

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 02-55
)	
Relinquishment By Sprint Nextel of Channels in the Interleaved, Expansion, and Guard Bands)	

ORDER

Adopted: October 29, 2008

Released: October 30, 2008

By the Commission:

I. INTRODUCTION

1. In this order, we address the June 17, 2008 Petition for Relief filed by Sprint Nextel Corporation (Sprint), in which Sprint asks that we modify or waive the requirement that it vacate its non-border spectrum holdings in the 800 MHz Interleaved Band (809-815/854-860 MHz), Expansion Band (815-816/860-861 MHz) and Guard Band (816-817/861-862 MHz) (collectively, Mid-Band) by June 26, 2008.¹ We grant a waiver to Sprint allowing it to relinquish this spectrum in stages, tied to the progress towards completion of rebanding achieved by 800 MHz NPSPAC licensees in each NPSPAC Public Safety Region. We further require that regardless of the pace of rebanding progress, Sprint must relinquish all of its non-border spectrum in the Interleaved Band, *i.e.*, all channels below 815/860 MHz, by March 31, 2010.² We also adapt our previously established procedures for licensing the vacated spectrum to public safety and critical infrastructure industry (CII) entities to conform to this staged approach.

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.³ As one element of rebanding, Sprint agreed to vacate all of its 800 MHz spectrum

¹ Petition for Relief – Expedited Action Requested, filed by Sprint Nextel Corporation, June 17, 2008 (Sprint Petition).

² 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 Wave 4 regions where licensees subject to rebanding received replacement frequency assignments from the Transition Administrator prior to June 26, 2008.

³ 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*

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holdings below 817/862 MHz, including its holdings in the Mid-Band, that have not otherwise been used to accommodate rebanding of 800 MHz incumbents.⁴ The Commission further provided that the vacated channels in the Interleaved Band would be made exclusively available for new licensing to public safety for three years after the completion of rebanding in each region, and would be exclusively available to public safety and CII for the following two years.⁵ The vacated channels in the Expansion Band and Guard Band would be available for licensing under their pre-rebanding pool categories.⁶

3. In the *800 MHz 3rd MO&O*, we affirmed that Sprint is required to vacate the Mid-Band in non-border areas 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 are complete.⁷ Sprint appealed the *800 MHz 3rd MO&O* to the Court of Appeals for the D.C. Circuit, contending that it is not required to vacate the Mid-Band in any NPSPAC region until all licensees in the region have completed rebanding, even if the completion of rebanding takes longer than 36 months. On May 2, 2008, the Court upheld our decision in full.⁸

4. On June 17, 2008, Sprint filed its Petition for Relief, requesting that the Commission authorize it to relinquish its non-border spectrum holdings in the Mid-Band in six 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).⁹ To the extent necessary, Sprint requests a waiver to carry out this staged transition,¹⁰ which would occur as follows under Sprint's proposal:

- Stage 1: Sprint proposes to relinquish all of its remaining channels in the 809-809.5/854-854.5 MHz block of the Interleaved Band, making them immediately available for licensing and use by eligible public safety licensees in all non-border public safety regions. Since the Petition was filed, Sprint has begun the process of relinquishing its channel holdings in this block.

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MHz Supplemental Order); *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005); *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007).

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

⁵ *Id.*, 19 FCC Rcd at 15052 ¶ 152.

⁶ *Id.*, 19 FCC Rcd 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.

⁷ *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.

⁸ *Sprint Nextel Corp. v. FCC*, 524 F.3d 253 (D.C. Cir. 2008).

⁹ Sprint Petition at 3-5.

¹⁰ *Id.* at 2.

- Stages 2 through 6: Sprint proposes to relinquish additional Mid-Band channels in each non-border public safety region based on the percentage of channels in the old NPSPAC block that have been cleared in the region by relocation of NPSPAC incumbents to the new NPSPAC block:
 - Stage 2 -- 809.5-810.5/854.5-855.5 MHz block: relinquished when 25% of channels in the old NPSPAC block (*i.e.*, 30 channels) are clear in the region.¹¹
 - Stage 3 -- 810.5-812/855.5-857 MHz block: relinquished when 50% of channels in the old NPSPAC block (*i.e.*, 60 channels) are clear in the region.
 - Stage 4 -- 812-814/857-859 MHz block: relinquished when 75% of channels in the old NPSPAC block (*i.e.*, 90 channels) are clear in the region.
 - Stage 5 -- 814-816/859-861 MHz block: relinquished when 90% of channels in the old NPSPAC block (*i.e.*, 108 channels) are clear in the region.
 - Stage 6 -- 816-817/861-862 MHz block: relinquished when 100% of channels in the old NPSPAC block (*i.e.*, 120 channels) are clear in the region.

