

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

In the Matter of
MARICOPA COUNTY, ARIZONA
Further Request for Extension of Time
WT Docket No, 02-55

ORDER

Adopted: July 24, 2014

Released: July 24, 2014

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

I. INTRODUCTION AND BACKGROUND

1. Under consideration is the Further Request for Extension of Time (Request) filed July 14, 2014 by Maricopa County, Arizona (Maricopa). Maricopa has not filed a cost estimate for reconfiguration of its 800 MHz communications system and requests an extension of time until October 5, 2014 to do so. Maricopa's cost estimate was due on November 20, 2013. It previously sought an extension of time to file its cost estimate by June 1, 2014 which request was denied by the Public Safety and Homeland Security Bureau (Bureau) which ordered Maricopa to furnish its cost estimate by March 10, 2014 or request a further extension. Maricopa failed to furnish a cost estimate by March 10, 2014, because of a mistake: it had failed to contract with its vendor, Motorola Solutions, Inc. (Motorola) for the planning work necessary for Maricopa's preparation of its cost estimate. Maricopa then filed an additional extension request which was opposed by Sprint Corporation (Sprint) which intimated, using

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 (2004); Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Third Erratum, 19 FCC Rcd 21818 (2004) (800 MHz Report and Order); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004); Erratum, WT Docket No. 02-55 (rel. Jan. 19, 2005) (Supplemental Order) review denied sub nom. Mobile Relay Associates v. FCC, 457 F.3d 1 (D.C. Cir. 2006); Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005) (800 MHz MO&O); Order, 21 FCC Rcd 5503 (2006) (Mediation Extension Order); Second Memorandum Opinion and Order, 22 FCC Rcd 10467 (2007); Erratum, WT Docket No. 02-55 (rel. July 26, 2007) (800 MHz Second MO&O); Third Memorandum Opinion and Order, 22 FCC Rcd 17209 (2007) (800 MHz Third MO&O); Second Report and Order, 23 FCC Rcd 7605 (2008), Erratum, WT Docket No. 02-55 (rel. May 28, 2008) (800 MHz Second Report and Order); Fourth Memorandum Opinion and Order, 23 FCC Rcd 18512 (2008) (800 MHz Fourth MO&O); Third Report and Order, 25 FCC Rcd 4443 (2010) (800 MHz Third Report and Order); Fourth Report and Order, 26 FCC Rcd 1937 (2011) (800 MHz Fourth Report and Order); Fifth Report and Order, 28 FCC Rcd 4085 (2013) (Fifth Report and Order).

2 Maricopa blames Motorola for Maricopa's failure to negotiate the planning contract. Request at unnumbered page 2. It claims the failure was due to the "retirement of certain Motorola personnel and replacement with new-to-Maricopa personnel." Id. The Request is silent on why Maricopa, or counsel, failed to recognize the need timely to conclude a contract essential to development of the cost estimate.

Maricopa's terms, "that Maricopa was 'slow rolling' its planning in order to request a system upgrade."³ In a reply to Sprint's opposition, Maricopa disclaimed any intent to attempt a system upgrade. The Bureau denied Maricopa's extension request, but gave it until July 14, 2014 to submit a cost estimate, imposing certain conditions if Maricopa failed to do so.⁴ Maricopa did not file a cost estimate by July 14, 2014 and, instead, filed the instant Request.

2. According to Maricopa, it did not comply with the previous extension because "Motorola has been unable to work fast enough to deliver a cost estimate in time for the Bureau's deadline."⁵ In support of that statement, Maricopa provides a timeline which "details Motorola's past, current and future work on the project."⁶ The Motorola-supplied timeline shows "Customer Delivery" of Motorola's Statement of Work by September 5, 2014.

II. DISCUSSION

3. Section 1.46(a) of the Commission's rules states that "[i]t is the policy of the Commission that extensions of time shall not be routinely granted."⁷ The Bureau has emphasized that the "import of that rule is especially relevant to 800 MHz rebanding where delay in rebanding by one licensee can cause a 'domino effect' delay in the rebanding efforts of other licensees that have met the Commission's 800 MHz band reconfiguration deadlines with a consequent delay of the overall program. We therefore afford a high degree of scrutiny to the reasons licensees advance for extensions of time."⁸

4. Here, Maricopa, in the knowledge that it was expected to provide a cost estimate to Sprint and the 800 MHz Transition Administrator (TA) by November 20, 2013, did not even recognize until late in 2013 that it had failed to contract with Motorola for work essential to preparation of the cost estimate.⁹ It is unremarkable therefore, that Maricopa finds itself well behind schedule. Short of finding bad faith on Maricopa's part, however, there is little the Bureau can do to remedy the problem that Maricopa has created. We will not, however, equate negligence with bad faith in this instance. Accordingly, having no practical alternative, we will grant Maricopa an extension of time to submit its cost estimate until October 5, 2014. In the interim, Maricopa shall report to the Bureau, and the TA Mediator, within one business day, any instance in which Motorola fails to meet the start and finish dates listed in the attachment to Maricopa's Request. In addition, Maricopa shall attend such conferences, and furnish such reports, as the TA Mediator may direct.

³ Request at unnumbered page 3.

⁴ *Id.* Maricopa filed a petition for reconsideration of the Bureau order denying the extension, which petition remains pending. The filing of the petition did not stay Maricopa's obligation to submit a cost estimate by July 14, 2014. 47 U.S.C. § 405(a): "No [petition for reconsideration before the Commission] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission."

⁵ Request at unnumbered page 3. Maricopa implies that the Commission should have been aware that Maricopa required more time to complete its cost estimate "as Maricopa understands that the Commission has weekly conference calls with Motorola to discuss rebanding status." Request at unnumbered page 2, n.3. Maricopa is mistaken; the Commission holds no such weekly conference calls with Motorola.

⁶ Request at unnumbered page 4.

⁷ 47 C.F.R. § 1.46(a).

⁸ Regents of the University of California, *Order*, 28 FCC Rcd 15920, 15921 (PSHSB 2013).

⁹ Request at unnumbered page 2.

5. In Maricopa’s case, as with others, the Bureau has been faced with delays to the rebanding program due, in large part, to vendors not providing timely planning services to their customers. Such delays are inimical to the Commission’s objective promptly to conclude rebanding so as to eliminate the hazard that 800 MHz interference creates for first responders. Licensees faced with such delays are well advised to request their vendors to apply additional resources to the task.

III. DECISION

6. We grant Maricopa an extension of time until October 5, 2014 to provide a cost estimate to Sprint and the TA. The extension includes a 30-day period for Maricopa to evaluate the Motorola statement of work, obtain any required changes, and estimate Maricopa’s rebanding-related internal costs. We expect Maricopa to exercise diligence in timely obtaining the cost estimate and to avoid mistakes of the kind that contributed to delays to date.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that the Further Request for Extension of Time filed July 14, 2014 by Maricopa County, Arizona, IS GRANTED to the extent provided for herein.

8. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau