

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
Proceeding Terminated

ORDER
(Terminating Proceeding)

Adopted: April 22, 2021

Released: April 22, 2021

By the Commission: Acting Chairwoman Rosenworcel and Commissioner Carr issuing separate statements.

I. INTRODUCTION

1. By this Order, we bring the Commission’s 800 MHz rebanding program to a conclusion and terminate this proceeding. The rebanding process is now essentially complete: over 2,100 800 MHz licensees have successfully relocated to new channels in the band and the few licensing and administrative matters remaining can be completed outside the rebanding program. After many years of hard work by Sprint Corporation, numerous 800 MHz licensees, the 800 MHz Transition Administrator, and Commission staff, the rebanding program has fulfilled its promise to further the Commission’s mandate to “promote safety of life and property through the use of wire and radio communication.”

II. BACKGROUND

2. The FCC initiated the 800 MHz rebanding program in 2004 to alleviate harmful interference to 800 MHz public safety radio systems caused by their proximity in the band to the 800 MHz commercial cellular architecture systems, principally those operated by Sprint. To alleviate the interference, the Commission reconfigured the 800 MHz band to increase the spectral separation between

1 On April 1, 2020, Sprint Corporation and T-Mobile US, Inc. merged to create a new company operating under the name T-Mobile with T-Mobile US, Inc. as the parent company. See Applications of T-Mobile US Inc. and Sprint Corp. for Consent to Transfer Control of Licenses, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732, para. 348 (2019). As used herein, and as context requires, the term Sprint will also apply to its predecessor, Nextel Communications, Inc. The current actions and obligations taken by and placed upon T-Mobile by virtue of its status as Sprint’s successor are attributed herein directly to T-Mobile.

2 47 U.S.C. § 151 and Federal Communications Commission Strategic Plan FY 2003-FY2008, p.5 (2002).

3 See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004), amended by Erratum, WT Docket 02-55 (Sep. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Third Erratum, 19 FCC Rcd 21818 (2004) (800 MHz Report and Order); Mobile Relay Associates and Skitronics, LLC v. FCC, 457 F. 3d 1 (D.C. Cir. 2006); Kay v. FCC, 621 Fed. Appx. 5 (D.C. Cir. 2016); Sprint Nextel Communications v. FCC, 524 F.3d 253 (D.C. Cir. 2006); Schwaninger & Assoc. v. FCC, 2000 WL 817892 (per curiam) (D.C. Cir. 2000).

cellular architecture systems and so-called, high site systems<sup>4</sup> occupying the band. The Commission adopted a band plan that required the relocation of the bulk of Sprint's system (and the other similarly situated cellular-based licensees) to spectrum at the upper end of the band, and the relocation of public safety licensees (and the other similarly situated high site system operators) to spectrum at the lower end of the band. The Commission further required Sprint to pay the accumulated relocation costs incurred by public safety and other high-site licensees in addition to its own relocation costs, in exchange for which the Commission awarded Sprint 10 megahertz of spectrum rights in the 1.9 GHz band.<sup>5</sup> The *800 MHz Report and Order* required that "at the conclusion of band reconfiguration, the Transition Administrator shall provide an accounting of the funds spent to reconfigure the systems of incumbent operators in the 800 MHz band. This accounting shall include certifications from each relocated licensee that all necessary reconfiguration work has been completed and that Nextel and said licensee agree on the sum paid for such work."<sup>6</sup> As discussed *infra*, those requirements have been either complied with or waived.

3. Nearly seventeen years after the *800 MHz Report and Order*, the 800 MHz band reconfiguration program has achieved its objective—substantially alleviating the interference risk to public safety in the 800 MHz band. The 800 MHz Transition Administrator, LLC (Transition Administrator) reports that 2,169 licensees have successfully completed physical reconfiguration of their systems, and that only two licensees remain with unresolved administrative matters.<sup>7</sup> As detailed below, one of these licensees, the City of El Paso, Texas (El Paso), has completed its physical reconfiguration, and T-Mobile is contractually obligated to pay the funds necessary to enable El Paso to complete its rebanding. The second licensee, License Acquisitions, LLC (License Acquisitions), has no operating system requiring reconfiguration, and the remaining issues concerning the status of its licenses can be addressed outside the rebanding program.

