

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

In the Matter of
Improving Public Safety Communications in the
800 MHz Band
Relinquishment By Sprint Nextel of Channels in
the Interleaved, Expansion, and Guard Bands
WT Docket 02-55

ORDER

Adopted: March 31, 2010

Released: March 31, 2010

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this order, we partially grant the January 27, 2010, Request for Waiver filed by Sprint Nextel Corporation (Sprint), in which Sprint asks that the Commission modify the requirement that Sprint vacate its non-border spectrum holdings in the 800 MHz "Interleaved Band" (809-815/854-860 MHz) by March 31, 2010. Sprint seeks relief from the March 31, 2010 deadline in 21 of 46 non-border NPSAC 800 MHz Public Safety Regions. We deny Sprint's request to vacate the deadline altogether in the 21 regions, but extend the deadline in those regions until March 31, 2011. We also require Sprint to relinquish "Stage 2" (809.5-810.5/854.5-855.5 MHz) channels in the 21 regions on an accelerated basis.

II. BACKGROUND

2. In the 800 MHz Report and Order, the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. As one element of rebanding, Sprint agreed to vacate all of its 800 MHz spectrum holdings in the "Mid-Band" (809-817/854-862 MHz) that were not otherwise used to accommodate rebanding of 800 MHz incumbents. The Commission further provided that the vacated channels in the Interleaved Band would be made exclusively available for new licensing to public safety for three years after the completion of rebanding in each public safety region, and would be exclusively available to public safety and critical

1 For this purpose, we define "non-border spectrum" to include spectrum in NPSAC public safety regions in Waves 1 through 3 and in non-border portions of the Wave 4 regions where licensees subject to rebanding received replacement frequency assignments from the 800 MHz Transition Administrator (TA) prior to June 26, 2008.

2 Request for Waiver, filed by Sprint Nextel Corporation, January 27, 2010 (Sprint Petition).

3 Id.

4 Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, et al., Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) (800 MHz Report and Order). See also Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004) (800 MHz Supplemental Order); Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005); Second Memorandum Opinion and Order, 22 FCC Rcd 10467 (2007).

5 800 MHz Report and Order, 19 FCC Rcd at 15046-47 ¶ 146.

infrastructure industry (CII) eligibles for the following two years.⁶ The vacated channels in the Expansion Band and Guard Band would be made available for licensing under their pre-rebanding pool categories.⁷

3. In the *800 MHz 3rd MO&O*, the Commission affirmed that Sprint was required to vacate the Mid-Band in non-border NPSPAC regions by the end of the 36-month rebanding transition period, *i.e.*, by June 26, 2008, regardless of whether other elements of the rebanding transition were complete.⁸ Sprint appealed the *800 MHz 3rd MO&O* to the United States Court of Appeals for the District of Columbia Circuit, contending that it was not required to vacate the Mid-Band in any NPSPAC region until all public safety licensees in the region had completed rebanding, even if the completion of rebanding took longer than 36 months. On May 2, 2008, the Court upheld the Commission's decision in full.⁹

4. On June 17, 2008, Sprint filed a petition for relief, requesting that the Commission authorize it to relinquish its non-border spectrum holdings in the Mid-Band in six stages based on the region-by-region progress made by public safety licensees in retuning their systems from the old NPSPAC band (821-824/866-869 MHz) to the new NPSPAC band (806-809/851-854 MHz).¹⁰ On October 30, 2008, the Commission granted Sprint's request in part.¹¹ The Commission ordered Sprint to relinquish this spectrum in the following stages, tied to the progress towards completion of rebanding achieved by 800 MHz NPSPAC licensees in each NPSPAC region:

- Stage 1: Channels in the 809-809.5/854-854.5 MHz block made available in each region immediately.¹²
- Stage 2: Channels in the 809.5-810.5/854.5-855.5 MHz block made available in each region when 25% of old NPSPAC channels are clear in the region.
- Stage 3: Channels in the 810.5-812/855.5-857 MHz block made available in each region when 50% of old NPSPAC channels are clear in the region.

⁶ *Id.* at 15052 ¶ 152.

⁷ *Id.* at 15051-52 ¶ 151. In order to consolidate public safety spectrum in the lower portion of the 800 MHz band, the Commission reclassified 12 Public Safety channels in the Expansion Band as SMR channels, and reclassified 12 SMR channels in the Interleaved Band as Public Safety channels. *Id.* at 15053 ¶ 155.

⁸ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Third Memorandum Opinion and Order*, 22 FCC Rcd 17209, 17217 ¶ 28 (2007) (*800 MHz 3rd MO&O*). The *800 MHz 3rd MO&O* deferred consideration of Sprint's spectrum-clearing obligations in border areas to a later date. *Id.* at 17216-17 ¶ 25 n.56.

