

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

In the Matter of)	
)	
License Acquisitions, LLC)	WT Docket No. WT 02-55
)	
and)	Mediation No. TAM-45083
)	
Nextel Communications, Inc.)	

ORDER

Adopted: May 28, 2014

Released: May 28, 2014

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

I. INTRODUCTION

1. Under consideration is the Second Recommended Resolution and Renewed Request for Waiver (Second RR) filed May 27, 2014 by the 800 MHz Transition Administrator, LLC (TA) in connection with the resolution of the dispute between incumbent licensee, License Acquisitions, LLC (License Acquisitions) and Nextel Communications, Inc. (Sprint)¹ (collectively, Parties) regarding the adoption of a Frequency Reconfiguration Agreement (FRA).² The TA seeks an extension of time until June 3, 2014 for the Parties to execute an FRA. For the reasons set out below, we grant the request for waiver and extend, until June 3, 2014 the date by which the parties must execute an FRA.

II. BACKGROUND

2. Pursuant to the Commission’s *Fifth Report and Order*³ in this proceeding, and a timetable established by the TA,⁴ License Acquisitions submitted a cost estimate for reconfiguration of License Acquisitions’ 800 MHz communications licenses⁵ on November 20, 2013.⁶ The Parties mediated the cost

¹ For purposes of uniformity in 800 MHz proceedings, Sprint wholly-owned subsidiaries, such as Nextel Communications, Inc. are referred to by the parent, Sprint.

² See Second Recommended Resolution and Renewed Request for Waiver filed by the 800 MHz Transition Administrator, LLC *re* Mediation No. TAM-45083 (dated May 27, 2014) (Second RR).

³ Improving Public Safety Communications In the 800 MHz Band, WT Docket 02-55, *Fifth Report and Order*, 28 FCC Rcd 4085, 4104 (2013) (*Fifth Report and Order*)

⁴ 800 MHz Transition Administrator, LLC, Reconfiguration Timetable for the Reconfiguration of the 800 MHz Band in the Sharing Zone and Affected NPSPAC Regions Along the U.S.-Mexico Border, WT Docket No. 02-55 (Aug. 6, 2013).

⁵ Call signs WPLM227, WPLM228, WPLM229, WPLM230, WPSJ755, WPSJ756, WPSJ760, WPSJ761, WPSJ762, WPSJ766, and WPSJ767.

estimate until the prescribed mediation period terminated on January 28, 2014. On January 13, 2014, the Parties requested that the mediation period be extended until February 19, 2014.⁷ On February 20, 2014, Sprint requested the Public Safety and Homeland Security Bureau (Bureau) to extend or suspend the mediation period until the Commission addressed certain licensing disputes between the Parties.⁸ License Acquisitions concurred with the Sprint request.⁹ The Bureau, however, directed the Parties to negotiate an FRA for an additional thirty days¹⁰ and ordered the TA Mediator to submit a progress report by March 14, 2014.¹¹ The TA Mediator, on March 11, 2014, reported that the Parties were at impasse on the licensing issues.¹² On April 2, 2014 the Bureau ordered the Parties to conclude an FRA within twenty working days, with the FRA to be held in escrow by the TA pending resolution of the licensing issue. The Parties, on April 23, 2014, submitted an unexecuted FRA. The TA directed the Parties to execute the FRA. The TA Mediator then issued a Recommended Resolution and Request for Waiver recommending that the Bureau give the Parties until May 16, 2014 to submit an executed agreement. On May 27, 2014 the TA Mediator filed the instant Recommended Resolution and Request for Waiver, reporting that the Parties had not yet executed the FRA but were drafting and negotiating certain language that “will protect their respective positions in the non-rebanding-related disputes currently before the Commission.”¹³ The TA Mediator recommends that the Bureau extend the date for submission of an executed agreement until June 3, 2014.

III. DISCUSSION

3. The Commission, by rule,¹⁴ demands “utmost good faith” of the parties to FRA negotiations. Here, the Parties, ordered to submit an FRA by April 30, 2014, submitted an unexecuted document and, then proceeded to draft additional FRA language to “protect their respective positions” on matters unrelated to how License Acquisitions’ licenses will be reconfigured. Their action was in direct disregard of a Bureau order and did not reflect the utmost good faith that the rule requires. Now, the TA Mediator recommends that the parties be given yet additional time to execute an FRA, pointing out that the further extension will obviate the “need to review the Record,”¹⁵ and that “grant of additional time will facilitate the reconfiguration process without causing unreasonable delay.”¹⁶ The TA Mediator is correct that

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⁶ The Licensee’s cost estimate was due on this date because the Licensee chose not to negotiate a Planning Funding Agreement with Sprint, and has 5,000 or fewer subscriber units. *Fifth Report and Order*, 28 FCC Rcd at 4104.

⁷ E-mail from S. Pardue, counsel for Sprint Corporation to Public Safety and Homeland Security Bureau dated January 13, 2014.

⁸ E-mail from L. Phillips, counsel for Sprint Corporation to Public Safety and Homeland Security Bureau dated February 20, 2014.

⁹ E-mail from R. Somers, General Counsel, Smartcomm, LLC to M. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau dated February 24, 2014.

¹⁰ E-mail from M. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau to R. Somers, *et al.* dated February 27, 2014.

¹¹ Sprint Corporation and License Acquisitions, LLC, *Order*, 29 FCC Rcd 3566 (PSHSB 2014).

¹² See E-mail from C. M. McMurray, TA Mediator to M. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau dated March 11, 2014.

¹³ Second RR at 4.

¹⁴ 47 C.F.R. § 90.677(c).

¹⁵ Second RR at 4.

¹⁶ *Id.* at 3.

preparation of a recommended resolution and *de novo* review by the Bureau could cause unreasonable delay in the reconfiguration process.¹⁷ However, we are not prepared to perpetuate the series of delays that have characterized this matter to date.

IV. DECISION

4. We will extend the date for submission of an executed FRA to the TA on or before June 3, 2014, with the understanding, however, that there will be no further extensions. Should the Parties not submit an executed FRA by that date, the TA Mediator shall prepare a recommended resolution, addressing therein, *inter alia*, facts probative of whether either or both parties violated Section 90.677(c) of the Commission's rules.¹⁸ On *de novo* review of the recommended resolution, the Bureau will assess whether either, or both, parties are responsible for the rule violation, and the appropriate sanctions therefor.

V. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED that the Second Recommended Resolution and Renewed Request for Waiver, filed May 27, 2014 by the 800 MHz Transition Administrator, LLC IS GRANTED, to the extent indicated herein.

6. IT IS FURTHER ORDERED that Nextel Communications, Inc. and License Acquisitions, LLC, SHALL SUBMIT a fully executed Frequency Reconfiguration Agreement to the 800 MHz Transition Administrator, LLC on or before June 3, 2014.

7. IT IS FURTHER ORDERED that, should Nextel Communications, Inc. and License Acquisitions, LLC, not submit a fully executed Frequency Reconfiguration Agreement to the 800 MHz Transition Administrator, LLC, on or before June 3, 2014, the 800 MHz Transition Administrator Mediator SHALL PREPARE a recommended resolution of this matter within ten business days.

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

¹⁷ Letter from Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, FCC to Robert B. Kelly, Esq., 800 MHz Transition Administrator, LLC, 21 FCC Rcd 687, 688 (WTB 2006).

¹⁸ 47 C.F.R. § 90.677(c).