4. On February 26, 2021, T-Mobile submitted a request for waiver asking the Commission to declare the 800 MHz rebanding program complete, conclude T-Mobile's and the Transition Administrator's respective obligations relating to the program, and eliminate the requirement that it continue to maintain a Letter of Credit.<sup>8</sup> As part of its waiver request, T-Mobile notes that El Paso and License Acquisitions can complete their reconfigurations through existing contractual arrangements outside the scope of the 800 MHz rebanding program.<sup>9</sup>

5. The Transition Administrator has now filed documentation with the Commission, which asserts that the rebanding program should be deemed completed.<sup>10</sup> Specifically, on March 5, 2021, the Transition Administrator submitted a Notice of Program Completion and Request for Authorization to Terminate Program Agreements.<sup>11</sup> The Program Completion Notice states that all activities associated with the 800 MHz relocation have been completed, except for the administrative matters noted above relating to El Paso and License Acquisitions.

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<sup>4</sup> High site systems are those that use one or a few base stations located on tall towers, buildings or hill and mountain tops to provide wide-area coverage. Low site systems use multiple sites (cells) with antennas on relatively short towers or buildings and employ frequency re-use to enhance system subscriber capacity.

<sup>5</sup> *800 MHz Report and Order*, 19 FCC Rcd at 14987-89, paras. 29, 34.

<sup>6</sup> *Id.* at 15132 paras. 354, 355.

<sup>7</sup> Notice of Program Completion and Request for Authorization to Terminate Program Agreements, WT Docket 02-55, filed Mar. 5, 2021 by the 800 MHz Transition Administrator (Program Completion Notice) at 3.

<sup>8</sup> T-Mobile Petition for Waiver, WT Docket 02-55, filed Feb. 26, 2021 (Waiver Petition) at 4.

<sup>9</sup> *Id.* at 10-12.

<sup>10</sup> See generally Program Completion Notice.

<sup>11</sup> *Id.*

### III. DISCUSSION

#### A. Termination Procedures

6. *Background.* To effectuate the rebanding program's completion, the Transition Administrator submitted the Program Completion Notice,<sup>12</sup> which contained the following program completion documents:

- The Transition Administrator's draft Certification of Program Completion.<sup>13</sup>
- A list of licensees that have submitted Completion Certifications.<sup>14</sup>
- The Transition Administrator's verification of completion of financial reconciliation, or true-up.<sup>15</sup>
- T-Mobile's draft Certification of Program Completion,<sup>16</sup> wherein T-Mobile will certify that all approved costs for 800 MHz reconfiguration work, excepting final payments for El Paso, have been paid and reported to the Transition Administrator.<sup>17</sup>
- Request for the Commission's authorization to terminate certain program agreements.<sup>18</sup>
- Request for the Commission to dismiss as moot (a) the Recommended Resolutions and (b) the Recommended Resolutions and Requests for Waiver currently pending before the

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

<sup>13</sup> This certification is required by the *800 MHz Report and Order*, 19 FCC Rcd at 14987, 15216, para. 28, Appendix E-Annex E. The Transition Administrator will submit an updated and executed Certification of Program Completion in conjunction with termination of the program agreements. Program Completion Notice at 3.

<sup>14</sup> The licensee Completion Certifications have been provided to the Public Safety and Homeland Security Bureau (PSHSB) under separate cover. Required by *800 MHz Report and Order*, 19 FCC Rcd at 14989, para. 35. On March 23, 2020, the PSHSB deemed certain licensees, which had not submitted a timely, accurate Completion Certification or a notice of dispute, to have completed rebanding effective as of June 12, 2020. See *Improving Public Safety Communications in the 800 MHz Band*, Order, 35 FCC Rcd 2850 (PSHSB 2020). The Completion Certifications for this class of licensees are therefore not required.

