

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 )
Requests for Waiver of April 14, 2011 Rebanding )
Deadline in Regions Along the U.S.-Canada Border )

ORDER

Adopted: December 5, 2011

Released: December 5, 2011

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION AND BACKGROUND

1. By this order, we address requests for waiver of the April 14, 2011 deadline for completing rebanding in regions along the US-Canada border. Rebanding commenced on October 14, 2008 in regions adjacent to the Canada border pursuant to the Second Report and Order in WT Docket 02-55. That order established a 30-month transition period to complete rebanding in the regions adjacent to the Canadian border. The 30-month transition period ended on April 14, 2011.

2. On April 8, 2011, the Public Safety and Homeland Security Bureau (Bureau) released a public notice (Waiver Guidance Notice) providing guidance to licensees in the Canadian Border Region (CBR) that must request an extension of the April 14, 2011 deadline. Consequently, in this order, we:

- Grant waivers to licensees seeking extensions of time to complete rebanding on or before June 1, 2012.

1 See Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for U.S. – Canada Border Regions, WT Docket 02-55, Second Report and Order, 23 FCC Rcd 7605 (PSHSB 2008), amended by Erratum, May 28, 2008 (Second Report and Order).

2 Id., 23 FCC Rcd at 7620 ¶ 38. The 800 MHz Second R&O provided that the 30-month period would begin 60 days after the effective date of the order. The order became effective on August 12, 2008. Because the 60-day period ended on a weekend and Monday, October 13, 2008 was a federal holiday, the 30-month period commenced on the next business day, October 14, 2008.

3 See Public Safety and Homeland Security Bureau (Bureau) announces that the 30-month transition period for 800 MHz reconfiguration in regions along the U.S.-Canada border will commence on October 14, 2008, Public Notice, 23 FCC Rcd 14877 n.2 (2008) (Canada Border Kick-Off PN).

4 Public Safety and Homeland Security Bureau Provides Guidance for Submission of Requests for Waiver of the April 14, 2011 Deadline for Completion of 800 MHz Rebanding in Regions Along the U.S.-Canada Border, Public Notice, 26 FCC Rcd 5179 (PSHSB 2011) (CBR Guidance PN).

- Direct licensees seeking extensions beyond June 1, 2012, to either complete rebanding by that date or else submit, by that date, a detailed request for a further extension of time.
- Grant an extension until December 3, 2012 for licensees that have executed a Frequency Relocation Agreement (FRA) with Sprint but cannot complete rebanding because a “downstream” licensee is blocking their replacement channels. By this date, these licensees must either complete rebanding or else submit a detailed request for a further extension of time.
- Direct each licensee that failed to submit an extension request or is requesting an extension date that had already passed to provide, within 30 days of the release of this notice, either (1) confirmation to the Transition Administrator (TA) that the licensee has completed rebanding, or (2) a proposed timetable and milestones for completion of rebanding as required by the *CBR Guidance Notice*.<sup>5</sup>
- Direct licensees for which the deadline for completion of rebanding was tolled due to a frequency conflict with a Canadian station to complete rebanding within 12 months of the approval date of their FRA by the TA.
- Direct licensees unable to propose a specific timetable because they have not executed an FRA with Sprint prior to April 14, 2011 to submit a report to the TA detailing the status of FRA negotiations, together with a proposed timetable for completing and executing an FRA.
- Direct licensees unable to propose a specific timetable because they have yet to submit a cost estimate to Sprint within 60 days of the release of this Order or provide the Bureau with a report explaining why it cannot provide the cost estimate by this date, together with a schedule detailing when it anticipates submitting a cost estimate.

## II. DISCUSSION

3. The Commission has stated that: “Requests for extension [of 800 MHz rebanding] will be subject to a high level of scrutiny. Licensees will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.”<sup>6</sup> With this in mind, the Bureau makes the following decisions on licensees seeking waiver of the April 14, 2011 deadline for completing band reconfiguration in regions along the US-Canada border.

### A. Licensees With Executed FRAs

4. *Licensees Requesting Extensions to Complete Rebanding on or before June 1, 2012.* We first address waiver requests of those CBR licensees that have executed FRAs and propose to complete their rebanding on or before June 1, 2012.<sup>7</sup> After reviewing these requests, we find that each of these licensees has made substantial progress toward completing rebanding and has demonstrated a level of diligence and good faith sufficient to warrant the requested extension. We thus grant the waiver dates requested by these licensees.

