



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 10-1739

Released: September 15, 2010

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES THAT THE 18-MONTH TRANSITION PERIOD FOR 800 MHz BAND RECONFIGURATION IN PUERTO RICO (REGION 47) WILL COMMENCE ON SEPTEMBER 20, 2010

Bureau Approves Puerto Rico Implementation Plan Submitted by the 800 MHz Transition Administrator and Establishes Application Freeze Dates

WT Docket No. 02-55

By this *Public Notice*, the Public Safety and Homeland Security Bureau (Bureau) announces that the 18-month transition period for reconfiguration of 800 MHz licensees in Puerto Rico will begin on September 20, 2010. As specified in the *800 MHz Third R&O*, which established the 800 MHz band reconfiguration plan for Puerto Rico,¹ affected 800 MHz licensees must complete band reconfiguration within this 18-month transition period, which will end on March 19, 2012.²

Implementation Plan

On August 23, 2010, as directed by the Bureau in the *800 MHz Third R&O*,³ the 800 MHz Transition Administrator, LLC, (TA) filed an implementation plan and timetable for 800 MHz band reconfiguration in Puerto Rico.⁴ The Implementation Plan establishes a two-stage process for rebanding in Puerto Rico.⁵ In Stage 1, all Channels 1-120 incumbent licensees clear their frequencies to allow for NPSPAC licensees to be relocated to these frequencies.⁶ In Stage 2: (a) NPSPAC licensees relocate 15

¹ See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4443, 4451 ¶ 22 (2010) (*Third R&O*). Petitions for reconsideration pending. The effective date of the *Third R&O* was July 22, 2010.

² *Id.* at 4450 ¶ 20. The *Third R&O* provided that the 18-month period would begin 60 days after the effective date of the order. *Id.* The order became effective on July 22, 2008, 30 days after publication in the Federal Register. *Id.* at 4453 ¶ 31; see 75 Fed. Reg. 35363 (June 22, 2010).

³ *Third R&O* at 4450 ¶ 22.

⁴ Implementation Plan and Timetable for the Reconfiguration of the 800 MHz Band in Puerto Rico, filed August 23, 2010 (Implementation Plan).

⁵ As noted in the *Third R&O*, a third stage may be necessary to accommodate licensees relocating to the ESMR band, and there may be a *pro rata* distribution of ESMR channels. See *Third R&O*, 25 FCC Rcd at 4450 ¶ 23; see also Implementation Plan at 6.

⁶ See Implementation Plan at 9. We note that the TA filed a Petition for Waiver to permit NPSPAC licensees to relocate to the new NPSPAC band. *Id.* at 10; see 800 MHz Transition Administrator, LLC, Request for Waiver filed Aug. 23, 2010. The TA notes that there are five NPSPAC licensees, all of which have already negotiated FRAs with Sprint Nextel. Implementation Plan at 10. Given that Preferred Acquisition, Inc. (PAI) must, but has not as yet, relocated from the new NPSPAC band, these NPSPAC licensees cannot relocate to the new NPSPAC band because their replacement frequencies would violate the Commission's short-spacing rules relative to PAI's unconstructed licenses. *Id.* The TA filed a request for waiver of Section 90.621(b) of the FCC's rules to allow for the public

MHz lower to the new NPSPAC Band; (b) high-site incumbent licensees relocate from the ESMR Band to the Interleaved Band; and (c) site-based licensees that are part of an EA election relocate from the Interleaved, Expansion, and Guard Bands into the ESMR Band.⁷ If necessary, in Stage 3, the licenses of Preferred Communication Systems, Inc. (PCSI) and Preferred Acquisitions, Inc. (PAI) (collectively Preferred) will be relocated to the ESMR band subject to a *pro rata* apportionment of ESMR spectrum.⁸ The Implementation Plan contains a more detailed timetable with sequential milestones for completion of each stage of the implementation process.⁹ By this *Public Notice*, the Bureau approves the Implementation Plan as filed.¹⁰

Affected Licensees

The Implementation Plan applies to all 800 MHz licensees in Puerto Rico that have not yet completed reconfiguration negotiations with Sprint due to the suspension of the rebanding timetable in Puerto Rico.¹¹

Planning and Negotiation Timelines

Puerto Rico licensees must comply with the timelines specified in the Implementation Plan for procurement of planning funding, planning and development of cost estimates, and negotiation of Frequency Reconfiguration Agreements (FRAs) with Sprint Nextel Corporation (Sprint).¹²

- The 90 day mandatory negotiation period for the licensees that must be returned from the 816.5-821/861.5-866 MHz portion of the band begins on September 20, 2010 and ends on December 20, 2010.
- Licensees in the modified Guard Band (816.5-817/861.5-862 MHz) may elect to relocate to the Interleaved or Expansion Bands by September 20, 2010.
- Licensees should prepare and submit a complete cost estimate – an estimate of all costs associated with the reconfiguration of their radio systems – to Sprint Nextel as soon as possible in the 90 day mandatory negotiation period, but no later than October 19, 2010.¹³

safety licensees to proceed with the reconfiguration of their systems. *Id.* citing 47 C.F.R. § 90.621(b). The TA's waiver request will be addressed in a subsequent order.

