

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

In the Matter of )  
 )  
SPRINT NEXTEL CORPORATION ) WT Docket No. 02-55  
 )  
Petition for Declaratory Ruling )

MEMORANDUM OPINION AND ORDER  
AND ORDER OF PROPOSED MODIFICATION

Adopted: September 15, 2014

Released: September 17, 2014

By the Commission:

I. INTRODUCTION

1. On January 22, 2013 Sprint Nextel Corporation (Sprint) filed a Petition for Declaratory Ruling (Petition) asking the Commission (1) to eliminate the \$850 million “floor” for the letter of credit securing Sprint’s performance of its 800 MHz rebanding obligations, immediately reduce the letter of credit amount to \$457 million, and allow subsequent incremental reductions as rebanding progresses; and (2) to declare that Sprint is no longer required to make an “anti-windfall” payment to the United States Treasury.<sup>1</sup>

2. For the reasons set out below, we find that a petition for declaratory ruling is not the proper procedural vehicle for seeking an elimination of the \$850 million floor on the letter of credit because the Commission imposed the floor as a condition to Sprint’s licenses and granting the relief Sprint seeks would not be an exercise of our declaratory authority to remove uncertainty or terminate a controversy, as specified by Section 1.2(a) of the Commission’s Rules.<sup>2</sup> We will, however, treat Sprint’s Petition as a request that the Commission modify the letter of credit license condition. As such, we now act pursuant to our Section 316 authority<sup>3</sup> and propose to modify the condition as set forth herein. When the proposed license modification becomes effective, the \$850 million floor will be eliminated and we further direct that the letter of credit balance be reduced to \$457 million. In addition, Sprint may seek further incremental reductions in the letter of credit balance based on rebanding progress, which will be subject to the same process of review by the 800 MHz Transition Administrator (TA) and approval by the Public Safety and Homeland Security Bureau (Bureau) that has been used for prior letter of credit reductions.

3. With respect to Sprint’s request for a declaration that it is not liable for an anti-windfall payment, we conclude that it is premature to make this finding at this time, but we establish an expedited process for assessment of Sprint’s creditable expenditures and provide guidance as to additional documentation Sprint may submit to support such a determination in the future.

<sup>1</sup> Petition for Declaratory Ruling, filed January 22, 2013, by Sprint Nextel Corporation (Petition) at 4.

<sup>2</sup> 47 C.F.R. § 1.2(a).

<sup>3</sup> See 47 U.S.C. § 316.

## II. LETTER OF CREDIT

### A. Background

4. In the *800 MHz Report and Order*,<sup>4</sup> the Commission assigned Nextel Communications, Inc., now a wholly owned subsidiary of Sprint, the financial responsibility for relocating public safety and other “high site” users<sup>5</sup> of the 800 MHz band into new channels less susceptible to interference from cellular architecture “low site” systems such as those operated by Sprint. In order to secure Sprint’s performance of its financial obligations, the *800 MHz Report and Order* imposed, as a condition of Sprint’s 1.9 GHz and 800 MHz licenses,<sup>6</sup> a requirement that Sprint obtain a \$2.5 billion letter of credit that could be drawn upon to fund rebanding if Sprint was unable to do so.<sup>7</sup> The Commission delegated authority to the Bureau to incrementally reduce the letter of credit balance as rebanding progressed and the cost to complete the remainder of the project declined.<sup>8</sup> However, the Commission imposed a condition specifying that the letter of credit balance could not fall below \$850 million.<sup>9</sup>

5. Since 2008, as rebanding has progressed, the Bureau has approved a series of incremental reductions in the letter of credit balance from the original \$2.5 billion to its present level of \$850 million, the floor established by the Commission.<sup>10</sup> In evaluating each request from Sprint for a reduction in the balance, the Bureau has relied on the TA for review of the request and for a recommendation on whether it should be approved.<sup>11</sup> The TA has based each recommendation on an assessment of whether the reduction will leave a sufficient letter of credit balance to cover the remaining cost of completing rebanding as estimated by the TA.<sup>12</sup>

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<sup>4</sup> 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) (*800 MHz Report and Order*). See also, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*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); *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007); *Kay v. FCC*, No. 06-1076 (D.C. Cir. filed Feb. 24, 2006).

<sup>5</sup> 800 MHz non-cellular licensees, such as public safety licensees, typically employ communications systems that incorporate a limited number of antennas on relatively high, e.g., 300 foot, towers, to achieve wide-area coverage—so-called “high-site” systems. Cellular-architecture systems, such as those used by Sprint typically use numerous antennas at relatively low elevations, e.g., 50 feet, to achieve localized coverage and facilitate frequency re-use—so-called “low site” systems.

<sup>6</sup> See, e.g., license call sign WQKS971, BEA 151 Reno NV-CA.

<sup>7</sup> *800 MHz Report and Order*, 19 FCC Rcd at 14987.

<sup>8</sup> *Supplemental Order*, 19 FCC Rcd at 25130.

<sup>9</sup> *800 MHz Report and Order*, 19 FCC Rcd at 15068. See also *Supplemental Order*, 19 FCC Rcd at 25130.

<sup>10</sup> *800 MHz Report and Order*, 19 FCC Rcd at 14987. Sprint requested and received reductions in the letter of credit on the following dates and in the following amounts: May 6, 2008 (\$337 million), Aug. 25, 2008 (\$85 million), Dec. 29, 2008 (\$107 million), Jun. 18, 2009 (\$105 million), Sept. 2, 2009 (\$84.3 million); Nov. 17, 2009 (\$113.5 million), Mar. 11, 2010 (\$82 million), Jul. 6, 2010 (\$91 million), Jul. 8, 2010 (\$69.4 million), Sept. 10, 2010 (\$83.5 million), Dec. 6, 2010 (\$74.2 million); Jan. 4 2011 (\$87.6 million); Apr. 5, 2011 (\$69.9 million), Jul. 19, 2011 (\$50 million), Oct. 12, 2011 (\$37.7 million), Jan. 3, 2012 (\$42.2 million), Mar. 29, 2012 (\$36.6 million), Jun. 22, 2012 (\$34.1 million); Sept. 21, 2012 (\$26.4 million), Dec. 18, 2012 (\$25.1 million), and on Mar. 29, 2013 (\$8.5 million).

<sup>11</sup> The 800 MHz Transition Administrator is an independent body established by the Commission to oversee 800 MHz rebanding. *800 MHz Report and Order*, 19 FCC Rcd at 14986.

<sup>12</sup> Each of Sprint’s requests for letter of credit reduction details its expenditures in the prior quarter accompanied by a request for a proportionate reduction in the letter of credit amount. The TA evaluates the request by estimating the amount required to cover the remaining cost of completing rebanding and comparing this to the letter of credit balance that will remain if the request is granted. If the reduced letter of credit balance remains sufficient to cover

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6. On February 21, 2013 Sprint requested a \$25.7 million reduction in the letter of credit balance based on claimed expenses through December 31, 2012. Grant of this request in full would have reduced the letter of credit balance to \$832.8 million, \$17.2 million below the \$850 million floor. Accordingly, the TA recommended and the Bureau approved only a partial reduction of \$8.5 million, to bring the balance to the \$850 million floor. On May 21, 2013, Sprint submitted a request for an additional \$32.4 million balance reduction, and on September 16, 2013, Sprint submitted a request for an additional \$22.1 million balance reduction. The TA has recommended approval of both of these requests if the \$850 million floor were to be eliminated. Grant of these latter requests would result in a further reduction of the letter of credit balance to \$778.3 million.

7. In its Petition, Sprint argues that the \$850 million letter of credit floor no longer serves any purpose and should be eliminated. Sprint notes that the letter of credit trustee has never had to draw on the letter of credit to pay for any 800 MHz rebanding costs.<sup>13</sup> Sprint also cites the fact that the TA and the Bureau have repeatedly approved reductions in the letter of credit amount. In light of these factors, Sprint contends that maintaining the letter of credit at the \$850 million floor imposes “an unnecessary financial burden on Sprint with no concomitant public interest benefit.”<sup>14</sup>

8. Sprint also requests that the Commission immediately reduce the letter of credit balance to \$457 million. Sprint claims that \$457 million is sufficient to secure Sprint’s payment of rebanding costs for all remaining licensees that have not yet rebanded, including those in the Mexico border region.<sup>15</sup> In support of this claim, Sprint states that the rebanding costs of licensees outside the Mexico border region will be covered by the \$309 million it is obligated to pay pursuant to outstanding Planning Funding Agreements (PFAs) and Frequency Reconfiguration Agreements (FRAs)—the contracts between Sprint and licensees for, respectively, planning for reconfiguration and reconfiguration implementation. In addition, Sprint estimates that it will cost \$123 million to reband Mexico border region licensees, and \$24.9 million to reband non-border area licensees that do not have executed FRAs.<sup>16</sup> Sprint claims to have derived its \$123 million estimate by applying the “TA Metrics”—a database maintained by the TA containing the historical cost of rebanding 800 MHz systems of varying size and complexity. However, Sprint does not identify the specific metric it applied in reaching its estimate.<sup>17</sup>

9. The Commission received a number of comments in response to the Sprint petition, but no commenter opposes allowing Sprint to reduce the letter of credit below \$850 million.<sup>18</sup> Instead, some

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the estimated cost to complete rebanding, plus an amount added for contingencies, the TA recommends that the Public Safety and Homeland Security Bureau approve the requested reduction.

<sup>13</sup> Sprint Reply Comments at 9-10.

<sup>14</sup> Sprint notes that it pays approximately \$1200 per day in carrying costs for every \$10 million included in the letter of credit amount.” Sprint Comments at 18.

<sup>15</sup> The Mexico border area is the last to be reconfigured because of the need to renegotiate agreements with Mexico for use of the 800 MHz band in the border area. *See* Improving Public Safety in the 800 MHz Band, *Fifth Report and Order*, 28 FCC Rcd 4085 (PSHSB 2013) (instituting Mexico Border Band Plan and specifying a 30-month period for conclusion of rebanding in the Mexico Border Area.)

<sup>16</sup> Sprint Reply Comments at 10-11.

<sup>17</sup> The TA Metrics present rebanding costs in terms of percentiles, *i.e.* for each size/complexity category, the TA Metrics provide historical cost data for the 25<sup>th</sup>, 50<sup>th</sup> (median) and 75<sup>th</sup> percentile, as derived from executed PFAs and FRAs.

<sup>18</sup> The Commission received comments on the Sprint Petition from representatives of public safety interests, *i.e.*, the City of Philadelphia, the Association of Public Safety Communications Officials, International (APCO) filing jointly with the International Association of Fire Chiefs (IAFC) and the International Association of Chiefs of Police (IACP); The City of Alexandria, Virginia, filing jointly with Culpeper, Virginia, Forsyth County, North Carolina, Fulton County, Georgia, the State of Illinois, City of Laredo, Texas, Loudoun County, Virginia, Miami County, Ohio, Pinellas County, Florida and the State of Wisconsin (collectively, the Public Safety Licensees). Comments

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commenters question whether the letter of credit should be reduced to \$457 million, as Sprint requests. As of March 2014, the TA estimated the cost for remaining public safety licensees to complete rebanding at \$441.6 million.<sup>19</sup> In a joint filing, APCO, IACP and IAFC urge the Commission to retain a floor amount for the letter of credit and to use “worst case” TA Metrics to define any revised floor, *i.e.*, to assume that rebanding costs for the remaining licensees will be at the 100<sup>th</sup> percentile of the range of historical rebanding costs for systems of similar size and complexity.<sup>20</sup> The Public Safety Licensees advise the Commission to take a “hard look” at Sprint’s estimates for rebanding licensees in the Mexico border area—the last licensees to be rebanded—noting what it characterizes as “[Sprint’s] historic under-estimation of rebanding costs.”<sup>21</sup>

## B. Discussion

10. As stated above, a request for declaratory ruling is not the appropriate vehicle for seeking a reduction in the \$850 million letter of credit balance floor, which is a the condition the Commission imposed on Sprint’s 1.9 GHz and 800 MHz licenses. Section 1.2 of the Commission’s rules provides that the Commission may issue a declaratory ruling for purposes of “terminating a controversy or removing uncertainty.”<sup>22</sup> Here, there is neither controversy nor uncertainty regarding the fact that the *800 MHz Report and Order* established the \$850 million floor for the Sprint letter of credit.<sup>23</sup> Rather, Sprint is seeking a substantive change in this license condition to allow reduction of the balance below the \$850 million floor. Accordingly, and on our own motion, we treat the Sprint petition – to the extent that it deals with the letter of credit – as an informal request for modification of the letter of credit condition imposed on its licenses by the *800 MHz Report and Order*.<sup>24</sup>

11. Under Section 316 of the Communications Act of 1934, as amended,<sup>25</sup> a license may be modified “if in the judgment of the Commission such action will promote the public interest convenience and necessity”<sup>26</sup> and the Commission follows certain procedural requirements.<sup>27</sup> In this case, we find the public interest test for modification of the license to be met.

12. The Commission required Sprint, as a condition of its licenses, to obtain a letter of credit to ensure that there would be sufficient funds available to complete rebanding in the event of a Sprint

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also were filed by Motorola Solutions, Inc. (Motorola), the Enterprise Wireless Association (EWA) and Dish Network Corporation. The Commission received reply comments from Sprint Nextel Corporation; the State of Washington, filing jointly with Oakland County, Michigan and Orleans County, New York.

<sup>19</sup> See Letter from Brett Hahn, Transition Administrator, to Michael J. Wilhelm, F.C.C., July 23, 2014.

<sup>20</sup> APCO, IACP and IAFC Comments at 2-3. Under this approach, for example, if the median cost of rebanding an 800 MHz system with 1000 radios and 3 base stations were \$250,000, but one licensee in the same category encountered rebanding costs totaling \$1,000,000 (placing it in the 100th percentile of the TA’s metrics) the \$1,000,000 figure would be used as the basis for estimating the rebanding costs for all licensees falling into that category.

<sup>21</sup> Public Safety Licensees Comments at 3.

<sup>22</sup> 47 C.F.R. § 1.2. See also 5 U.S.C. § 554(e).

<sup>23</sup> “At no time during the life of the letter(s) of credit shall the balance fall below \$850 million.” *800 MHz Report and Order*, 19 FCC Rcd at 15125.

<sup>24</sup> See 47 C.F.R. § 1.41 (discussing requests for informal action).

<sup>25</sup> U.S.C. § 316.

<sup>26</sup> 47 U.S.C. § 316(a)(1).

<sup>27</sup> See 47 U.S.C. § 316(a)(1), (a)(2). Section 316 enables the Commission to modify a license when to do so will advance the public interest, convenience and necessity. A modification order is not final until the licensee has been given a minimum of 30 days to protest the modification. Any other licensee whose license would be modified by the proposed modification may also protest the modification before its effective date.

default, due to bankruptcy or other reasons.<sup>28</sup> The Commission established the original monetary thresholds for the letter of credit, including both the \$2.5 billion initial balance and the \$850 million floor, based on a range of estimates presented in the record regarding the prospective cost of rebanding. This, however, occurred before rebanding had begun or any data on actual rebanding costs was available. Since then, numerous 800 MHz licensees have completed the rebanding process and the TA has compiled a detailed record of rebanding costs. As a result, the cost of rebanding the remaining systems can be more accurately predicted. Indeed, using that data, the TA has been able to recommend multiple reductions of the letter of credit from its initial \$2.5 billion amount, and is prepared to carry that process forward. Therefore, we conclude that that the initial underlying purpose of the \$850 million floor has been served and that no public interest purpose would now be advanced by retaining this license condition. Rather, we find that modifying the license condition in light of the considerations discussed below will promote the public interest.

13. We also find that requiring Sprint to maintain the letter of credit at \$850 million to the conclusion of the rebanding program is unnecessarily burdensome on Sprint. Sprint is required to pay substantial carrying fees on the letter of credit. No public interest purpose would be served by requiring Sprint to continue to incur them at the present level. Moreover, several considerations lead us to conclude that removing the condition does not conflict with the public's interest in ensuring adequate funding to complete the rebanding process. First, Sprint remains responsible for payment of all remaining rebanding costs independent of the amount of the letter of credit.<sup>29</sup> Importantly, the elimination of the letter of credit floor will not relieve Sprint from its liability for the total cost of rebanding.<sup>30</sup> Second, under the terms of the *800 MHz Report and Order*, the Commission may increase as well as decrease the amount of the letter of credit in the event that circumstances should so dictate.<sup>31</sup> Third, Sprint's requests for letter of credit reductions will continue to be subject to careful review by the TA and approval by the Bureau to ensure that the remaining letter of credit balance will be sufficient to cover remaining rebanding costs.<sup>32</sup>

14. For these reasons, we propose to eliminate the \$850 million floor by modifying the relevant license condition from the *800 MHz Report and Order* stating that “[a]t no time during the life of the letter of credit shall the balance fall below \$850 million.”<sup>33</sup> The proposed modification would add the underlined language below to the license conditions currently in effect:

This authorization is conditioned on licensee's continued compliance with license conditions adopted by the Commission in the 800 MHz public safety proceeding, WT Docket 02-55, including but not limited to conditions contained in paragraphs 346, 351, 352, 355, 356 of *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); (*800 MHz Report and Order*) as amended by *Erratum*, WT Docket No. 02-55 (rel. Sept. 10, 2004) and *Second Erratum*, 19 FCC Rcd 19651 (2004) and *Third Erratum*, 19 FCC Rcd 21818 (2004). Provided, however, that effective [DATE] the licensee need not comply with paragraph 331 of said *800 MHz Report and Order* but only to the extent that said paragraph provides that: “At

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<sup>28</sup> *800 MHz Report and Order* 19 FCC Rcd at 15082.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 14987

<sup>32</sup> *Improving Public Safety in the 800 MHz Band, Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25130 (2004).

<sup>33</sup> *800 MHz Report and Order* 19 FCC Rcd at 15125.

no time during the life of the letter(s) of credit shall the balance fall below \$ 850 million.”

We delegate to the Chief of the Public Safety and Homeland Security Bureau, the authority to issue a license modification order consistent with this decision and the requirements of Section 316, including Section 316’s 30-day protest period, in the event that no protests are filed.

15. In addition, upon modification of Sprint’s licenses to eliminate the \$850 million floor for the letter of credit, we also authorize the immediate reduction of the letter of credit amount from \$850 to \$457 million as requested by Sprint. As noted above, the TA’s most recent estimate of remaining licensee rebanding costs was \$441.6 million.<sup>34</sup> We believe this provides a sufficient basis to reduce the letter of credit balance to \$457 million as requested. Moreover, Sprint may request further reductions in the letter of credit based on quarterly expenditures using the same process we have used for prior reductions, *i.e.*, Bureau evaluation of the recommendations provided by the TA, in response to requests from Sprint, based on the TA’s independent estimate of remaining rebanding costs. We prefer this approach over the suggestion of APCO *et al.* that the letter of credit balance be calculated based on the 100<sup>th</sup> percentile of the TA Metrics.<sup>35</sup> We have not relied on such a “worst case” analysis to date and see no reason to do so now so long as letter of credit reductions are approved according to the foregoing procedure.

### III. ANTI-WINDFALL PAYMENT DETERMINATION

#### A. Background

16. In the *800 MHz Report and Order*, the Commission required Sprint to make a payment to the United States Treasury in the event that the aggregate costs incurred by Sprint in 800 MHz rebanding and clearing the 1.9 GHz spectrum of incumbent Broadcast Auxiliary Service (BAS) licensees were less than the value of the 1.9 GHz spectrum rights that Sprint received. The Commission stated that for purposes of the anti-windfall calculation, Sprint was entitled to receive credit for costs incurred to relocate 800 MHz incumbent licensees, the cost of 1.9 GHz band clearing, and certain internal costs incurred by Sprint itself that related directly to rebanding.<sup>36</sup> Thus, under the terms of the *800 MHz Report and Order*, Sprint can avoid making such an anti-windfall payment by demonstrating that its total creditable 800 MHz rebanding costs and 1.9 GHz clearing costs equal or exceed \$2.8 billion.<sup>37</sup> Sprint asserts in its Petition that its creditable expenses have exceeded \$2.8 billion.<sup>38</sup>

#### B. Discussion

17. We decline to make the requested anti-windfall determination at this time. As with the letter of credit reductions, we rely on information from the TA for any anti-windfall cost analysis. Specifically, the TA evaluates costs submitted to it by Sprint and determines whether such costs are creditable as against the potential anti-windfall payment. Then, the creditable costs are verified by an

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<sup>34</sup> See note 19, *supra*.

