

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, 2011

Released: March 31, 2011

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this order, we grant the February 11, 2011, 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, 2011. Specifically, as Sprint requests, we extend the deadline in nine non-border NPSPAC 800 MHz Public Safety Regions until March 31, 2012. We retain, however, the requirement that Sprint relinquish "Stage 2" (809.5-810.5/854.5-855.5 MHz) channels in the nine NPSPAC 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 portion of the Mid-Band would be made exclusively available for new licensing to public safety for three years

1 For this purpose, we define "non-border spectrum" to include spectrum in NPSPAC 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, February 11, 2011 (Sprint Petition).

3 Id.

4 See infra ¶ 4.

5 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).

6 800 MHz Report and Order, 19 FCC Rcd at 15046-47 ¶ 146.

after the completion of rebanding in each public safety region and would be exclusively available to public safety and critical infrastructure industry (CII) eligibles for the following two years.⁷ The vacated channels in the Expansion Band and Guard Band, however, were not exclusively reserved for public safety and CII applicants and will be made available for licensing under their pre-rebanding pool categories at a future date.⁸

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.⁹ 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.¹⁰

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 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).¹¹ On October 30, 2008, the Commission granted Sprint's request in part.¹² The Commission ordered Sprint to relinquish Mid-Band 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 to be made available in each region immediately.¹³
- Stage 2: Channels in the 809.5-810.5/854.5-855.5 MHz block to be made available in each region when 25% of old NPSPAC channels are clear in the region.

⁷ *Id.* at 15052 ¶ 152.

⁸ *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.

⁹ 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.

¹⁰ *Sprint Nextel Corp. v. FCC*, 524 F.3d 253 (D.C. Cir. 2008).

¹¹ Petition for Relief, filed by Sprint Nextel Corporation, June 17, 2008.

¹² 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) (*2008 Vacated Spectrum Order*).

¹³ Stage 1 channels were vacated and made available for licensing 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 for licensing to public safety 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 3: Channels in the 810.5-812/855.5-857 MHz block to be made available in each region when 50% of old NPSPAC channels are clear in the region.
- Stage 4: Channels in the 812-814/857-859 MHz block to be 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 to be 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 to be made available in each region when 100% of old NPSPAC channels are clear in the region.¹⁴

5. In addition, the Commission established March 31, 2010 as a backstop deadline 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 met the above thresholds by the deadline.¹⁵

6. On January 27, 2010, Sprint filed a waiver request, asking the Commission to waive the March 31, 2010 backstop deadline for relinquishing all non-border Interleaved Band channels in 21 of 46 non-border NPSPAC Regions.¹⁶ On March 31, 2010, the Public Safety and Homeland Security Bureau (Bureau) granted partial relief, extending the deadline in these 21 regions until March 31, 2011.¹⁷ We extended—instead of eliminating—the deadline as an incentive for Sprint to fully cooperate with relocating licensees in the completion of rebanding, to provide public safety with certainty regarding when vacated channels would become available to meet public safety demand, and to further the Commission’s goal of increasing the spectral separation between Sprint and public safety.¹⁸ In addition, we required Sprint to relinquish Stage 2 channels in the 21 NPSPAC regions on an accelerated basis, by lowering the threshold for Stage 2 clearing from 25 percent to 10 percent. This was done for two reasons: first, to meet the demand for new public safety spectrum in these regions while maintaining incentives for public safety licensees to timely complete rebanding, and second, to avoid significant harm to Sprint’s customers.¹⁹

7. On February 11, 2011, Sprint filed the instant Request for Waiver, asking the Commission to extend, until March 31, 2012, the deadline for relinquishing non-border Interleaved Band channels in nine non-border NPSPAC Regions.²⁰ Sprint contends that, although there has been

¹⁴ *Id.* at 15972-73 ¶17.

¹⁵ *Id.*

¹⁶ See 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*, 25 FCC Rcd 3270 (2010) (*2010 Vacated Spectrum Waiver Order*).

¹⁷ *Id.* The Bureau granted a waiver 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.

¹⁸ *Id.* at 3274 ¶ 13.

¹⁹ *Id.* at ¶ 14.

²⁰ Sprint Petition at 2. Sprint seeks relief for the following nine NPSPAC Regions: 1 – Alabama; 6 – Northern California; 8 – New York Metro; 9 – Florida; 18 – Louisiana; 20 – Maryland, Washington, DC, Northern Virginia; 40 – Dallas, Texas; 51 – Houston, Texas; 54 – Chicago Metro. *Id.* at n.4.

considerable rebanding progress across the country as a whole, progress has varied significantly in some NPSPAC regions.²¹ Sprint specifically notes that, in 15 of the 21 regions in which we previously extended the deadline until March 2011, public safety rebanding has not reached the 10 percent completion benchmark that triggers release of additional Interleaved Band channels under the process established in the *2010 Vacated Spectrum Waiver Order*.²² Sprint also states that, in many 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.²³ Sprint states that relinquishing its Interleaved Band channels in all 15 regions would result in its losing significant channel capacity.²⁴ However, Sprint seeks waiver relief in only nine NPSPAC regions, arguing that strict enforcement of the March 31, 2011 deadline would not accelerate rebanding in these regions but could subject Sprint's customers to service degradation or dropped calls.²⁵

8. On February 22, 2011, Smartcomm, LLC (Smartcomm) and Preferred Spectrum Investments, LLC (PSI) filed oppositions to the Sprint Petition.²⁶ Both parties assert they have standing to oppose the waiver request because they are "potential competitors" of Sprint.²⁷ Both parties argue that the Commission should deny the waiver request and force Sprint to fulfill its obligations under the previous orders issued in this docket.²⁸

9. On February 25, 2011, 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 letter expressing concern with the potential delay in clearing spectrum in the nine NPSPAC regions in which Sprint seeks relief.²⁹ The Public Safety Parties urge the Commission to take appropriate steps to expedite the release of all Interleaved Band channels in all non-border areas and ask that, if the Commission grants relief to Sprint, it afford similar flexibility to public safety entities seeking early access to interleaved channels.³⁰ Specifically, the Public Safety Parties argue that the Commission should afford relief to those public safety applicants that can demonstrate an immediate need for 800 MHz channels, the lack of reasonable alternatives, and the full support of the relevant regional planning committees.³¹

²¹ Sprint Petition at 3.

²² *Id.* at 3-4.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Opposition of Smartcomm, LLC. to Sprint Nextel Corporation's Request for Waiver of its Obligation to Relinquish Channels in the 800 MHz Interleaved, Expansion and Guard Bands, filed Feb. 22, 2011 (Smartcomm Opposition); Opposition to Request for Waiver, filed Feb. 22, 2011 (PSI Opposition).

²⁷ Smartcomm Opposition at 5; PSI Opposition at 4. Smartcomm argues in the alternative that, if the Commission does not agree that it has standing, it should treat its filing as an informal objection. Smartcomm Opposition at 5-6.

²⁸ Smartcomm Opposition at 1-2; PSI Opposition at 1.

²⁹ Letter from Robert M. Guss, 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 25, 2011 (Public Safety Joint Letter).

³⁰ *Id.*

³¹ *Id.*

10. On March 1, 2011, Sprint filed a reply to Smartcomm's and PSI's oppositions and commented on the Public Safety Joint Letter.³² Sprint argues that both Smartcomm and PSI lack standing to oppose its waiver request.³³ With regard to the Joint Public Safety letter, Sprint echoes the Public Safety Parties' concern over the pace of rebanding but notes that Interleaved Band channels are available in most regions, including some in the regions in which Sprint seeks relief, and that it stands ready to relinquish more spectrum as public safety agencies retune to their new channel assignments.³⁴

