufficient progress to proceed with the true-up or whether the true-up should again be postponed.¹⁴

III. DISCUSSION

6. Based on the progress to date of 800 MHz rebanding and BAS relocation, we agree with the TA that a true-up of Sprint's rebanding expenditures as of July 1, 2009, would be premature because it would fail to take into account a large portion of Sprint's eventual cost obligation. While progress has been made in 800 MHz rebanding, a substantial number of licensees have yet to complete the process.¹⁵

⁷ *Id.*, 23 FCC Rcd at 18513-14 ¶ 6.

⁸ *Id.*, 23 FCC Rcd at 18512 ¶ 1.

⁹ *Id.*, 23 FCC Rcd at 18515 ¶ 11.

¹⁰ *Id.*, 23 FCC Rcd at 18515 ¶ 12.

¹¹ *Id.*

¹² Recommendation to Postpone 800 MHz Rebanding Financial True-Up, WT Docket 02-55, filed May 1, 2009 by the 800 MHz Transition Administrator, LLC, at 2. The TA recommends that the "'true-up', if not further extended, be performed based on expenditures as of December 31, 2009 . . . [and] that the TA have six months from [that date] to submit a final 'true-up' report to the Commission." *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ See Quarterly Progress Report, filed June 19, 2009 by the 800 MHz Transition Administrator, LLC. See also Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Order*, DA 09-1297 (PSHSB, rel. June 9, 2009).

Similarly, the Commission has recently extended the deadline for BAS relocation until February 8, 2010.¹⁶

7. We therefore extend the true-up date until December 31, 2009, and direct the TA to file a report by November 2, 2009,¹⁷ with its recommendation on whether the true-up should be conducted based on rebanding expenditures incurred by Sprint as of December 31, 2009, or further postponed. Should the true-up be conducted based on expenditures as of December 31, 2009, the TA shall submit its final true-up report by June 30, 2010. We emphasize that our action with respect to the true-up date is intended to have no impact on any other aspect of the timetable for either 800 MHz rebanding or BAS relocation.

IV. ORDERING CLAUSES

8. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.191, 0.392, and 90.677 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392, 90.677, IT IS ORDERED that, unless further extended, the true-up ordered in the *Fourth Memorandum Opinion and Order* SHALL BE CALCULATED based on rebanding expenditures by Sprint Nextel Corporation as of December 31, 2009.

9. IT IS FURTHER ORDERED that, unless the true-up is further extended, the 800 MHz Transition Administrator SHALL FILE its final true-up report by June 30, 2010.

10. IT IS FURTHER ORDERED that the Transition Administrator SHALL FILE in this docket its recommendation on further extension of the true-up date by November 2, 2009.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁶ See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order and Order and Further Notice of Proposed Rulemaking*, FCC 09-49 (2009).

¹⁷ The TA proposes to file its recommendation by November 1, 2009. Because this falls on a Sunday, we direct the TA to file by November 2, 2009.