<sup>35</sup> APCO, IACP, IAFC Comments at 3.

<sup>36</sup> *800 MHz Report and Order* 19 FCC Rcd at 15113-16. Creditable internal costs included the cost of network filters to reduce out-of-band emissions, costs of changing frequencies necessitated by rebanding, and payments for the services of the TA. *Id.*

<sup>37</sup> The Commission valued Sprint’s 1.9 GHz spectrum rights at \$4.855548 billion. It credited Sprint with \$2.059 billion for 800 MHz spectrum that Sprint vacated for public safety use. The difference, \$2.796548 billion (\$2.8 billion) is the amount Sprint must demonstrate it has expended in 800 MHz rebanding and 1.9 GHz incumbent clearing (net of amounts received from MSS licensees), in order to avoid making an anti-windfall payment to the U.S. Treasury. *800 MHz Report and Order* 19 FCC Rcd at 15124.

<sup>38</sup> Petition at 3.

independent annual audit as required by Section 90.676(b)(4) of the Commission's rules.<sup>39</sup> To date, the annual audit process has documented approximately \$1.157 billion in creditable rebanding expenses incurred by Sprint from closed transactions through December 31, 2013.<sup>40</sup> In addition, Sprint has incurred \$500.35 million in creditable expenses for clearing the 1.9 GHz spectrum of BAS incumbents.<sup>41</sup> Thus, Sprint has documented a total of \$1.657 billion in creditable expenses, and must document an additional \$1.143 billion in creditable expenses in order to demonstrate that it is not liable for an anti-windfall payment. While Sprint has presented information suggesting that its total remaining expenses are highly likely to exceed \$1.143 billion before the conclusion of the program, Sprint has either not yet incurred some of these expenses, has not submitted them to the TA, or has not provided all of the documentation requested by the TA to support a determination of whether the expenses are creditable. Accordingly, Sprint's request for an anti-windfall determination is premature.

18. That said, however, we believe there is merit in disposing of the anti-windfall issue before the entire 800 MHz rebanding program concludes, and that there is no benefit in requiring Sprint to await completion of the program before the anti-windfall determination is made. Accordingly, for purposes of the anti-windfall determination, we find that Sprint need only provide the TA with sufficient evidence to demonstrate \$1.143 billion of creditable expenditures exclusive of previously audited rebanding expenses and BAS clearing expenses. Sprint may make this showing at any time prior to the completion of rebanding, and may select which expense categories it submits for consideration as creditable expenses. For example, while Sprint is entitled to receive credit for certain internal network costs related to rebanding, it may elect not to submit such costs for verification if other creditable expense categories are sufficient to reach the \$1.143 billion threshold. In support of its claim for creditable rebanding expenses, Sprint must provide the following documentation to the TA:

- Actual cost support, *e.g.*, receipts and/or time sheets, for Sprint's claimed internal and external labor expenditures deemed "pending" by the TA because of lack of such actual cost support related to rebanding.
- Evidence of payment of claimed equipment manufacturer software development costs.
- Evidence of Sprint's claimed network costs, *e.g.*, capacity sites.<sup>42</sup>

19. We also recognize that in many instances, Sprint has been unable to obtain credit for costs of licensee rebanding it has already incurred due to delays in closing Frequency Relocation Agreements (FRAs) between Sprint and individual licensees whose systems have been rebanded. These delays are often due to the unwillingness or inability of the parties to provide all of the detailed records (including relevant invoices, receipts, and other supporting documentation) necessary to close an FRA. However, we believe the TA can make a determination as to the creditability of a significant portion of

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<sup>39</sup> 47 C.F.R. § 90.676(b)(4).