⁹ *Sprint Nextel Corp. v. FCC*, 524 F.3d 253 (D.C. Cir. 2008).

¹⁰ Petition for Relief, filed by Sprint Nextel Corporation, June 17, 2008.

¹¹ Improving Public Safety Communications in the 800 MHz Band, Relinquishment By Sprint Nextel of Channels in the Interleaved, Expansion, and Guard Bands, WT Docket No. 02-55, *Order*, 23 FCC Rcd 15966 (2008) (*Vacated Spectrum Order*).

¹² Stage 1 channels were vacated and made available to public safety in early 2009. See Public Safety and Homeland Security Bureau Announces Application And Licensing Procedures For Channels Relinquished By Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band, *Public Notice*, 23 FCC Rcd 18343 (PSHSB 2008). Since then, additional channels from Stage 2 and subsequent stages have been made available in some regions. See Public Safety and Homeland Security Bureau Announces Application And Licensing Procedures For Channels Relinquished By Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band, *Public Notice*, 24 FCC Rcd 13236 (PSHSB 2009).

- Stage 4: Channels in the 812-814/857-859 MHz block made available in each region when 75% of old NPSPAC channels are clear in the region.
- Stage 5: Channels in the 814-816/859-861 MHz block made available in each region when 90% of old NPSPAC channels are clear in the region.
- Stage 6: Channels in the 816-817/861-862 MHz Guard Band block made available in each region when 100% of old NPSPAC channels are clear in the region.¹³

5. In addition, the Commission established March 31, 2010 as a backstop date for Sprint to relinquish all of its remaining non-border spectrum in the Interleaved Band, *i.e.*, all channels below 815/860 MHz, regardless of whether rebanding in non-border regions had achieved the above thresholds.¹⁴

6. On January 27, 2010, Sprint filed the instant Request for Waiver, asking the Commission to waive the March 31, 2010 deadline for relinquishing non-border Interleaved Band channels in 21 of 46 non-border NPSPAC Regions.¹⁵ Sprint contends that while there has been considerable rebanding progress across the country as a whole, progress varies significantly on a region-by-region basis.¹⁶ Sprint specifically notes that in 25 non-border NPSPAC Regions, Phase II public safety rebanding has not reached the 25 percent completion benchmark that triggers release of Stage 2 Interleaved channels under the process established in the *Vacated Spectrum Order*.¹⁷ Sprint also notes that in these regions, Sprint is precluded from transitioning its operations to the old NPSPAC channels because these channels continue to be heavily occupied by public safety licensees that have not yet completed rebanding.¹⁸ Consequently, if Sprint is required to relinquish all of its interleaved channels, it will face a significant loss of channel capacity in these regions.¹⁹ Sprint argues that strict enforcement of the March 31, 2010 deadline will not increase the pace of rebanding in the 21 NPSPAC regions for which it seeks relief, but could subject Sprint's customers to service degradations or interruptions.²⁰

7. On February 3, 2010, the Association of Public Safety Communications Officials International (APCO), the International Association of Fire Chiefs (IAFC) and the International Association of Chiefs of Police (IACP) (collectively, Public Safety Parties) filed a joint opposition to Sprint's request,²¹ stating that the Commission established the March 31, 2010 deadline to provide public

¹³ *Id.* at 15972-73 ¶17.

¹⁴ *Id.*

¹⁵ Sprint Petition at 1. Sprint seeks relief for the following NPSPAC Regions: 1 – Alabama; 6 – Northern California; 8 – New York Metro; 9 – Florida; 14 – Indiana; 16 – Kansas; 18 – Louisiana; 19 – New England; 20 – Maryland, Washington, DC, Northern Virginia; 27 – Nevada; 28 – New Jersey, Eastern Pennsylvania, Delaware; 31 – North Carolina; 34 – Oklahoma; 36 – Western Pennsylvania; 37 – South Carolina; 39 – Tennessee; 40 – Dallas, Texas; 42 – Virginia; 49 Austin, Texas; 51 – Houston, Texas; 54 – Chicago Metro. *Id.* at Attachment A.

¹⁶ Sprint Petition at 3.