11. On March 8, 2011, Smartcomm and PSI each filed a reply to the Sprint Reply.³⁵ Because Smartcomm's and PSI's replies fall outside of the scope of permissible pleadings contemplated by Section 1.45 of the Commission's rules, we have not considered them and are dismissing them as unauthorized pleadings.³⁶

III. DISCUSSION

12. In the *2008 Vacated Spectrum Order*, the Commission established a process under which Sprint was to clear the Mid-Band in stages.³⁷ 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.³⁸ In the *2010 Vacated Spectrum Waiver Order*, we lowered the threshold for Stage 2 clearing from 25 to 10 percent, thus accelerating the availability of new channels for public safety applicants.³⁹

13. We agree with Sprint that considerable progress has been made in rebanding.⁴⁰ We note, however, that many public safety licensees continue to require extensions of time to complete the rebanding process.⁴¹ Thus, once again, we find ourselves balancing the need to make spectrum available to public safety and to reduce the potential for harmful interference against the need to avoid a substantial impact on Sprint's network and customer base. We find that Sprint's proposal satisfies our objectives and thus grant Sprint the relief it seeks.

14. First, we affirm that the March 31, 2011 deadline established in the *2010 Vacated Spectrum Waiver Order* continues to apply in full to the 12 non-border regions in which Sprint has not

³² Reply To Oppositions To Sprint Nextel Corporation's Request For Waiver, filed Mar. 1, 2011 (Sprint Reply).

³³ Sprint Reply at ii. Sprint also argued that the Commission must dismiss PSI's opposition because PSI did not serve Sprint with a copy of its opposition as required by the Commission's rules but subsequently withdrew that allegation. See letter dated March 10, 2011, from James B. Goldstein, Esq., Director, Spectrum Reconfiguration, Sprint Nextel to Michael Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau.

³⁴ *Id.*

³⁵ Reply to Sprint Nextel Corporation, filed Mar. 8, 2011 (Smartcomm Reply) and Reply, filed Mar. 8, 2011 (PSI Reply).

³⁶ See 47 C.F.R. § 1.45 (establishing rules governing a pleading cycle consisting only of petitions, oppositions, and replies).

³⁷ See *2008 Vacated Spectrum Order*, 23 FCC Rcd at 15972-73 ¶ 17.

³⁸ *Id.* at 15970-71 ¶¶ 10, 13.

³⁹ *2010 Vacated Spectrum Waiver Order*, 25 FCC Rcd at 3274 ¶ 14.

⁴⁰ Sprint Petition at 2.

⁴¹ We recently granted 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*, 25 FCC Rcd 17776 (PSHSB 2010).

sought additional relief.⁴² Thus, Sprint must vacate its Interleaved Band spectrum in those regions by March 31, 2011, as previously ordered.⁴³ This will provide public safety with access to newly available channels in those regions. We will issue a Public Notice at a later date to announce a filing window and application procedures for these vacated channels.

15. Second, in the nine regions in which Sprint has sought waiver relief, we extend the deadline for Sprint to vacate the Interleaved Band from March 31, 2011 to March 31, 2012. In all other respects, the channel clearing procedures that we established in the *2010 Vacated Spectrum Waiver Order* remain in effect in the nine regions in which we grant Sprint relief. 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.⁴⁴

16. We dismiss Smartcomm's and PSI's oppositions for lack of standing. Smartcomm contends that it is entitled to standing because, as a potential licensee, it would be a competitor to Sprint and could potentially receive interference from Sprint's facilities.⁴⁵ PSI contends that it is entitled to standing because its members are "poised to apply for available spectrum" and "intend to purchase SMR and Business and Industrial and Land/Transportation operating systems and licenses within the Interleaved Channels within the nine NPSPAC Regions with respect to which Sprint is seeking an indefinite extension of its deadline to vacate its licenses within the Interleaved Band."⁴⁶ We disagree. It is established that in order to obtain standing, PSI and Smartcomm must allege facts sufficient to demonstrate that granting the waiver would cause them to suffer a direct injury.⁴⁷ The Commission has consistently held that claims amounting to a "remote" or "speculative" injury are insufficient to confer standing.⁴⁸ PSI's and Smartcomm's claims based on hypothetical future applications for spectrum are too remote and speculative to confer standing.