<sup>40</sup> 800 MHz Transition Administrator: Statement of Program Expenditures, Dec. 31, 2013, at 18 (2013 Financial Statement). Cohn-Reznick, the independent auditor, has identified an additional \$576,495,000 in potentially creditable payments made by Sprint under open Frequency Relocation Agreements, which reflects the TA's estimate of payments that would be creditable upon closing of the agreements. *Id.* at 15 n.9. The financial statement notes that the actual creditable expenditures at closing could differ from the estimated creditable expenditures. *Id.* As discussed below, we are directing the TA to assess the creditability of these expenditures prior to closing, based on the documentation that Sprint has provided. *See* paragraph 22, *infra*.

<sup>41</sup> *See* Petition at 12. The creditable amount is net of the reimbursement amount that Sprint has received from Mobile Satellite licensees. *See ex parte* letter to Marlene H. Dortch, Secretary, FCC, from James B. Goldstein, Esq., Sprint Corp., filed August 25, 2014. Sprint has previously provided an audited report of its BAS clearing costs, and the TA is not responsible for determining their creditability. *See* Sprint Nextel Corp. Schedule of Costs Expended in Connection With Clearance of the 1.9 GHz Band (With Independent Accountants' Report Thereon) (Oct. 31, 2010).

<sup>42</sup> *Supplemental Order* 19 FCC Rcd at 25150.

Sprint's rebanding expenditures in advance of FRA closing. Therefore, we believe it is appropriate to establish an expedited process for the TA to identify such creditable expenditures and to allow Sprint to claim those expenditures towards a showing that it has met the anti-windfall provision of the program.

20. In the *800 MHz Report and Order*, the Commission required the TA to "provide an accounting of the funds spent to reconfigure the systems of incumbent operators in the 800 MHz band," which would "include certifications by [Sprint] and relevant licensees that relocation has been completed and that both parties agree on the amount received . . . in connection with relocation of the licensees' facilities."<sup>43</sup> Under current procedures, these certifications are provided to the TA at the conclusion of system reconfiguration, and the TA conducts its accounting after all documentation and certifications have been provided, any disputes between Sprint and the licensee have been resolved, and the FRA closing has occurred.

21. We believe that in light of the substantial progress that has occurred in the rebanding program, with hundreds of public safety licensees having successfully rebanded and rebanding nearing completion in the non-border regions and the Canadian Border Region,<sup>44</sup> it is appropriate to revise existing procedures to enable the TA to expedite the anti-windfall accounting process. We emphasize that in so doing, we are not altering the obligation of Sprint and rebanding licensees to work cooperatively and in good faith to close FRAs promptly once rebanding of the relevant radio system has been completed. We also are not altering the requirement in Section 90.676(b)(4) of the Commission's rules that creditable rebanding expenses are subject to verification by independent audit.<sup>45</sup>

22. For purposes of calculating Sprint's anti-windfall obligation, we direct the TA to conduct a prompt creditability assessment of Sprint's expenditures and supporting documentation provided by the parties for all system reconfigurations where the system cutover to new frequencies has occurred and the required licensing modifications to add new frequencies and delete old frequencies have been granted, even if the FRAs for such reconfigurations are not yet closed and the final certifications have not been provided.<sup>46</sup>

- The TA shall make a creditability determination with respect to reasonably documented expenditures that are not in dispute between Sprint and the licensee, but may defer the assessment of disputed expenditures pending resolution in connection with the FRA closing.<sup>47</sup>
- In rebanding transactions where Sprint has provided the licensee with replacement radios, the TA shall make a creditability determination with respect to amounts that Sprint has paid to vendors and equipment suppliers for such radios. Sprint shall provide documentation of receipt of the replacement radios by the licensee and that the licensee has relinquished the

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<sup>43</sup> *800 MHz Report and Order* 19 FCC Rcd at 15124.

<sup>44</sup> As of March 31, 2014, of the 1,978 FRAs for rebanding licensees (excluding Mexico border licensees), the licensees in 1,923 FRAs (97.2%) have completed their physical retuning and are operating on their new frequencies. 800 MHz Transition Administrator, LLC, Quarterly Progress Report for the Quarter Ended March 31, 2014 (filed June 20, 2014) (June 20, 2014 TA Quarterly Report) at 1, 4, 5, 22.