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Letter from Robert M. Gurs, Director, Legal & Government Affairs, APCO International; Harlin R. McEwen, Chairman, IACP Communications & Technology Committee; and Alan Caldwell, Senior Advisor, Government Relations, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, Federal Communications Commission, February 3, 2010 (Public Safety Joint Opposition).

safety with certainty regarding when Interleaved Band spectrum would become available.²² The Public Safety Parties also argue that allowing Sprint to remain in the Interleaved Band perpetuates the potential for interference that the 800 MHz proceeding was designed to avoid.²³ On February 4, 2010, the Region 39 Regional Planning Committee (Tennessee) filed a letter endorsing the Public Safety Parties' position.²⁴

8. On February 16, 2010, Sprint responded to the Joint Opposition and the Region 39 opposition,²⁵ contending that it is seeking relief only because public safety licensees in the 21 regions are "seriously behind" in completing rebanding, even though Sprint has negotiated rebanding agreements with 95 percent of all licensees.²⁶ Sprint argues that in the 21 regions that are the subject of the Waiver Request, the Commission's stage-by-stage formula for relinquishment of Interleaved Band channels will ensure that Sprint continues to make spectrum available to public safety as rebanding progresses while providing an incentive to public safety licensees to accelerate their rebanding efforts.²⁷ Sprint also contends that completing rebanding more quickly will alleviate public safety's interference concerns.²⁸

9. On March 26, 2010 – only days before the instant order's release - Smartcomm, L.L.C. (Smartcomm), which represents that it is a potential applicant for channels in the 800 MHz Expansion Band and Guard Band, filed an opposition to Sprint's waiver request, accompanied by a motion to accept its late-filed pleading.²⁹ Also, on March 26, 2010, Concepts to Operations filed a letter with the Commission's Secretary, supporting the Public Safety Parties' position.

III. DISCUSSION

10. In the *Vacated Spectrum Order*, the Commission established a process under which Sprint was to clear the Mid-Band in stages.³⁰ This process was intended to balance the need to reduce the potential for interference and increase the amount of 800 MHz spectrum available for public safety use against the need to avoid serious disruption to Sprint's network and customers.³¹ As Sprint notes, considerable progress has been made in rebanding since the release of the *Vacated Spectrum Order*.³² However, this progress has not been universal, as rebanding in some non-border regions continues to lag

²² *Id.* at 2.

²³ *Id.*

²⁴ Letter from John Johnson, Chairman, NPSPAC Region 39, to Marlene H. Dortch, Secretary, Federal Communications Commission, February 4, 2010.

²⁵ Letter from Lawrence R. Krevor, Vice-President- Spectrum, Sprint Nextel and James B. Goldstein, Director, Spectrum Reconfiguration, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, February 16, 2010 (Sprint Reply)

²⁶ *Id.* at 2-3.

²⁷ *Id.* at 8-9.

²⁸ *Id.* at 9.

²⁹ Opposition of Smartcomm, L.L.C. to Sprint Nextel Corporation's Request for Waiver of its Obligation to Relinquish Channels in the 800 MHz Interleaved, Expansion and Guard Bands, filed Mar. 26, 2010 (Smartcomm Opposition); Motion for Leave to File Opposition or for Acceptance as Informal Objection, filed Mar. 26, 2010 (Smartcomm Motion).

³⁰ See *Vacated Spectrum Order*, 23 FCC Rcd at 15972-73 ¶ 17.

³¹ *Id.* at 15970-71 ¶¶ 10, 13.

³² Sprint Petition at 2.

significantly, and many public safety licensees continue to require extensions to complete rebanding.³³ The TA's most recent Quarterly Progress Report shows there are eight non-border NPSPAC regions where no old NPSPAC channels have been fully cleared.³⁴

11. Thus, we find ourselves facing a similar situation to that faced by the Commission when it adopted the *Vacated Spectrum Order*, albeit on a smaller scale. Specifically, in the subset of regions where rebanding is taking the longest, we must continue to make spectrum available to public safety and reduce the potential for harmful interference while avoiding a substantial impact on Sprint's network and customer base. We find that Sprint's proposal is generally consistent with these objectives, but we also impose certain conditions to address public safety's concerns over access to additional public safety spectrum.

12. First, we affirm that the *Vacated Spectrum Order* continues to apply in full to the 25 non-border regions in which Sprint has not sought additional relief. Thus Sprint must vacate its Interleaved Band spectrum in those regions by March 31, 2010 as previously ordered.³⁵ This will provide an immediate source of available spectrum to public safety in those regions. We will issue a Public Notice at a later date to announce a filing window and application procedures for these channels.

13. Second, in the 21 regions in which Sprint has sought waiver relief, we extend the deadline for Sprint to vacate the Interleaved Band from March 31, 2010 to March 31, 2011. We extend rather than eliminate the deadline as an incentive to Sprint to fully cooperate with relocating licensees in the completion of rebanding. This will also provide public safety with certainty regarding when such spectrum will become available to meet public safety demand, and will increase the spectral separation between Sprint and public safety.

14. Third, we will require Sprint to relinquish Stage 2 channels in the 21 regions on an accelerated basis, by lowering the threshold for Stage 2 clearing from 25 percent to 10 percent. This will hasten the influx of new public safety spectrum in these regions while still providing incentives for public safety to timely complete rebanding and avoid avoiding significant harm to Sprint's customers.