5. *Licensees Requesting Extensions or Proposing Milestone Dates to Complete Rebanding after June 1, 2012.* With respect to those CBR licensees that have executed FRAs but have filed requests

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> We list these licensees in Appendix A-1 of this Order.

for extension to complete their rebanding projects after June 1, 2012, we grant partial waivers until June 1, 2012 to either complete rebanding or submit a further request for waiver seeking additional time.<sup>8</sup> Any further request for waiver must detail the licensee's progress to date and propose milestone dates for each major rebanding step, *e.g.*, subscriber unit deployment, system cut-over, and post-cutover modifications,<sup>9</sup> that has yet to be completed. In addition, licensees with timetables that are dependent on rebanding by adjacent or overlapping systems must identify such interdependencies.

6. *Licensees With FRAs That Can Not Complete Rebanding Because Certain Frequencies are Blocked by Downstream Licensees.* In some cases, the TA has confirmed that a licensee has executed an FRA with Sprint but cannot complete rebanding because a "downstream" licensee is blocking its replacement channels. These CBR licensees<sup>10</sup> are granted waivers until December 3, 2012, and must either complete rebanding by that date or else submit, by that date, a detailed further request for additional time. Any further request for waiver by licensees in this category must detail whether a "downstream" licensee is continuing to block their replacement channels and, if so, what non-frequency specific progress the licensee has made, *e.g.*, re-flashing of mobile and portable units etc.

7. *Licensees With FRAs That Have Not Requested Extensions or Have Requested Extension Dates That Have Passed.* We next address those licensees that have either failed to file an extension request<sup>11</sup> or have filed a request in which the requested extension date has passed.<sup>12</sup> We direct each such licensee, within 30 days of release of this Order, to provide the TA with documentation showing it has completed reconfiguration or to file a supplemental waiver request with the Bureau requesting additional time for such completion in accordance with the *Waiver Guidance Notice*.<sup>13</sup>

8. *Licensees With FRAs Whose Waiver Requirement Was Tolerated Pending Resolution of Frequency Conflicts with Canadian Stations.* For licensees who completed FRA negotiations with Sprint but whose FRAs were held by the TA due to a frequency conflict with stations in Canada, the deadline for the completion of rebanding has been tolled for twelve months from the date the TA eventually approved the FRA.<sup>14</sup>

## **B. Licensees Without Executed FRAs**

9. *Licensees That Have Submitted Cost Estimates But Have Yet to Execute a Frequency Reconfiguration Agreement (FRA).* We hold in abeyance the extension requests received from those CBR

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<sup>8</sup> We list these licensees in Appendix A-2 of this Order.

<sup>9</sup> The Bureau previously defined system "cutover" as the retuning of base stations to the licensee's new channel assignments and commencement of system operations on the new channels. The Bureau further explained that post-cutover system modifications included disposal or return of temporary or legacy equipment and removal of pre-rebanding channels from subscriber units. *See* Improving Public Safety Communications in the 800 MHz Band, Requests for Interim Waiver of the June 26, 2008 Rebanding Deadline – Wave 1 Public Safety Regions, *Order*, 23 FCC Rcd 9421, 9423 ¶ 5 (PSHSB 2008).

<sup>10</sup> We list these licensees in Appendix A-3 of this Order.

<sup>11</sup> We list these licensees in Appendix A-4 of this Order.

<sup>12</sup> We list these licensees in Appendix A-5 of this Order.

<sup>13</sup> *CBR Guidance PN*, 26 FCC Rcd at 5179. Licensees are also directed to the TA's website for the template form and instructions for filing the supplemental waiver requests: <http://www.800ta.org/content/resources/nonborder.asp#supplementalwaiver>.

<sup>14</sup> We list these licensees in Appendix A-6 of this Order.

licensees that have submitted a cost estimate but have yet to execute an FRA with Sprint.<sup>15</sup> We direct each licensee without an FRA to either execute an FRA within 75 days of release of this Order or submit to the TA a report (which the TA shall summarize and provide to the Bureau) regarding the status of FRA negotiations, together with a schedule detailing when it anticipates that FRA negotiations will be complete and a brief summary of the issues in dispute. The TA will establish and submit to the Bureau a proposed schedule for completion of FRA negotiations. After executing its FRA, each licensee covered by this section must submit to the Bureau, within 30 days of the execution of the FRA, an updated request for additional time to complete rebanding.