<sup>45</sup> 47 C.F.R. § 90.676(b)(4).

<sup>46</sup> Of the 1,995 FRAs that have been executed by licensees and Sprint, 491 (24.6 %) have not been closed. June 20, 2014 TA Quarterly Report at 27-28.

<sup>47</sup> This assessment shall include the \$576,495,000 in Sprint expenditures made under open agreements identified in the 2013 Financial Statement. *See* note 44, *supra*. With respect to expenditures that are not in dispute between Sprint and the licensee, we expect that the TA will be able to conduct this portion of the assessment based on documentation Sprint has already provided. With respect to expenditures that remain in dispute, we expect Sprint and each licensee to negotiate resolution of these issues in good faith and to close their FRAs in the shortest practicable time.



replaced radios (either to Sprint or to the equipment vendor) pursuant to the terms of the FRA.<sup>48</sup>

23. We direct the TA, upon receipt of documentation from Sprint as described above, to evaluate it and make a determination within 90 days. If the TA determines that Sprint has provided sufficient evidence of \$1.1143 billion or more in creditable expenses, it shall conduct the anti-windfall true-up calculation and shall issue an audited true-up report within six months. We instruct the TA to provide the true-up report to the Chief of the Public Safety and Homeland Security Bureau, and, if the Bureau Chief determines the report contains no material exceptions, the Bureau may issue a declaratory ruling that Sprint does not owe an anti-windfall payment.

#### IV. PROCEDURAL MATTERS

24. This proceeding is considered a “permit but disclose” proceeding for purposes of the Commission's *ex parte* rules.<sup>49</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, docx, xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### V. ORDERING CLAUSES

25. Accordingly IT IS ORDERED pursuant to the authority of Sections 1, 4(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(f) and (r), 316, and 332, that the Petition for Declaratory Ruling submitted by Sprint Nextel Corporation on January 22, 2013, considered as a request for modification of license, IS GRANTED IN PART with respect to elimination of the \$850 million minimum amount of Sprint Nextel Corporation's letter of credit and the reduction of the letter of credit amount to \$457 million described herein, and in all other respects IS DENIED.

26. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that licenses held by Sprint Corporation in the 800 MHz and 1.9 GHz bands BE MODIFIED as proposed herein. Pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, 47

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<sup>48</sup> If the actual exchange of radios varies from the FRA specifications (*e.g.*, if the quantity or make and model of radios actually exchanged reflects changes from what was originally identified in the FRA) or if additional documentation is needed to fully confirm the exchange of radios, the TA may credit the portion of the exchange for which sufficient documentation exists and defer assessment of the remainder until the FRA closes.

<sup>49</sup> 47 C.F.R. §§ 1.1200 *et seq.* The TA is exempt from the Commission's *ex parte* rules. General Counsel Modifies *Ex Parte* Rules for 800 MHz Transition Administrator, *Public Notice*, 19 FCC Rcd 24795 (2004).

U.S.C. § 316(a)(1), and Section 1.87(a) of the Commission's rules, 47 C.F.R. § 1.87(a), receipt of this *Memorandum Opinion and Order and Order of Proposed Modification* by certified mail, return receipt requested, shall constitute notification in writing of our *Order of Proposed Modification* that proposes to modify the relevant licenses held by Sprint Corporation in the 800 MHz and 1.9 GHz bands, and of the grounds and reasons therefor, and Sprint Corporation shall have thirty (30) days from the date of receipt to protest such *Order of Proposed Modification*. The Public Safety and Homeland Security Bureau is delegated authority to issue an order of modification if no protests consistent with Section 316 are filed.

27. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order and Order Proposing Modification* shall be sent by certified mail, return receipt requested, to James Goldstein, Esq., Sprint Corporation, 12502 Sunrise Valley Drive, Reston, VA 20196.

28. IT IS FURTHER ORDERED that the license modification proceedings commenced by the *Order of Proposed Modification* shall be treated as permit-but-disclose proceedings under the Commission's *ex parte* rules, 47 C.F.R. § 1.1200 *et seq.*

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary