

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
)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	
)	
Amendment of Part 2 of the Commission’s Rules To Allocate Spectrum Below 3 GHz for Mobile And Fixed Services to Support the Introduction Of New Advanced Wireless Services, Including Third Generation Wireless Systems)	ET Docket No. 00-258
)	
Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service)	ET Docket No. 95-18
)	

ORDER

Adopted: February 4, 2010

Released: February 5, 2010

By the Chief, Office of Engineering and Technology:

1. By this Order, we extend for an additional six months (*i.e.*, to August 9, 2010) the deadline by which Sprint Nextel Corporation (Sprint Nextel) is required to complete the transition of the broadcast auxiliary service (BAS) to frequencies above 2025 MHz in the following 28 markets: Anchorage, Alaska; St. Louis, Missouri; Minot-Bismarck-Dickinson, North Dakota; Missoula, Montana; Columbus and Dayton, Ohio; Buffalo, New York; Lexington, Kentucky; the tri-cities of Tennessee and Virginia; Des Moines-Ames, Sioux City, and Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; Honolulu, Hawaii; Butte-Bozeman, Montana; Wausau-Rhineland, Wisconsin; Davenport, Iowa-Rock island-Moline, Illinois; Spokane and Yakima-Pasco-Richland-Kennewick, Washington; Rochester Minnesota-Mason City, Iowa-Austin Minnesota; Portland, Eugene, Medford-Klamath Falls, and Bend, Oregon; Indianapolis, Fort Wayne, Evansville, and Lafayette, Indiana; and Albuquerque-Santa Fe, New Mexico.¹ As discussed below, we conclude that it serves the public interest to grant this limited waiver for 28 of the 213 BAS markets nationwide that are required to be relocated by February 8, 2010. This waiver is granted in response to the Joint Request Concerning the BAS Relocation (Request) filed by Sprint Nextel Corporation, the Association for Maximum Service Television, Inc. (MSTV), the National Association of Broadcasters (NAB), and the Society of Broadcast Engineers (SBE) (collectively, “the parties”) on December 31, 2009, the Supplement to the Joint Request Concerning the BAS Relocation

¹ For purposes of BAS relocation, markets are based on Nielsen Designated Market Areas (DMAs) as they existed on September 6, 2000. 47 C.F.R. § 74.690(3)(1)(i). For convenience, we refer to the DMAs as “markets” or “BAS markets.”

(Supplemental Request) filed by the parties on February 1, 2010, and the record of Sprint Nextel's BAS relocation efforts as documented in its bi-monthly reports to the Commission.

2. As background, 35 megahertz of BAS spectrum at 1990-2025 MHz was re-allocated in the year 2000 to the Mobile Satellite Service, which was made responsible for relocation of BAS operations to the re-defined BAS band at 2025-2110 MHz.² In 2003, a portion of this recovered spectrum (5 megahertz at 1990-1995 MHz) was reallocated for the Fixed and Mobile Services and subsequently, in 2004, assigned to Nextel Communications, Inc. (the predecessor in interest to Sprint Nextel) under the terms of the 800 MHz Order.³ Although both Sprint Nextel and MSS licensees have equal obligations to relocate the BAS incumbents, Sprint Nextel committed to the relocation of BAS incumbents in the 1990-2025 MHz band and was to complete the relocation in 2007.⁴ The Commission subsequently granted the parties a waiver to provide additional time to complete the BAS relocation by extending the relocation deadline to March 5, 2009, and holding in abeyance the parties' original request to move the relocation deadline to February 7, 2010.⁵ On June 12, 2009, the Commission issued a *Report and Order and Order and Further Notice of Proposed Rulemaking* that, among other things, waived until February 8, 2010 Sprint Nextel's BAS relocation deadline and removed restrictions that had prohibited MSS operators from beginning operations until the relocation of BAS in the thirty largest markets and of all fixed BAS links in all markets was completed.⁶

3. On December 31, 2009, the parties filed the Request, in which they recounted the progress made to date in Sprint Nextel's BAS relocation efforts, described the impediments that they have identified that will prevent completion of the BAS relocation nationwide by February 8, 2010, and sought a waiver of the relocation deadline in nine BAS markets until August 9, 2010.⁷ The Parties stated that, barring unforeseen circumstances, a waiver will "provide Sprint Nextel and the BAS licensees the time

² See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service*, ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, 15 FCC Rcd 12315 (2000). The BAS relocation procedures are codified in Sections 74.690 and 78.40 of the Commission's Rules. 47 C.F.R. §§ 74.690, 78.40.