17. 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

⁴² These NPSPAC Regions are: 14 – Indiana; 16 – Kansas; 19 - New England; 27 – Nevada; 28 – New Jersey, Eastern Pennsylvania, Delaware; 31 – North Carolina ; 34 – Oklahoma; 36 – Western Pennsylvania; 37 – South Carolina; 39 – Tennessee; 42 – Virginia; 49 – Austin, Texas.

⁴³ *2010 Vacated Spectrum Waiver Order*, 25 FCC Rcd at 3274 ¶ 13. As provided in the *2008 Vacated Spectrum Order*, Sprint may remain on Interleaved Band channels in these regions past this date but must vacate any channel on 60 days notice that a public safety licensee is prepared to commence operating on the channel. *2008 Vacated Spectrum Order*, 23 FCC Rcd at 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.* 23 FCC Rcd at 15972-73 ¶ 17. The Expansion and Guard Band channels, however, will not be available for application until the Commission issues a public notice to that effect.

⁴⁴ *See id.* 23 FCC Rcd at 15971 ¶ 16.

⁴⁵ Smartcomm Opposition at 4 *citing* *FCC v. Sanders Brothers*, 309 U.S. 470, 477 (1940) and *FCC v. National Broadcasting Company*, 319 U.S. 239, 247 (1943).

⁴⁶ PSI Opposition at 3-4.

⁴⁷ *Wireless Co., L.P., Order*, 10 FCC Rcd. 13233 (1995) *citing* *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). *See Lawrence N. Brandt*, 3 FCC Rcd. 4082 (1988); *National Broadcasting Co.*, 37 FCC 2d 897, 898 (1972). *See also SunCom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386 (DC Cir. 1996) (future intent to purchase licenses insufficient to establish standing under Article III).

⁴⁸ *Wireless Co., L.P., Order*, 10 FCC Rcd 13233 *citing* *KIRV Radio*, 50 FCC2d 1010 (1975) (stating that "the claim of potential economic injury by a mere applicant for a broadcast facility is too remote and speculative to show standing as a 'party in interest'").

request pursuant to Section 1.41 of the Rules is discretionary.⁴⁹ In support of its request, Smartcomm states only that treating its opposition as an informal request would provide the Commission with “an important opportunity to develop a full record.”⁵⁰ We find that this is insufficient to merit our accepting the Smartcomm pleading as an informal request for Commission action. We therefore deny Smartcomm’s request and dismiss its opposition.

18. In response to the Public Safety Parties’ concerns, we affirm that we will consider waiver requests from public safety entities that can demonstrate a compelling need for Interleaved Band channels in advance of when they otherwise will be available. In the event a public safety entity submits a waiver request, we will issue a public notice to afford interested parties, including Sprint, the opportunity to comment on the request.

IV. ORDERING CLAUSES

19. 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, 1.45, and 90.677 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392, 1.45, 90.677, IT IS 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, LLC, IS DISMISSED.

20. IT IS FURTHER ORDERED that the Opposition to the Request for Waiver, filed by Preferred Spectrum Investments, LLC, IS DISMISSED.

21. IT IS FURTHER ORDERED that the Reply to Sprint Nextel Corporation filed by Smartcomm, LLC IS DISMISSED.

22. IT IS FURTHER ORDERED that the Reply filed by Preferred Spectrum Investments, LLC IS DISMISSED.

23. IT IS FURTHER ORDERED that the Request for Waiver, filed February 11, 2011 by Sprint Nextel Corporation IS GRANTED as conditioned herein.

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

25. 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

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

⁴⁹ 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) (stating that the Commission is not obligated to consider informal requests).

⁵⁰ Smartcomm Opposition at 6.