Sprint further proposes that in each stage, Sprint would relinquish its rights to the channels to allow eligible entities to apply for them, but would not be required to physically vacate any channel until the new licensee with rights to the channel provided 60 days notice of readiness to use the channel.¹²

5. On June 20, 2008, the Public Safety and Homeland Security Bureau (PSHSB), on its own motion, waived the deadline by which Sprint must vacate the Mid-Band for a period of 30 days to allow us time to consider the issues raised by the Sprint Petition.¹³ The Bureau has since extended the deadline by four additional 30-day periods.¹⁴ Consequently, Sprint is currently obligated to vacate the entire Mid-Band by November 24, 2008 unless the Commission finds good cause to modify or waive the requirement.

6. On June 24, 2008, 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) jointly filed a letter in response to the Sprint Petition.¹⁵

¹¹ Because Sprint operates on 25 kHz channels, Sprint calculates a total of 120 channels in the old NPSPAC block, and proposes to define a “clear” channel for this purpose as a 25 kHz channel that is available for use by Sprint throughout the entire NPSPAC region. Sprint Petition at 4 n.9.

¹² *Id.*

¹³ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 23 FCC Rcd 9581 (PSHSB 2008).

¹⁴ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 23 FCC Rcd 11271 (PSHSB 2008); Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 23 FCC Rcd 12819 (PSHSB 2008); Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 23 FCC Rcd 13851 (PSHSB 2008); Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, DA 08-2351 (PSHSB, rel. Oct. 24, 2008)

¹⁵ 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

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These organizations state that they are not opposed to Sprint's proposal, but propose that Sprint be required to vacate all of its Interleaved Band channels, *i.e.*, all Mid-Band channels below 815/860 MHz, by July 1, 2009 to accommodate the anticipated demand for additional public safety spectrum capacity in the 800 MHz band.¹⁶

7. On July 7, 2008, Sprint filed a reply to the APCO/IACP/IAFC Joint Response.¹⁷ Sprint objects to the APCO/IACP/IAFC proposal that it be required to vacate all of its Interleaved Band channels by July 1, 2009.¹⁸ As an alternative, Sprint proposes a "safety valve" for accelerated release of additional channels on a case-by-case basis. Under this proposal, when the 75% clearing benchmark (Stage 4) is achieved in a region, freeing up channels for public safety below 814/859 MHz, Sprint will also vacate any of its channels in the 814-815/859-860 MHz block on 60 days notice if a public safety licensee in the region demonstrates that it needs the additional capacity.¹⁹ Sprint also proposes that in unique circumstances involving extensive rebanding delays where the 75% threshold has not been met, the Commission could consider public safety requests for additional channels on a case-by-case basis.²⁰

8. On July 25, 2008, Spectrum Acquisitions, Inc. (SAI) filed an opposition to the Sprint Petition.²¹ SAI contends that Sprint's proposal will increase interference to public safety entities in the 800 MHz band and does not make sufficient spectrum available to public safety users in a timely fashion.²² SAI proposes that the Commission grant a 6-month extension of the deadline for Sprint to vacate the Mid-Band and that we revise Sprint's 1.9 GHz spectrum rights so that it may only access the 1.9 GHz band on a region-by-region basis as rebanding is completed in each region.²³ SAI also references comments it recently filed in the Commission's 700 MHz D Block proceeding, in which SAI proposed that Sprint return all of its 800 MHz

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Relations, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, Federal Communications Commission, June 24, 2008 (APCO/IACP/IAFC Joint Response).

¹⁶ *Id.* APCO, IACP, and IAFC would allow Sprint to remain on Interleaved Band channels past July 1, 2009 provided that Sprint vacates any channel on 60-days notice that a public safety agency is prepared to operate on the channel.

