

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

In the Matter of)
)
State of Indiana) WT Docket No. 02-55
and)
Sprint Nextel Corporation)
)
Mediation No. TAM-12005)

ORDER

Adopted: March 10, 2011

Released: March 10, 2011

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

I. INTRODUCTION

1. On February 22, 2011, the State of Indiana (Indiana) filed a motion to stay the effect of the Public Safety and Homeland Security’s (Bureau) *Memorandum Opinion and Order* which resolved a dispute between Indiana (Indiana) and Sprint Nextel Corporation (Sprint).¹ The dispute involved a Change Notice request submitted by Indiana, and was resolved in Sprint’s favor.² Following release of the Bureau’s decision, Indiana filed a timely Petition for Reconsideration (Petition).³ In a separate and contemporaneous pleading, Indiana filed the instant motion requesting a stay of the Bureau’s decision pending disposition of Indiana’s Petition.⁴ For the reasons discussed below, we deny Indiana’s motion for failure to meet established Commission criteria for issuance of a stay.⁵

II. BACKGROUND

2. The sole reason advanced by Indiana in support of its stay motion is “[t]o allow the State and Nextel to avoid needless further negotiation that relies on those issues under

¹ State of Indiana, WT Docket 02-55, *Memorandum Opinion and Order*, DA 11-191 (PSHSB Feb. 2, 2011) (*MO&O*).

² *Id.*

³ Petition for Reconsideration filed by the State of Indiana at 1 (received Feb. 22, 2011).

⁴ Motion for Stay filed by the State of Indiana (received Feb. 22, 2011).

⁵ We will address Indiana’s Petition in a separate order.

reconsideration and since the parties cannot enter into a final amendment to the subject Frequency Reconfiguration Agreement until a decision on the State's petition is rendered [...]”⁶

III. DISCUSSION

3. To qualify for the extraordinary remedy of a stay, Indiana has the burden of demonstrating: (i) it is likely to prevail on the merits; (ii) it will suffer irreparable harm, absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest favors a grant of the stay.⁷ Indiana has not addressed these criteria, much less satisfied them.⁸

IV. DECISION

4. Indiana has failed to meet the fundamental pleading requirements for obtaining a stay.⁹ Accordingly, we are denying its motion.

V. ORDERING CLAUSE

5. Accordingly, pursuant to the authority of Sections 0.191, 0.392, 1.43 and 1.298(a) of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, 1.43 and 1.298(a); Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) IT IS ORDERED that the Motion for Stay filed by the State of Indiana IS DENIED.

6. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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⁶ Motion at 1.

⁷ See, e.g., Cincinnati Bell Telephone Company, *Memorandum Opinion and Order*, 8 FCC Rcd 6709 (1993), citing *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921 (D.C. 1958); modified by *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

⁸ See *Phone Depots Inc. d/b/a Mobilefone Radio System, Memorandum Opinion and Order*, 91 FCC 2d 1244, ¶6 (1982) (stay motion summarily denied because movant's "request failed to discuss and does not satisfy the criteria for a stay").

⁹ *Id.*