

**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
	)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	
	)	

**ORDER**

**Adopted: May 25, 2006**

**Released: May 26, 2006**

By the Commission: Commissioner Tate not participating.

1. In this Order, we address a request by the 800 MHz Transition Administrator (TA) to extend the mandatory negotiation period for NPSPAC licensees in Wave 1 of the TA's transition timetable by three months from July 31, 2006 to October 31, 2006. The requested extension will provide additional time for Wave 1 NPSPAC licensees to negotiate frequency relocation agreements (FRAs) with Sprint Nextel Corporation (Sprint). For the reasons set out below, we grant the request.

2. In July 2004, the Commission adopted the *800 MHz Report and Order* in this docket, which established a 36-month timetable for reconfiguration of the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band.<sup>1</sup> The *800 MHz Report & Order* further provided that negotiations between Sprint and 800 MHz licensees affected by rebanding would be subject to a three-month voluntary negotiation period, followed by a three-month mandatory negotiation period, starting on a date or dates specified by the TA, after which parties that have failed to reach agreement would enter into mediation.<sup>2</sup> The TA established a band reconfiguration schedule that groups 800 MHz licensees into four waves, and designated staggered starting dates for the negotiation periods in each wave.<sup>3</sup> Pursuant to this schedule, the voluntary negotiation period for 800 MHz NPSPAC

<sup>1</sup> See *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*). See also *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004); *Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015 (2005).

<sup>2</sup> *800 MHz Report & Order*, 19 FCC Rcd at 15075-78 ¶ 201.

<sup>3</sup> See "Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan," *Public Notice*, 20 FCC Rcd 5159 (WTB 2005). In each wave, negotiations occur in two phases on separate schedules: 1) Phase 1 consists of negotiations between (continued....)

licensees in Wave 1 began on February 1, 2006, and ended on April 30, 2006.<sup>4</sup> The mandatory negotiation period began on May 1, 2006 and is currently scheduled to end on July 31, 2006.<sup>5</sup>

3. On January 31, 2006, the Wireless Telecommunications Bureau requested that the TA assess whether adjustments should be made to the band reconfiguration schedule.<sup>6</sup> On March 29, 2006, the TA informed the Bureau that, after consultation with major stakeholders in the band reconfiguration process, including public safety organizations, Sprint, and equipment vendors, it recommended extending the mandatory negotiation period for NPSPAC channel licensees in Wave 1 by three months, *i.e.* until October 31, 2006.<sup>7</sup> The TA noted that its recommendation was based on the number of licensees in the wave and the TA's experience from prior waves regarding the time required to complete negotiations and formalize agreements.<sup>8</sup> The TA further stated that the extension would help maintain the integrity of the 36-month rebanding schedule established by the Commission and was supported by major stakeholders.<sup>9</sup> On April 7, 2006, Sprint filed a letter supporting the TA's recommendation.<sup>10</sup> On April 11, 2006, several public safety organizations submitted a joint letter that also supports the TA's recommendation.<sup>11</sup> In addition, they urged the TA to take affirmative steps to ensure that negotiations proceed in a fair and expeditious manner, and stressed the importance of Sprint providing sufficient resources to engage in meaningful negotiations with public safety licensees.<sup>12</sup>

4. In order to extend the mandatory negotiation period as requested by the TA, we must waive Section 90.677(c) of the Commission's Rules, which specifies a three-month

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Sprint and licensees in the wave who occupy Channels 1-120 in the 800 MHz band; 2) Phase 2 consists of negotiations between Sprint and licensees in the wave who occupy the NPSPAC channels. The extension in the instant order affects only Wave 1, Phase 2 negotiations.

<sup>4</sup> See "Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration for NPSPAC Channels Will Commence February 1, 2006, in the NPSPAC Regions Assigned To Wave 1," *Public Notice*, DA 05-3348, released December 30, 2005.

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau to Robert B. Kelly, WT Docket No. 02-55 (Jan. 31, 2006).

<sup>7</sup> Letter from Robert B. Kelly to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, WT Docket No. 02-55, at 3 (Mar. 29, 2006) (TA March 29 Letter).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> Letter from Lawrence R. Krevor, Vice President-Spectrum, Government Affairs, Sprint Nextel Corporation, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, WT Docket No. 02-55 (Apr. 7, 2006).

<sup>11</sup> Letter from Association of Public Safety Communications Officials-International, International Association of Chiefs of Police, International Association of Fire Chiefs, Major Cities Chiefs Association, Major County Sheriff's Association and National Sheriff's Association, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, WT Docket No. 02-55 (Apr. 11, 2006) (Public Safety Joint Letter).