¹⁷ Letter from Lawrence R. Krevor, Vice President – Spectrum; James B. Goldstein, Director, Spectrum Reconfiguration, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, July 7, 2008 (Sprint Reply). On July 10, 2008, the Enterprise Wireless Alliance, filed a letter in support of Sprint's revised position. Letter from Mark E. Crosby, President/CEO, Enterprise Wireless Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, July 10, 2008.

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4.

²¹ Opposition of Spectrum Acquisitions, Inc., filed July 25, 2008 (SAI Opposition).

²² *Id.* at 14-16.

²³ *Id.* at 18-19.

spectrum to the Commission as part of a larger reconfiguration of the 700 MHz and 800 MHz bands.²⁴

9. Since the Petition was filed, Sprint has begun the process of relinquishing its channel holdings in the 809-809.5/854-854.5 MHz block (Stage 1 of its proposal) in all non-border regions while the Petition is pending. Accordingly, we will shortly launch a public website that interested parties may use to identify relinquished channels in this block, and will issue a public notice detailing application and licensing procedures and specifying the initial date that applications for such channels may be filed.

III. DISCUSSION

10. As we observed in the *800 MHz 3rd MO&O*, requiring Sprint to clear the Mid-Band in a timely manner “accomplishes important public interest objectives by reducing the potential for interference and increasing the amount of 800 MHz spectrum available for public safety use.”²⁵ We also pointed out that the Commission had enabled Sprint to prepare for and mitigate the potential spectrum shortfalls “by providing Sprint access to 900 MHz spectrum and crediting Sprint for the cost of constructing additional cell sites to increase its network capacity.”²⁶

11. Sprint contends, however, that the Commission should modify or waive the requirement that Sprint vacate the Mid-Band in light of changed circumstances since the *800 MHz 3rd MO&O*. Sprint notes that over 60 percent of non-border NPSPAC licensees have sought and received waivers of the June 26, 2008 rebanding deadline.²⁷ As a result of these waivers, Sprint asserts, it will continue to bear the administrative, network, and implementation burdens of rebanding well beyond June 26, 2008, while its access to spectrum being vacated by NPSPAC licensees will be delayed.²⁸ Sprint contends that if it is required to fully vacate the Mid-Band while substantial NPSPAC relocation is still ongoing, it will suffer a significant reduction in spectrum capacity during the transition that could substantially impair its network performance and ability to serve customers, including public safety customers.²⁹ Sprint states that it will meet its rebanding obligations, but requests that we readjust the *800 MHz 3rd MO&O* requirements “to ensure a fair and equitable balance in expediting band reconfiguration, providing public safety additional channels, and avoiding disruption to Sprint Nextel’s customers during the transition to the final band plan.”³⁰

12. We will waive our rules if “[i]n view of unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to

²⁴ *Id.* at 4-5 (citing SAI comments filed June 23, 2008 in WT Docket No. 06-150).

²⁵ *800 MHz 3rd MO&O*, 22 FCC Rcd at 17217 ¶ 28.

²⁶ *Id.*

²⁷ Sprint Petition at 1-2.

²⁸ *Id.* at 3.

²⁹ *Id.* at 5.

³⁰ *Id.* at 3.

the public interest.”³¹ We agree with Sprint that since the *800 MHz 3rd MO&O*, the circumstances surrounding the rebanding process have evolved in several material respects. Although most NPSPAC licensees are now engaged in the rebanding process, rebanding has proven to be substantially more complicated and protracted than originally contemplated.³² On June 17, 2008, PSHSB released a series of orders addressing approximately 500 requests by public safety licensees for waiver of the June 26, 2008 deadline.³³ In these orders, the Bureau granted waivers to public safety licensees seeking extensions to complete rebanding on or before July 1, 2009, and granted partial relief to licensees requesting more lengthy extensions. On June 19, 2008, the Bureau granted Sprint a parallel waiver to remain on Channel 1-120 channels until NPSPAC licensees that receive waivers are ready to reband.³⁴ As a result, it is now clear that completion of NPSPAC rebanding will extend well past June 26, 2008.

13. Given these circumstances, we do not believe the public interest would be served by requiring Sprint to immediately vacate the entire Mid-Band, which would cause serious disruption to Sprint’s network and customers. At the same time, we believe that to make spectrum available to public safety and reduce the potential for harmful interference, Sprint should promptly begin the process of vacating the Mid-Band, and should vacate additional Mid-Band portions as rebanding progresses. We find that Sprint’s proposal is consistent with this objective and will not undermine the original purpose of the requirement.