15. In all other respects, the channel clearing procedures that the Commission established in the *Vacated Spectrum Order* remain in effect. In taking these actions, we make no finding regarding the degree to which Sprint's inability to vacate channels by prior deadlines is due to factors within or beyond Sprint's control, and defer consideration of such issues to a later date.³⁶

16. Finally, we deny Smartcomm's motion to late-file its opposition to the Sprint waiver request and we dismiss its opposition. Section 1.45 of the Commission's rules provides that oppositions

³³ In a companion order that we are releasing today, we are granting supplemental extensions to several hundred NPSPAC licensees that require additional time to complete rebanding. Improving Public Safety Communications in the 800 MHz Band, Supplemental Requests for Waiver of June 26, 2008 Rebanding Deadline, WT Docket 02-55, *Order*, DA 10-574 (rel. Mar. 31, 2010).

³⁴ See The 800 MHz Transition Administrator, LLC Quarterly Progress Report For The Quarter Ended December 31, 2009, Appendix 2. These NPSPAC Regions are: 4 – Arkansas; 9 – Florida; 18 – Louisiana; 20 – Maryland, Washington, DC, Northern Virginia; 28 – New Jersey, Eastern Pennsylvania, Delaware; 31 – North Carolina ; 37 – South Carolina; 51 – Houston, Texas.

³⁵ As provided in the *Vacated Spectrum Order*, Sprint may remain on Interleaved Band channels past this date, but must vacate any channel on 60 days notice that a public safety agency is prepared to commence operating on the channel. *Vacated Spectrum Order* at 23 FCC Rcd 15974 ¶ 19. Sprint also may remain on Expansion Band and Guard Band channels in each region until the relevant NPSPAC clearing threshold is reached. *Id.* at 23 FCC Rcd 15972-73 ¶ 17.

³⁶ See *id.* at 23 FCC Rcd 15971 ¶ 16.

to any motion, petition, or request be filed within 10 days of the filing date of the underlying pleading.³⁷ Sprint filed its waiver request on January 27, 2010, causing oppositions to be due no later than February 8, 2010. Smartcomm's filing was thus untimely by 46 days. In its request for acceptance of its late-filed pleading, Smartcomm avers that it only recently obtained outside counsel and alleges that the matters raised in its opposition have public interest importance.³⁸ We find neither argument persuasive. Smartcomm fails to explain why it could not have retained outside counsel earlier, and its assertion that it has raised public interest considerations in its pleading is unsupported and insufficient to overcome "the policy of the Commission that extensions of time shall not be routinely granted."³⁹ In the alternative, Smartcomm asks that its opposition be treated as an informal request for Commission action under Section 1.41 of the Commission's rules. Acceptance of Smartcomm's request pursuant to Section 1.41 of the Rules is discretionary.⁴⁰ In support of its request, Smartcomm states only that treating its opposition as an informal request would advance the public interest and allow the issues raised in Sprint's petition to be "fully aired."⁴¹ Such generalized claims are insufficient to merit our accepting the Smartcomm pleading as an informal request for Commission action. We therefore deny Smartcomm's motion and dismiss its opposition. We also dismiss the letter filed by Concepts to Operations, which was late-filed and does not reflect that it was served on Sprint.⁴²

IV. ORDERING CLAUSES

17. 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, 1.46 and 90.677 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392, 90.677, the Motion for Leave to File Opposition or for Acceptance as Informal Objection filed by Smartcomm, L.L.C IS DENIED.

18. It is FURTHER ORDERED, that the Opposition to Sprint Nextel Corporation's Request for Waiver of its Obligation to Relinquish Channels in the Interleaved, Expansion and Guard Bands, filed by Smartcomm, L.L.C. IS DISMISSED.

19. IT IS FURTHER ORDERED, that the letter of March 26, 2010, filed by Concepts to Operations IS DISMISSED.

20. IT IS FURTHER ORDERED that this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau

³⁷ 47 C.F.R. § 1.45.

³⁸ Smartcomm Motion at 1-2.

³⁹ 47 C.F.R. § 1.46. *See, e.g.*, Association for Community Education, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 12682, 12684 (2004) (dismissing opposition late-filed by 30 days).

⁴⁰ *See* National Ready Mixed Concrete Co., *Memorandum Opinion and Order*, 23 FCC Rcd 5250, 5251 n.12 (2008). *See also* Charles T. Crawford, *et al.* *Memorandum Opinion and Order*, 17 FCC Rcd 19328, 19329 (2002) (Commission not obligated to consider informal requests).

⁴¹ Smartcomm Motion at 2.

⁴² *See* 47 C.F.R. § 1.47 (Service of Documents and Proof of Service).