10. *Licensees That Have Yet to Submit a Cost Estimate.* We also hold in abeyance the extension requests received from licensees that have yet to submit a cost estimate to Sprint.<sup>16</sup> We direct each such licensee to either submit a cost estimate to Sprint within 60 days of release of this Order or to provide the Bureau with a report explaining why it cannot provide a cost estimate by this date, together with a schedule detailing when it anticipates submitting a cost estimate.<sup>17</sup> Each licensee must file an additional report every 30 days thereafter until it submits its cost estimate, unless the TA deems such updates to be unnecessary.<sup>18</sup> Upon submission of the cost estimate, the TA will establish and submit to the Bureau a proposed schedule for expedited FRA negotiations between the licensee and Sprint.

### III. CONCLUSION AND ORDERING CLAUSE

11. We note that failure to comply with the requirements of this *Order*, including, but not limited to, the requirement to file timely extension requests, without good cause shown, may result in further action by the Public Safety and Homeland Security Bureau, including consideration of whether the licensee has breached its good faith obligations and is no longer entitled to recover its rebanding costs from Sprint.

12. 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 1.925 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392, 1.925, IT IS ORDERED that the requests for waiver of the April 14, 2011, deadline submitted by the licensees listed in Appendix A of this order are GRANTED, GRANTED IN PART, OR HELD IN ABEYANCE, to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>15</sup> We list these licensees in Appendix A-7 of this Order.

<sup>16</sup> We list these licensees in Appendix A-8 of this Order.

<sup>17</sup> Licensees that have been separately ordered by the Bureau to provide a cost estimate in fewer than 60 days shall comply with the schedule set forth in such separate order.

<sup>18</sup> Licensees that have not completed their cost estimates must submit the initial report and updated reports to the PSHSB800 mailbox, PSHSB800@fcc.gov. The cost to the licensee of preparing and submitting these reports to the Bureau is presumptively not recoverable from Sprint.

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**Appendix A<sup>19</sup>****Appendix A-1 – Licensees Requesting Extensions to Complete Rebanding on or Before June 1, 2012****Relief Granted: Extension to Complete Rebanding on or Before the Date Requested (indicated in parentheses).**

Ann Arbor Transportation Authority [1907] – (Dec. 31, 2011)  
Michigan State University [1961] – (Dec. 31, 2011)  
Niagara Frontier Transportation Authority [1930] – (Dec 31, 2011)  
Seattle City Light [1965] – (Dec. 31, 2011)  
Consumers Energy Company [1942] – (Mar. 31, 2012)  
Canton, City of, OH [1979] - (Mar. 31, 2012)  
Tuscola, County of, MI [1983] - (Jan. 31, 2012)  
ArcelorMittal [1981]- (Mar. 1, 2012)

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**Appendix A-2 – Licensees Requesting Extension Dates Beyond June 1, 2012****Relief Granted: Extension Until June 1, 2012 to Either Complete Rebanding or Submit a Further Request for Waiver Seeking Additional Time.**

County of Medina, OH [1974]  
Huron County, MI [1914]  
City of Cleveland, OH [1955]  
Greene County, OH [1913]  
Pickaway County, OH [1916]  
Springfield, OH [1917]  
Radio Service Company [1928]  
Barberton, OH [1971]  
Island County Public Transportation Benefit Area [1929]  
Oswego, County of, NY [1902]  
Ohio State University [1915]

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<sup>19</sup> The number listed in the brackets refers to the TA Waiver Reference Number as can be found at:  
<http://tatoos.800ta.org/PublicTaTools/WaiverProfileStatus.aspx>

**Appendix A-3 – Licensees With FRAs That Can Not Complete Rebanding Because Certain Frequencies are Blocked by Downstream Licensees****Relief Granted: Extension Until December 3, 2012 to Either Complete Rebanding or Submit a Further Request for Waiver Seeking Additional Time.**

City of Livonia, MI [1938]  
City of Findlay, OH [1948]  
County of Skagit, WA [1962]  
Township of Bloomfield, MI [1909]  
Stark County, OH [1953]  
Brown County Sheriff [1956]  
Kitsap Transit [1963]  
Cuyahoga Falls, OH [1922]  
City of Westland, MI [1951]  
City of Grosse Pointe Farms [1954]  
Downriver Mutual Aid [1944]  
Franklin County, OH [1912]  
Bellingham, WA [1978]  
Whatcom County FARS, WA [1978]  
City of Tacoma [1982]  
City of Worthington, OH [1923]  
Port of Seattle [1921]  
City of Akron and County of Summit, OH [1947]  
City of Puyallup [1966]  
Jackson County, MI [1936]  
Lapeer County, MI [1937]  
State of Michigan [1941]  
University of Michigan [1932]  
Montgomery County, OH [1925]  
Genesee County, MI [1934]