14. We disagree with SAI’s assertion that Sprint’s proposal will increase harmful interference to public safety.³⁵ Of particular note, under the proposal, Sprint will relinquish channels at the low end of the Mid-Band in the earlier stages while relinquishing channels at the high end of the band in the later stages. By relinquishing lower-end channels first, Sprint will achieve greater spectral separation from the new NPSPAC band early in the transition, thereby decreasing the potential for harmful interference to public safety systems. This sequence will also enable public safety entities to access those channels earliest that are likely to be the most valuable to public safety due to their proximity to the new NPSPAC band and their separation from the reconfigured ESMR band. Finally, so long as Sprint continues to occupy any Mid-Band channels, we will continue to require it to protect public safety from harmful interference under the rules established for the rebanding transition.³⁶

³¹ 47 C.F.R. § 1.925(b)(3)(ii). See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

³² Sprint Petition at 2. See also Federal Communications Commission Provides Guidance for Submission of Requests for Waiver of June 26, 2008 Deadline for Completion of 800 MHz Rebanding, *Public Notice*, 23 FCC Rcd 664 (2008).

³³ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Order*, 23 FCC Rcd 9421 (PSHSB 2008); *Order*, 23 FCC Rcd 9430 (PSHSB 2008); *Order*, 23 FCC Rcd 9443 (PSHSB 2008); *Order*, 23 FCC Rcd 9454 (PSHSB 2008); *Order*, 23 FCC Rcd 9464 (PSHSB 2008); *Order*, 23 FCC Rcd 9476 (PSHSB 2008); *Order*, 23 FCC Rcd 9485 (PSHSB 2008); *Order*, 23 FCC Rcd 9491 (PSHSB 2008).

³⁴ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Order*, 23 FCC Rcd 9558 (PSHSB 2008) (*Sprint Channel 1-120 Waiver Order*).

³⁵ See SAI Opposition at 15-16.

³⁶ During the transition, Sprint must protect public safety licensees in accordance with the “interim” interference standard specified by the Commission in the *800 MHz Supplemental Order*. See *800 MHz Supplemental Order*, 19 FCC Rcd at 25137-38 ¶ 39. In addition, Sprint must employ the additional protection methods identified in the *800*

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15. While we find merit in Sprint's proposal to relinquish its Mid-Band spectrum in stages tied to NPSPAC rebanding, we also agree with public safety representatives that it is appropriate to set an eventual deadline for Sprint to vacate the Interleaved Band regardless of NPSPAC rebanding progress. This will provide public safety with certainty regarding when such spectrum will become available to meet public safety demand, and will increase the spectral separation between Sprint and public safety. We therefore require that by March 31, 2010, Sprint must make available all of its remaining non-border spectrum in the Interleaved Band, *i.e.*, all channels below 815/860 MHz.³⁷ Sprint may remain on such channels past this date provided that Sprint vacates any channel on 60-days notice that a public safety agency is prepared to operate on the channel. Although the March 31, 2010 deadline we adopt is later than the date proposed by APCO, IACP, and IAFC, we believe this date fairly balances Sprint's network concerns against public safety's need for additional spectrum. Based on the progress achieved in rebanding to date, we believe that by March 31, 2010, the staged approach proposed by Sprint will have already yielded substantial spectrum to public safety in most regions. We will also entertain public safety requests for accelerated access to Interleaved Band channels on a case-by-case basis where public safety can demonstrate a compelling need for the channels before the relevant NPSPAC clearing threshold is met.

16. We emphasize that in acting on the Sprint Petition, we make no finding regarding the degree to which Sprint's inability to vacate the Mid-Band by the 36-month deadline was due to factors within or beyond Sprint's control. We therefore defer for the time being any consideration of possible enforcement action against Sprint (*e.g.*, monetary forfeitures or license revocation) for failure to meet the deadline.³⁸ We specifically decline at this time to consider SAI's proposal to limit Sprint's rights to use the 1.9 GHz spectrum.³⁹ We also note that our waiver of Sprint's deadline for vacating the Mid-Band has no impact on Sprint's other rebanding obligations or any other aspect of the rebanding timetable set forth in the Commission's orders in this proceeding, including the timetable for relocating Broadcast Auxiliary Service (BAS) licensees to frequencies above 2025 MHz.

17. Based on the above, we grant Sprint's request for waiver in part and impose the following requirements on Sprint for relinquishing its channel holdings in the Mid-Band by stages. We also adapt our procedures for licensing of these channels to conform to this staged approach as follows:

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MHz Supplemental Order to protect licensees that do not meet the signal strength threshold under Commission's interim rule but that do meet the threshold under the Commission's final interference rules. *Id.* at 25139-40 ¶ 42.

³⁷ We will allow Sprint to remain on Expansion Band and Guard Band channels in each region until the relevant NPSPAC clearing threshold is reached. As noted above, these channels are not to be made available to public safety.

³⁸ We have similarly deferred consideration of enforcement action against Sprint for failure to meet the 18-month rebanding benchmark. *See 800 MHz 3rd MO&O*, 22 FCC Rcd at 17214 ¶ 18.

³⁹ We also decline to address SAI's proposal for Sprint to return all of its 800 MHz spectrum to the Commission. This proposal was submitted in comments to the 700 MHz proceeding and is beyond the scope of the proceeding currently before us.

- Stage 1: As noted above, Sprint has begun the process of making all of its channels in the 809-809.5/854-854.5 MHz block of the Interleaved Band available for licensing and use by eligible public safety agencies in all non-border regions. These channels will be identified in a publicly available website and PSHSB will announce a filing window and application procedures for the channels as soon as possible. Consistent with the *800 MHz Report and Order*, these channels will be exclusively available to public safety eligibles for three years after opening of the filing window, and will be exclusively available to public safety and CII eligibles for the following two years.⁴⁰ After new licenses are granted, Sprint will vacate any channel on 60 days notice that the new licensee is ready to use the channel.
- Sprint will make additional blocks of Mid-Band channels available for licensing and use in each non-border region in stages tied to achievement of the following thresholds in the region for relocation of NPSPAC licensees and resulting clearing of channels in the old NPSPAC band:
 - Stage 2: Sprint will make its channels in the 809.5-810.5/854.5-855.5 MHz block available in each region when 25% of channels in the old NPSPAC block (*i.e.*, 30 channels) are clear in the region.⁴¹
 - Stage 3: Sprint will make its channels in the 810.5-812/855.5-857 MHz block in available each region when 50% of channels in the old NPSPAC block (*i.e.*, 60 channels) are clear in the region.
 - Stage 4: Sprint will make its channels in the 812-814/857-859 MHz block in each region when 75% of channels in the old NPSPAC block (*i.e.*, 90 channels) are clear in the region.⁴² As described in Sprint's "safety valve" proposal, Sprint will also make its channels in the 814-815/859-860 MHz block available if there is public safety demand for additional channels in the region.⁴³
 - Stage 5: To the extent that channels in the 814-815/859-860 MHz block have not been made available in Stage 4, Sprint will make its channels in this block available in each region when 90% of channels in the old NPSPAC block (*i.e.*, 108 channels) are clear in the region. Sprint will also make its channels in the 815-816/860-861 MHz Expansion Band block available in each region
 - Stage 6: Sprint will make its channels in the 816-817/861-862 MHz Guard Band block available in each region when 100% of channels in the old NPSPAC block (*i.e.*, 120 channels) are clear in the region.

⁴⁰ *800 MHz Report and Order*, 19 FCC Rcd at 15052, ¶ 152.

⁴¹ Because Sprint operates on 25 kHz channels, we define a "clear" channel for this purpose as a 25 kHz channel that has been cleared of NPSPAC incumbents throughout the NPSPAC region.

⁴² In the Southeast ESMR Band Plan Area, Sprint is only required to vacate channels below 813.5/858.5 MHz, which is the dividing line in that region between the ESMR and non-ESMR portions of the band.

⁴³ Public safety entities will be allowed to apply for channels in the 814-815/859-860 MHz block in Stage 4 if the frequency coordinator certifies that there are no suitable Interleaved Band channels available to the applicant below 814/859 MHz.

