

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

In the Matter of
City of Billings, Montana
and Sprint Nextel Corporation
Mediation No. TAM-43313
WT Docket No. 02-55

ORDER

Adopted: March 26, 2010

Released: March 26, 2010

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

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) addresses two related requests from Sprint Nextel Corporation (Sprint): (1) a Petition for Reconsideration of the Bureau's May 15, 2009, decision to grant the City of Billings, Montana (Billings) a waiver (Cost Waiver) requiring Sprint to reimburse Billings for costs associated with rebanding facilities authorized to Billings under Special Temporary Authorization (STA) WQJM353, and (2) an informal request to stay the parties' negotiation of this matter pending the Bureau's assessment of the evidence Sprint has adduced in support of its Petition to Reconsider. For the reasons set forth below, we deny both requests and instruct both parties to proceed with negotiation and mediation as directed by the 800 MHz Transition Administrator (TA).

II. BACKGROUND

2. On December 31, 2008, Billings filed a request for waiver to require Sprint to pay for rebanding of mutual aid facilities authorized to Billings under STA WQJM353. Over Sprint's objection, the Bureau granted the request on May 15, 2009. The same day, Sprint submitted a Petition for Reconsideration (Petition), arguing that Billings had failed to provide documentation of the existence and operational status of its mutual aid system sufficient to justify grant of the Cost Waiver. On July 15, 2009, Sprint Nextel filed a supplement to its Petition (Supplement), claiming that, although a site visit

1 See Petition for Reconsideration of City of Billings, Montana, Cost Waiver filed by Sprint Nextel Corporation (filed May 15, 2009) (Petition).

2 See Supplemental Information to Support Sprint Nextel's Petition for Reconsideration Regarding City of Billings Request for Cost Waiver filed by Sprint Nextel Corporation at 6 (filed July 15, 2009) (Supplement).

3 See Request for Waiver filed by the City of Billings, Montana (filed Dec. 31, 2008) (Waiver Request).

4 See Opposition to City of Billings, Montana, Request for Waiver filed by Sprint Nextel Corporation (filed Apr. 3, 2009) (Sprint Opposition).

5 See Letter from Michael J. Wilhelm, Public Safety and Homeland Security Bureau, to Alan S. Tilles, Esq. (dated May 15, 2009) (Cost Waiver).

6 See Petition. Sprint submitted its Petition in the form of a letter to the Acting Chief of the Public Safety and Homeland Security Bureau but did not file its Petition, as the Commission's rules require, with the Office of the Secretary. See 47 C.F.R. § 1.106(i). Although Sprint's Petition is therefore subject to dismissal on procedural grounds, we address the merits of the Petition herein.

confirmed the existence of Billings' mutual aid system, the system is not properly configured to provide interoperability with other public safety agencies during a mutual aid event.⁷ The Supplement also informally requests that the Bureau stay the parties' negotiation of this matter while the Bureau considers the legitimacy of Billings' mutual aid operations in light of the evidence contained in the Supplement.⁸ On July 30, 2009, Billings filed a motion to dismiss Sprint's Supplement.⁹ Sprint filed an opposition to Billings' motion on August 6, 2009.¹⁰

III. DISCUSSION

3. We find that Sprint has not presented sufficient evidence to merit reconsideration of our grant of the Cost Waiver. At the time Billings sought the waiver, Sprint challenged the existence and operational status of the Billings mutual aid system as a basis for denial of the waiver. We stated in granting the Cost Waiver that "the existence of [Billings'] mutual aid system . . . will necessarily be resolved when the time arrives to retune Billings' 800 MHz infrastructure."¹¹ Sprint has since conducted its own investigation, which confirms the system's existence.¹² Moreover, the evidence Sprint submitted in its Petition and Supplement does not refute Billings' contention that its mutual aid system, despite its unusual configuration, is necessary to facilitate interoperable communications with Yellowstone County and "to ensure safety of life on an everyday basis" and during emergencies.¹³

4. Because there are no other 800 MHz public safety systems in the area, Billings acknowledges that it uses its mutual aid facilities for other purposes such as cross-band operations. This does not, however, disqualify Billings' system from being eligible for rebanding. Such use of mutual aid channels for purposes other than 800 MHz mutual aid interoperability is allowed on a secondary basis under the Commission's rules.¹⁴ Should the occasion arise when the repeater is needed for in-band 800 MHz mutual aid purposes, Billings can manually reconfigure it to that function. Sprint also argues that Billings could have used other non-mutual aid frequencies in the interleaved portion of the band to support its repeater and simplex operations.¹⁵ However, there is no Commission rule that requires licensees to use interleaved channels rather than NPSPAC channels for such operations. Accordingly, we reject Sprint's suggestion that the Bureau should require Billings to relocate its facilities to the interleaved segment of the 800 MHz band at its own expense.

5. We also find that Sprint has failed to satisfy the requirements for a stay of negotiation of this matter. Sprint would be entitled to a stay only upon a showing that "(i) [Sprint is] likely to prevail on the merits; (ii) [Sprint] will suffer irreparable harm absent a stay; (iii) other interested parties will not be

⁷ See Supplement.

⁸ See Supplement at 6.

⁹ See Motion to Dismiss filed by the City of Billings, Montana (filed July 30, 2009).

¹⁰ See Opposition to Motion to Dismiss filed by Sprint Nextel Corporation (filed Aug. 6, 2009) (Sprint Opposition to Motion to Dismiss).

¹¹ Bureau Letter at 3.

¹² Sprint Opposition to Motion to Dismiss at 1, 2.

¹³ See File No. 0003610418 (Oct. 30, 2008) (STA Justification Letter).

¹⁴ See 47 C.F.R. § 90.720(b).

¹⁵ See Sprint Opposition to Waiver at 7.

harmful if the stay is granted; and (iv) the public interest favors grant of the stay.”¹⁶ Because Sprint’s informal stay request does not address these well-established criteria, we deny the request. We therefore deny Sprint’s Petition and direct both parties to proceed with negotiation and mediation as directed by the TA.

IV. ORDERING CLAUSES

6. 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 the informal stay request filed by Sprint Nextel Corporation is DENIED.

7. IT IS FURTHER ORDERED that the Petition to Reconsider filed by Sprint Nextel Corporation is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁶ City of Boston, Massachusetts and Sprint Nextel Corporation, *Order*, 22 FCC Rcd 2361, 2364 (PSHSB 2007); see also *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metropolitan Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).