<sup>15</sup> Required by the *800 MHz Report and Order*, 19 FCC Rcd at 14989, 15124, paras. 35, 330 (previously submitted as the audited Statement of Program Expenditures through December 31, 2016, which was intended to serve as the required true-up). PSHSB found that it was "satisfied that the Transition Administrator has correctly determined, based on documentation provided by Sprint and independently audited financial statements commissioned by the Transition Administrator, that Sprint has exceeded \$2.8 billion in creditable expenses associated with rebanding 800 MHz licensees and clearing the 1.9 GHz band of incumbents." See *Improving Public Safety Communications in the 800 MHz Band*, Declaratory Ruling, 32 FCC Rcd 7528, 7531, para. 8 (PSHSB 2017).

<sup>16</sup> T-Mobile will submit an updated and executed Certification of Program Completion upon termination of the program agreements. Program Completion Notice at 4.

<sup>17</sup> Required by Tri-Party Agreement dated June 9, 2005 among Nextel Operations, Inc., 800 MHz Transition Administrator, LLC, and U.S. Bank National Association, at Section 3.10(b)(ii), (x) (Tri-Party Agreement). See also Waiver Petition at 10-12 (requesting that the Commission eliminate the condition that Sprint maintain a Letter of Credit as unnecessary since it has no payment obligation to License Acquisitions and El Paso has agreed in its Frequency Reconfiguration Amendment to waive its right to require Sprint to maintain a Letter of Credit to secure any relocation funding obligation guaranteed in that amendment); *800 MHz Report and Order*, 19 FCC Rcd at 15067, paras. 330-331.

<sup>18</sup> These program agreements include the Tri-Party Agreement; the June 9, 2005 Transition Administrator Agreement among Nextel Operations, Inc. and 800 MHz Transition Administrator, LLC; and the June 9, 2005 800 MHz Relocation Trust Agreement among Nextel Operations, Inc. and U.S. Bank National Association, as well as other ancillary agreements (collectively, Program Agreements).

Public Safety and Homeland Security Bureau (PSHSB), as well as any filings submitted to the PSHSB by parties to the mediations resolved by the Transition Administrator.<sup>19</sup>

7. *Discussion.* We have reviewed the Transition Administrator's requests<sup>20</sup> and conclude that the Transition Administrator has completed all requirements necessary to terminate the program, consistent with our rules. We thus address the Transition Administrator's program completion documents by taking the following actions:

8. We accept the form of the Transition Administrator's draft Certification of Program Completion and direct the Transition Administrator to submit a final updated and executed Certification in conjunction with termination of the Program Agreements.

9. We accept the licensees' completion certifications provided by the Transition Administrator; and conclude that, except for License Acquisitions and El Paso (discussed below), all licensees subject to reconfiguration have completed their physical reconfiguration activities, relocated to their post-rebanding frequencies and modified their licenses to delete their pre-rebanding frequencies or cancelled their license.

10. We accept the Transition Administrator's verification of completion of financial reconciliation (true-up).<sup>21</sup>

11. We accept the form of T-Mobile's draft Certification of Program Completion, including the certification that all approved costs for 800 MHz reconfiguration work, excepting final payments for El Paso, have been paid and reported to the Transition Administrator and terminate the Letter of Credit.<sup>22</sup> As part of the termination of the Letter of Credit, we will remove the condition on T-Mobile's licenses that require it to maintain a Letter of Credit.<sup>23</sup>

12. We grant the Transition Administrator's request for authorization to terminate Program Agreements. We grant our consent for the parties to the Program Agreements, including the Transition Administrator, to terminate those agreements in accordance with the terms thereof and to execute such other documentation as may be necessary to effectuate program completion. We provide 15 days after this Order becomes effective, to effectuate termination of the Program Agreements and direct the Transition Administrator to provide notice to the Commission of such termination no later than two (2) days after such termination has been effectuated.