- On March 31, 2010, Sprint will make available all non-border channels in the Interleaved Band, *i.e.*, all channels below 815/860 MHz that it has not relinquished previously. Sprint will continue to make spectrum in the Expansion Band and Guard Band available based on the region-by-region thresholds for NPSPAC relocation and clearing described above.
- As each additional block of Mid-Band spectrum is made available based on the formulas described above, the available channels in the block will be identified in a publicly available website, and the relevant licensing bureau will announce a filing window and application procedures for the channels.⁴⁴
- Consistent with the *800 MHz Report and Order*, channels relinquished by Sprint in each block of the Interleaved Band (809-815/854-860 MHz) will be made exclusively available for licensing to public safety eligibles for three years after the opening of the filing window for that block, and will be exclusively available for licensing to public safety and CII eligibles for the following two years.⁴⁵ After new licenses are granted, Sprint will vacate any channel on 60 days notice that the new licensee is ready to use the channel.
- Expansion Band channels (815-816/860-861 MHz) covered in Stage 5 will be made available for licensing under their pre-rebanding pool categories. To the extent that new Expansion Band licenses are granted, Sprint will vacate any channel on 60 days notice that the new licensee is ready to use the channel.
- Guard Band channels (816-817/861-862 MHz) covered in Stage 6 will also be made available for licensing under pre-rebanding pool categories. Because Stage 6 represents the completion of NPSPAC rebanding in each region, Sprint will vacate these channels immediately and unconditionally when Stage 6 clearing is achieved. In addition, Sprint will immediately vacate any remaining Interleaved or Expansion Band channels in the region from Stages 1 through 5 that it has not previously vacated under the 60-day notice procedure.

18. We clarify several elements of the clearing and licensing process described above. Channels in the old NPSPAC band will be deemed “clear” when the NPSPAC licensee formerly occupying the channels has relocated to channels in the new NPSPAC band and has ceased operations on the old channels, even if the licensee has not completed all post-relocation rebanding tasks (*e.g.*, “second touches” of subscriber radios to remove old channels). The TA will be responsible for monitoring the NPSPAC clearing process and determining when each of

⁴⁴ PSHSB will be responsible for initial licensing of vacated Interleaved Band channels to public safety, while the Wireless Telecommunications Bureau will be responsible for subsequent licensing of Interleaved Band channels to CII as well as all licensing of vacated channels in the Expansion Band and Guard Band.

⁴⁵ After five years, any remaining vacated Interleaved Band channels will revert to their pre-rebanding licensing categories. However, to the extent that Sprint vacates any of the 12 former SMR channels that were reclassified in the *800 MHz Report and Order* as Public Safety channels (856.0125, 856.0375, 856.0625, 856.0875, 857.0125, 857.0375, 857.0625, 857.0875, 858.0125, 858.0375, 858.0625, and 858.0875 MHz), *see* note 6, *supra*, these channels will be permanently available solely to public safety entities.

the percentage clearing thresholds described above has been met, at which point it will notify Sprint and PSHSB.

19. We also clarify the 60-day notice procedure for Sprint to vacate and new licensees to commence operations on channels in the Mid-Band. Sprint proposes that the 60-day clock would commence once a new licensee demonstrates that it (1) has received authorization from the Commission to operate on the channels at its proposed site; (2) has constructed the base station(s) and related infrastructure necessary to operate on the new channel(s); (3) has deployed mobile units or handsets capable of operating on the new channels for the majority of its regular users; and (4) intends to commence regular operations on the new channels in 60 days.⁴⁶ We do not find such a complex showing by the licensee to be required. Instead, we apply the same 60-day notice procedure that we are already using elsewhere in the rebanding process to enable rebanding NPSPAC licensees to occupy channels in the Channel 1-120 band formerly occupied by Sprint.⁴⁷ Under this procedure, a new licensee with prospective rights to a Mid-Band channel need only provide notice to Sprint that it requires the channel in 60 days for testing purposes or to commence operations. Once Sprint has received such notice, Sprint must terminate its operations and clear the spectrum within 60 days to the extent necessary to allow the licensee to operate on the channel without harmful interference.

IV. ORDERING CLAUSE

20. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 332, this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁶ Sprint Petition at 5.

⁴⁷ See *800 MHz 3rd MO&O*, 22 FCC Rcd at 17216 ¶ 23; *Sprint Channel 1-120 Waiver Order*, 23 FCC Rcd at 9562 ¶ 14.