⁷ *Id.* Implementation Plan at 10. The TA notes that EA licensee, North Sight Communications, Inc., has elected to remain in the ESMR band and that EA licensee, Preferred, has elected to relocate to the ESMR band. *Id.*

⁸ *Id.* at 6.

⁹ *Id.* at 3-12.

¹⁰ Our approval of the Implementation Plan is without prejudice to resolution of issues raised in the pending Petitions for Reconsideration of the *Third R&O*. We will address those petitions separately at a later date.

¹¹ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467, 10479-80 ¶ 33 (2007) (suspending the rebanding timetable for Puerto Rico until a new band plan was adopted).

¹² See *Third R&O*, 25 FCC Rcd at 4450 ¶ 22.

¹³ Licensees may email their cost estimates to Sprint at 800mhz@sprint.com.

- If the parties have not negotiated an FRA and submitted it to the TA by December 20, 2010, they must participate in mediation during a mediation period beginning on December 21, 2010 and ending on February 3, 2011.¹⁴
- High-site licensees clearing the ESMR Band shall complete reconfiguration by September 20, 2011.¹⁵
- All other licensees, including NPSPAC, shall complete reconfiguration by March 19, 2012.

Application Freeze

In the *Third R&O*, the Bureau also extended the filing freeze on new applications in the Puerto Rico region until thirty working days after the date for completion of mandatory negotiations.¹⁶ The Bureau stated that “the [application] freeze shall commence 30 days from the effective date of this *Third Report and Order and Third Further Notice of Proposed Rulemaking* [i.e. August 23, 2010].”¹⁷ The application freeze shall end February 3, 2011, which is 30 working days after the date for completion of mandatory negotiations.¹⁸

The Bureau said that “the freeze does not apply to modification applications that do not change an 800 MHz frequency or expand an 800 MHz station’s existing coverage area (e.g., administrative updates, assignments/transfers, or renewal-only applications).”¹⁹ In addition, the Bureau said that “licensees in the Puerto Rico region may expand their facilities or add channels during the freeze, but only pursuant to Special Temporary Authorization (STA).”²⁰ The Bureau added that [r]equests for an STA must be accompanied by a demonstration that, without the new or expanded facilities, there would be a specific, material and serious adverse effect on the safety of life or property.²¹

¹⁴ Implementation Plan at 9. If the parties do not reach agreement, the TA Mediator will instruct the parties to file Proposed Resolution Memoranda on disputed issues and will prepare and submit a Recommended Resolution, along with the Mediation Record, to the FCC for *de novo* review. *Id.* Additional information about mediation for Puerto Rico licensees can be found in the TA’s Alternative Dispute Resolution Plan. http://www.800ta.org/content/resources/ADR_Plan.pdf.

¹⁵ Implementation Plan at 10. The TA notes that, on July 22, 2010, it provided replacement frequencies to seven high-site licensees that must relocate from the ESMR Band to the Interleaved Band. *Id.*

¹⁶ See *Third Report and Order*, 25 FCC Rcd at 4449 ¶ 19. Applicants may request an exception to the freeze pursuant to the waiver criteria in Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925. *Id.* at n.65. Parties filing such a request should carefully review the rule’s criteria for a waiver and must provide complete support, including but not limited to documentation demonstrating that they meet the waiver standard. *Id.*

¹⁷ *Id.* at 4449 ¶ 19.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* citing Public Safety and Homeland Security Bureau Provides Guidance for Public Safety Licensees With Regard to License Application and Special Temporary Authorization Procedures and Payment of Frequency Relocation Costs for Public Safety Facilities Added During 800 MHz Band Reconfiguration, *Public Notice*, 21 FCC Rcd 14658 (PSHSB 2006).

US Virgin Islands

In the *Third R&O*, the Bureau sought comment on its tentative conclusion to adopt for the U.S. Virgin Islands (“USVI”) the same band plan it adopted for Puerto Rico and sought comment on the rebanding timetable for the USVI.²² The comment and reply comment period has expired and a *Report and Order* setting forth the final USVI band plan is pending.²³ However, we encourage licensees in the USVI that are subject to rebanding to develop cost estimates for the reconfiguration of their systems and to commence FRA negotiations at the same time as Puerto Rico licensees. The TA will send frequency proposals to the USVI licensees, noting that the proposed replacement frequencies are contingent upon the FCC’s adoption of a final band plan for the USVI.²⁴

Further Information

For further information, contact: John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418-0848 or john.evanoff@fcc.gov.

Action by the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau.

– FCC –

²² See *id.* at 4451-4452 ¶ 25.

²³ See Public Safety and Homeland Security Bureau Announces Comment and Reply Comment Dates For the Third Further Notice of Proposed Rulemaking in Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Public Notice*, DA-10-1123 (PSHSB Jun 24, 2010).

²⁴ Implementation Plan at 13. Because at this time the Bureau has not adopted a *Report and Order* for the reconfiguration of the USVI, licensees there are not subject to a formal timeline for FRA negotiations. The negotiation of FRAs between USVI licensees and Sprint Nextel thus would be conducted on a voluntary basis and parties would not enter mediation after 90 days of FRA negotiations. *Id.*