³ See *Improving Public Safety Communications in the 800 MHz Band (800 MHz Order)*, WT Docket No. 02-55, ET Docket No. 00-258, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004).

⁴ The Commission had initially required that BAS relocation be completed within thirty months after the effective date of the *800 MHz Order*, i.e., May 7, 2007. *Id.* The Commission subsequently extended this deadline to September 7, 2007. See *Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding*, WT Docket No. 02-55, Public Notice (rel. Oct. 22, 2004).

⁵ *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, ET Docket 00-258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 4393 (2008) (*2008 Order*). The Commission had issued a number of short-term waivers in the period between the 2007 deadline and the *2008 Order*.

⁶ *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, ET Docket 00-258, ET Docket 95-18, *Report and Order and Order and Further Notice of Proposed Rulemaking*, FCC 09-49, 24 FCC Rcd 7904 (2009) (*2009 Order*).

⁷ Joint Request Concerning the BAS Relocation filed by Sprint Nextel Corporation, the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Society of Broadcast Engineers in WT Docket 02-55, ET Docket 00-258 and ET Docket 95-18 on December 31, 2009 (Request). The nine markets are Anchorage, Alaska; Portland, Eugene, Medford-Klamath Falls, and Bend, Oregon; Indianapolis, Fort Wayne, and Lafayette, Indiana; and Albuquerque, New Mexico. The parties indicated in the Request that the unpredictable nature of the BAS transition prevented them from identifying exactly which of the remaining markets would require additional time and that they would supplement the Request at a later date.

necessary to address a range of factors beyond their control,” and that unique circumstances of the BAS relocation justify grant of a waiver.⁸ On February 1, 2010 the parties filed the Supplemental Request in which they requested a waiver of the February 8, 2010 relocation deadline for an additional 19 markets.⁹ In the Supplemental Request, the parties provided a brief explanation of the reason that each of the 28 markets could not be transitioned by the deadline and an estimate of when each market would be transitioned. According to the Supplemental Request, of the 28 markets that have not been transitioned, 15 of them are expected to transition by the end of March 2010 and an additional 4 by the end of April 2010.

4. Two themes have emerged throughout the BAS relocation process: the transition has proven to be far more complicated than was first anticipated, and Sprint Nextel has made continued progress in its efforts to relocate the BAS markets.¹⁰ As we near the completion of this band transition, these themes remain true. In their Request and Supplemental Request, the parties describe a number of factors – such as installer constraints, weather conditions, manufacturer limitations, FCC license modification delays, and system complexity – that are causing Sprint Nextel to expect that it will not be able to finalize the nationwide BAS transition by February 8, 2010. For each of the 28 markets for which the parties are seeking a waiver, the Request and Supplemental Request specifically state how one or more of these factors will prevent the timely completion of the BAS relocation in that particular market. We conclude that these continue to be the types of circumstances that Sprint Nextel could not have reasonably avoided, that Sprint Nextel has shown substantial progress by completing the relocation of incumbents in more than 86 percent of the nation’s BAS markets, and that a limited waiver to permit it to finish the transition is consistent with the Commission’s past decisions in this proceeding.

5. Section 1.925(b)(3) of the Commission’s Rules requires parties seeking a waiver to demonstrate that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ In this case, we agree with the parties that strict application of the existing February 8, 2010 BAS relocation deadline would not serve the public interest. Removing Sprint Nextel from the BAS relocation process at this stage – just as it has relocated substantially all of the nation’s BAS facilities – would frustrate our goal of transitioning BAS licensees to the new band plan as expeditiously as possible without unduly disrupting the newsgathering activities of the incumbent BAS licensees. Moreover, because the Commission’s decision in the *2009 Order* provided a mechanism by which MSS entities may operate in the band prior to the conclusion of the BAS relocation, the grant of additional time for Sprint Nextel to relocate the final 28 of 213 markets is not unduly burdensome – particularly in light of the overall record of this proceeding. We are therefore waiving the deadline for Sprint’s completion of the BAS relocation to August 9, 2010, as requested.

⁸ Request at 2-3.