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**Appendix A-4 – Licensees That Have Not Filed an Extension Request**

**Further Action Required: Within 30 Days, Provide the Transition Administrator (TA) with Documentation That the Licensee Has Completed Rebanding or Submit a Supplemental Waiver Request for Additional Time.**

Skagit Transit System WA  
Spokane, City of, WA  
Warren, City of, OH  
Green, City of, OH  
Anacortes, City of, WA  
Erie, City of  
Garden City, MI  
Lancaster, Town of, NY  
Monroe, County of, NY  
Richfield, Village of, OH  
Rome, City of, NY  
San Juan, County of, WA  
Mentor, City of, OH  
APT Wireless  
Columbia Falls Aluminum Co, LLC  
Miami, County of, OH  
Columbus, OH  
Delaware, County of, OH  
King, County of, WA

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**Appendix A-5 – Licensees Requesting Extension Dates That Have Since Expired**

**Further Action Required: Within 30 Days, Provide the TA with Documentation That the Licensee Has Completed Rebanding or Submit a Supplemental Waiver Request for Additional Time.**

Auburn, NY [1918]  
Continental Airlines [1768]  
United Telephone Company of Ohio [1980]  
Austin Township [1977]  
Dayton, OH [1719]  
Professional Communications Messaging Service [1952]  
County of Fayette, OH [1911]  
NYS Office of Emergency Management [1905]  
State of New York [1906]  
Parma Heights, OH [1935]  
County of Lake, OH - Radio Dept [1945]  
Bath Township, OH [1908]  
Hazelton Industries [1973]  
Clinton County, MI [1957]  
Geauga County, OH [1933]  
Grand Isle County Mutual Aid Association, Inc.[1933]  
Parma, OH [1975]

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**Appendix A-6 – Licensees whose Deadline for Completion of Rebanding Was Tolled**

**Further Action Required: By the Date Specified Below, Complete Rebanding or Submit a Request for Waiver of the Deadline.**

Detroit City of, MI (TA approval date: 9/7/11; Rebanding Completion deadline: 9/7/12)  
Snohomish County of WA (TA approval date: 5/24/11; Rebanding Completion deadline: 5/24/12)  
Warren City of MI (TA approval date: 9/7/11; Rebanding Completion deadline: 9/7/12)  
Wayne, County of, NY (TA approval date: 8/11/11; Rebanding Completion deadline: 8/11/12)  
Chrysler Corporation (TA approval date: 9/7/11; Rebanding Completion deadline: 9/7/12)  
American Medical Response Inc (TA approval date: 9/9/11; Rebanding Completion deadline: 9/9/12)  
BP West Coast Products LLC (TA approval date: 9/9/11; Rebanding Completion deadline: 9/9/12)  
ConocoPhillips Communications Inc. (TA approval date: 9/9/11; Rebanding Completion deadline: 9/9/12)  
Federal Express (TA approval date: 9/7/11; Rebanding Completion deadline: 9/7/12)  
Ford Communications Inc (TA approval date: 9/9/11; Rebanding Completion deadline: 9/9/12)  
Northwest Airlines Inc (TA approval date: 9/7/11; Rebanding Completion deadline: 9/7/12)  
The Boeing Company (TA approval date: 8/11/11; Rebanding Completion deadline: 8/11/12)  
Wiztronics Inc (TA approval date: 9/9/11; Rebanding Completion deadline: 9/9/12)

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**Appendix A-7 - Licensees That Have Yet to Execute a Frequency Reconfiguration Agreement (FRA) With Sprint Nextel (Sprint)**

**Further Action Required: Within 75 Days, Execute an FRA or Submit to the TA the Required Report and Negotiation Schedule.**

City of Brook Park, OH/ City of Strongsville, OH [1950]  
Lucas County and City of Toledo, OH [1926]  
State of Ohio [1959]  
Orleans County, NY [1920]  
City of Ann Arbor, MI [1940]  
Clinton County, NY [1939]  
Ottawa County, OH [1919]  
State of Washington [1949]  
FELHC, Inc. [1972]

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**Appendix A-8 – Licensees That Have Yet to Submit a Cost Estimate to Sprint**

**Further Action Required: Within 60 Days, Submit a Cost Estimate to Sprint or Provide to the Public Safety and Homeland Security Bureau the Required Report and Schedule.<sup>20</sup>**

Wayne County of, MI [1976]  
Genesee County of, NY [1924]  
Oakland, County of, MI [1958]

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<sup>20</sup> See *supra* n.17