<sup>12</sup> *Id.*

mandatory negotiation period.<sup>13</sup> Section 1.925 of the Commission's rules states that a rule waiver is warranted if "(i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."<sup>14</sup>

5. We conclude that the TA has justified a waiver of Section 90.677(c) under the first prong of the waiver standard. The underlying purpose of the rule specifying the three-month mandatory negotiation period is to ensure timely completion of FRAs so that 800 MHz band reconfiguration may proceed on schedule. Experience shows, however, that some parties may require more time to plan for rebanding and negotiate agreements. This is particularly true in the case of NPSPAC licensees who must ensure that public safety operations are not compromised during the transition, and therefore require adequate time and funding to plan for rebanding as a prerequisite to negotiating a final agreement. We believe that affording Sprint and the NPSPAC licensees in Wave 1 a limited additional period for planning and negotiations will facilitate the transition and maintain the integrity of the overall rebanding timetable. We emphasize that the TA has not recommended and our action does not affect the interim milestones or the 36-month deadline for completion of rebanding established by the Commission.

6. We note that extending the mandatory negotiation period will not, in and of itself, ensure successful negotiations between Sprint and NPSPAC licensees. In granting this limited extension, we agree with the views expressed by public safety that all parties must take affirmative steps to ensure that negotiations proceed in a fair and expeditious manner.<sup>15</sup> The *800 MHz Report and Order* requires all parties to negotiate in the utmost good faith.<sup>16</sup> As part of this obligation, it is important that Sprint, as the common party to all negotiations, provide sufficient resources to engage in the multiple negotiations required in each wave and to enable reasonable planning by public safety entities. It is equally important that public safety and other 800 MHz licensees work expeditiously to plan for and conduct negotiations, and to provide such information reasonably requested by Sprint as is necessary to the calculation of relocation costs and expenses that Sprint must pay pursuant to the Commission's orders in this proceeding. We also direct the TA to take affirmative steps within the discretion afforded to it by Commission orders as necessary to facilitate negotiations, as it has done in recently announcing new

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<sup>13</sup> 47 C.F.R. § 90.677(c).

<sup>14</sup> 47 C.F.R. § 1.925(b)(3). The TA also recommended postponing the start dates for Wave 2 and Wave 3 NPSPAC negotiations by three months, respectively. TA March 29 Letter at 3. Because the start dates are set by the TA and these negotiation periods had not commenced, these actions are within the TA's authority and do not require a waiver of the rules. The Wireless Bureau concurred in the TA's recommendation and the start dates for Waves 2 and 3 have been postponed. See "Wireless Telecommunications Bureau Announces Revisions of the Start Date for Negotiations Between Sprint Nextel and NPSPAC Licensees Assigned to Waves 2 and 3 of 800 MHz Band Reconfiguration," WT Docket No. 02-55, *Public Notice*, DA 06-767 (rel. Apr. 3, 2006).

<sup>15</sup> See Public Safety Joint Letter at 1-2

<sup>16</sup> *800 MHz Report and Order*, 19 FCC Rcd at 15078 ¶ 201

procedures to facilitate and expedite negotiation of planning funding agreements.<sup>17</sup> We expect that the TA will take a more active role in monitoring the progress of individual negotiations and establishing deadlines for meeting negotiation milestones. In addition, we will continue to actively monitor the rebanding process and we will not hesitate to take any additional steps that may prove necessary to prevent delays in negotiations or other delays in the rebanding process. In order to assist us in this monitoring process, we will require the TA to report to the Public Safety and Critical Infrastructure Division (PSCID) every two weeks on the status of planning activities and negotiations.

7. Finally, we delegate to the Chief of PSCID the authority, consistent with this order, to grant requests by the TA for extension of negotiation periods in future waves, based on a sufficient showing by the TA that the requested extension will facilitate negotiations and does not affect the interim milestones or the 36-month deadline for completion of rebanding established by the Commission.

8. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f) and (r) that this *Order* IS HEREBY ADOPTED and that Section 90.677(c) of the Commission's rules, 47 C.F.R. § 90.677(c) IS WAIVED to the extent provided for herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>17</sup> See TA March 29 Letter at 3. In order to help streamline the planning activities associated with 800 MHz Reconfiguration, the TA has implemented procedures for review of licensees' planning funding submissions and a timetable for planning funding negotiations. See "800 MHz Transition Administrator Implements New Process for Obtaining Planning Funding," Press Release (Feb. 2, 2006) available at <http://www.800TA.org>.