⁹ Supplement to the Joint Request Concerning the BAS Relocation, the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Society of Broadcast Engineers in WT Docket 02-55, ET Docket 00-258 and ET Docket 95-18 on December 31, 2009 (Supplemental Request). The additional markets are: St. Louis, Missouri; Minot-Bismarck-Dickinson, North Dakota; Missoula, Montana; Columbus and Dayton, Ohio; Buffalo, New York; Lexington, Kentucky; the tri-cities of Tennessee and Virginia; Des Moines-Ames, Sioux City, and Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; Honolulu, Hawaii; Butte-Bozeman, Montana; Wausau-Rhineland, Wisconsin; Davenport, Iowa- Rock island-Moline, Illinois; Spokane and Yakima-Pasco-Richland-Kennewick, Washington; Rochester Minnesota-Mason City, Iowa-Austin Minnesota; and Evansville, Indiana.

¹⁰ See, e.g., *2008 Order*, 23 FCC Rcd at 4407, ¶31; *2009 Order*, 24 FCC Rcd at 7916, ¶29.

¹¹ 47 C.F.R. §1.925(b)(3).

6. In conjunction with the decision to extend the BAS relocation deadline, we discuss two related matters. First, in its *2009 Order*, the Commission noted the possibility that individual BAS licensees could act to delay or frustrate the transition, and sought comment on actions it should take if a BAS licensee has not completed relocation prior to February 9, 2010.¹² The parties' Request and Supplemental Request describe a wide variety of factors that have delayed the BAS transition in the remaining markets. These factors do not include problems with cooperation by BAS licensees. In addition, the BAS relocation is now essentially complete in all of the 185 other TV markets and 15 additional markets are expected to be completed by the end of the March 2010. We therefore do not see the need to address the matter of any uncooperative BAS licensees as part of this decision.¹³ Because the rule provision that BAS licensees are primary in the band until they are relocated, they refuse relocation, or the relocation rules sunset on December 9, 2013 remains in effect, any MSS operations in the 2000-2020 MHz band prior to the conclusion of the nationwide BAS relocation must continue to be conducted consistent with the process described in the *2009 Order* until the Commission addresses this matter further.¹⁴ Second, we conclude that because of the relatively short duration of the relocation deadline extension, it serves the public interest to have timely notice when each of the remaining BAS markets is relocated. We establish the following new reporting requirement, which shall remain in effect for the duration of the relocation process. Once the BAS relocation has been completed in each of the remaining markets, Sprint Nextel shall file a brief notice in this docket memorializing the completion date and indicating whether any of the remaining markets to be relocated are not on schedule to be completed by the dates indicated in the Supplemental Request. To the extent that a particular market's anticipated relocation date is later than that projected in the Supplemental Request, Sprint Nextel must provide a more detailed discussion of why it revised the estimated completion date.

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 C.F.R. §§ 154(i) and (j), and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that the deadline by which Sprint Nextel must complete relocation of the broadcast auxiliary service to frequencies above 2025 MHz IS WAIVED until August 9, 2010 for the 28 Designated Market Areas described herein.

8. IT IS FURTHER ORDERED that the Joint Request is GRANTED consistent with the terms of this order.

9. IT IS FURTHER ORDERED that Sprint Nextel's IS REQUIRED to notify the Commission upon the completion of BAS relocation in each of the 28 remaining unrelocated markets, as described herein.

10. IT IS FURTHER ORDERED that this Order is effective upon its release.

¹² *2009 Order*, 24 FCC Rcd at 7944-46, ¶¶109-13. For example, the Commission asked about changing a BAS licensee's status for interference purposes.

¹³ Based on the descriptions provided in the appendix to the Request, it does not appear that any individual BAS licensee's actions are, by themselves, the reason that market transition is not expected to be completed by February 8; nor is it obvious that, where a BAS licensee's actions have contributed to delays, the BAS licensee acted in an uncooperative manner or otherwise demonstrated bad faith.

¹⁴ See *2009 Order*, 24 FCC Rcd at 7922-27, ¶¶47-59. See also 47 C.F.R. §§ 74.690, 78.40.

11. This action is taken under delegated authority pursuant to Sections 0.31 and 0.241 of the Commission's rules, 47 C.F.R. §§ 0.31 and 0.241.

FEDERAL COMMUNICATIONS COMMISSION

Julius P. Knapp
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