

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

ORDER

Adopted: December 9, 2011

Released: December 9, 2011

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this Order, pursuant to delegated authority, we (1) postpone the 800 MHz rebanding financial reconciliation "true-up" date from December 31, 2011 to July 2, 2012, and (2) require the 800 MHz Transition Administrator (TA) to file a report by May 15, 2012, with its recommendation on whether the true-up date should occur on July 2, 2012, or be further postponed.

II. BACKGROUND

2. The Commission established the true-up in the 800 MHz Report and Order to assess the total creditable rebanding costs incurred by Sprint Nextel Corporation (Sprint) for both 800 MHz rebanding and relocating of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz band, and to compare these costs to the value of the 1.9 GHz spectrum that the Commission awarded to Sprint. If the true-up shows that the value of the 1.9 GHz spectrum exceeds Sprint's combined 800 MHz and BAS relocation costs, Sprint must pay the difference in an "anti-windfall" payment to the U.S. Treasury.

3. The 800 MHz Report and Order required Sprint to complete 800 MHz rebanding in non-border areas within thirty-six months and provided that that the true-up would occur within six months thereafter. The thirty-six month rebanding period expired on June 26, 2008, at which time neither 800 MHz rebanding nor BAS relocation was complete. Accordingly, on June 25, 2008, Sprint requested that the true-up - scheduled to occur on December 26, 2008 - be postponed indefinitely until both 800 MHz rebanding and BAS relocation were complete. Noting that both rebanding projects had been subject to unforeseen complexity and delay, Sprint contended that conducting the true-up as scheduled would be premature and would fail to account for significant rebanding costs that Sprint had yet to incur.

1 Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15124 ¶ 330 (2004) (800 MHz Report and Order).

2 Id.

3 Id. at 14977 ¶ 11.

4 Id. at 15124 ¶ 330.

5 Improving Public Safety Communications in the 800 MHz Band, Fourth Memorandum Opinion and Order, 23 FCC Rcd 18512, 18514 ¶ 9 (2008) (Fourth Memorandum Opinion and Order).

6 Id. at 18512 ¶ 1.

7 Id. at 18513-14 ¶ 6.

4. In its December 2008 *Fourth Memorandum Opinion and Order*, the Commission granted Sprint's request in part and extended the true-up date from December 26, 2008 until July 1, 2009.⁸ The Commission found that circumstances had changed since the establishment of the initial true-up schedule, and that neither 800 MHz rebanding nor BAS relocation had progressed sufficiently to justify conducting the true-up as originally scheduled. However, the Commission declined to postpone the true-up indefinitely, noting that Sprint could incur sufficient creditable costs before the completion of rebanding to allow the true-up to proceed.⁹ The Commission therefore extended the true-up date until July 1, 2009, and directed the TA to file a report by May 1, 2009, with its recommendation on whether rebanding had progressed sufficiently that the true-up should be conducted on July 1, 2009, or whether it should be further postponed.¹⁰ The Commission also delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to consider and grant further extensions of the true-up deadline based on the TA's recommendation.¹¹

5. The Bureau has previously exercised the authority granted by the Commission to extend the true-up deadline from July 1, 2009 until December 31, 2011, based on periodic reports and recommendations by the TA.¹² On November 15, 2011, the TA filed its sixth true-up report, recommending that the true-up date be further extended from December 31, 2011 to June 30, 2012.¹³ The TA stated that "a true-up remains premature at this time and that additional rebanding expenditures are required to provide a meaningful report of Sprint Nextel's total rebanding costs for both the 800 MHz rebanding and for the relocation of BAS licensees."¹⁴

III. DISCUSSION

6. The TA has indicated that, despite additional progress in rebanding since the last true-up extension, Sprint Nextel has still not incurred sufficient rebanding expenditures to warrant moving forward with the true-up at this time.¹⁵ We agree with the TA's analysis. While continued progress has been made in 800 MHz rebanding, a substantial number of licensees have yet to complete the process.¹⁶ Therefore, we conclude that a true-up of Sprint's rebanding expenditures as of December 31, 2011, would be premature because it would fail to take into account a large portion of Sprint's eventual cost obligation.

7. We therefore extend the true-up date until July 2, 2012,¹⁷ and direct the TA to file a report by May 15, 2012, with its recommendation on whether the true-up should be conducted based on

⁸ *Id.* at 18512 ¶ 1.

⁹ *Id.* at 18515 ¶ 11.

¹⁰ *Id.* at ¶ 12.

¹¹ *Id.*

¹² See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 24 FCC Rcd 8410 (PSHSB 2009); *Order*, 24 FCC Rcd 14642 (PSHSB 2009); *Order*, 25 FCC Rcd 8217 (PSHSB 2010); *Order*, 26 FCC Rcd 8572 (PSHSB 2011).

¹³ See Recommendation to Further Postpone 800 MHz Rebanding Financial True-Up, WT Docket 02-55, filed Nov 15, 2011 by the 800 MHz Transition Administrator, LLC, at 2-3.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ 800 MHz Transition Administrator, LLC Quarterly Progress Report for the Quarter Ended June 30, 2011, filed August 31, 2010, at 8-9.

¹⁷ Because the TA recommended date of June 30, 2012 falls on a Saturday, we post-pone the true-up to the following Monday (i.e. July 2, 2012).

rebanding expenditures incurred by Sprint as of July 2, 2012, or be further postponed. Should the true-up be conducted based on expenditures as of July 2, 2012, the TA shall submit its final true-up report by December 31, 2012. We emphasize that our action with respect to the true-up date is intended to have no impact on any other aspect of the timetable for 800 MHz rebanding.

IV. ORDERING CLAUSES

8. 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, unless further extended, the true-up ordered in the *Fourth Memorandum Opinion and Order* SHALL BE CALCULATED based on rebanding expenditures by Sprint Nextel Corporation as of July 2, 2012.

9. IT IS FURTHER ORDERED that, unless the true-up is further extended, the 800 MHz Transition Administrator SHALL FILE its final true-up report by December 31, 2012.

10. IT IS FURTHER ORDERED that the Transition Administrator SHALL FILE in this docket, by May 15, 2012, its recommendation on any further extension of the true-up date.

FEDERAL COMMUNICATIONS COMMISSION

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