13. We grant the Transition Administrator's request to dismiss as moot (a) any Recommended Resolutions and (b) any Recommended Resolutions and Requests for Waiver that may be pending before the PSHSB, as well as any filings submitted to the PSHSB by parties to mediated disputes that have been resolved with the assistance of the Transition Administrator.<sup>24</sup> As indicated, all the disputes underlying these recommended resolutions, waiver requests and mediations have been resolved.

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<sup>19</sup> See Program Completion Notice at 7. The referenced recommended resolutions are the documents submitted by the Transition Administrator when it submits the mediation record to PSHSB. They consist of the mediator's recommended disposition of the issues raised by the parties.

<sup>20</sup> See also Waiver Petition at 2 (noting "that the time has come for the Commission to take formal note of the progress made and to conclude its oversight of the Rebanding Program, as well as related TA [Transition Administrator] responsibilities, as they are no longer productive or necessary").

<sup>21</sup> See *800 MHz Report and Order*, 19 FCC Rcd at 15129, para 344.

<sup>22</sup> We similarly direct T Mobile to submit its final updated and executed Certification of Program Completion upon termination of the Program Agreements.

<sup>23</sup> See Waiver Petition at 4, 10-12.

<sup>24</sup> The reference to waiver requests, *supra*, does not include waiver requests submitted by License Acquisitions to the Wireless Telecommunications Bureau.

14. We also direct the Transition Administrator to take such other actions as necessary and appropriate to terminate the reconfiguration program, including, *inter alia*, dissolving the 800 MHz Transition Administrator, LLC entity in due course and shutting down any remaining Transition Administrator operations and facilities.<sup>25</sup>

#### **B. Outstanding Licensee Issues**

15. As noted above, two 800 MHz licensees, El Paso and License Acquisitions, have not fully completed the rebanding process. In each of these instances, we conclude that all remaining issues can be addressed outside the rebanding program, and that the pendency of these matters therefore poses no impediment to terminating the program.

##### **1. El Paso**

16. El Paso and Sprint entered into a Frequency Reconfiguration Agreement in 2015 for the rebanding of El Paso's system, and El Paso originally planned to complete rebanding on the schedule specified in its Frequency Reconfiguration Agreement. However, as the Transition Administrator reported to PSHSB, as El Paso began rebanding its system, it encountered interference on its replacement frequencies from unauthorized stations in Mexico. The Commission sought the assistance of Mexican regulators to shut down the interfering unauthorized stations, but when this proved unavailing, Sprint and El Paso agreed to have the Transition Administrator assign new replacement frequencies for El Paso. This substitution of new frequencies required El Paso to restart the retuning of over 4,500 radios. On February 25, 2021, El Paso completed physical retuning to the new replacement frequencies. However, in order to formally conclude El Paso's rebanding, T-Mobile and El Paso need to complete financial reconciliation and execute final closing documents, which they expect will take three additional months. In addition, El Paso must file an application in the Commission's Universal Licensing System (ULS) to delete pre-rebanding frequencies from its licenses, which application must then be granted, in order for the Transition Administrator to declare that band reconfiguration is complete in El Paso's National Public Safety Planning Advisory Committee (NPSPAC) region.<sup>26</sup>

17. We conclude that these remaining steps can be taken outside the rebanding program. In July 2020, T-Mobile and El Paso amended their Frequency Reconfiguration Agreement to provide that T-Mobile is contractually obligated to pay the funds necessary to enable El Paso to complete its rebanding.<sup>27</sup> As noted above, T-Mobile, in its Waiver Petition, contends it can complete El Paso's reconfiguration through existing contractual arrangements outside the scope of the 800 MHz rebanding program. Given that El Paso and T-Mobile have contractually agreed that T-Mobile will cover the expenses necessary to enable El Paso to complete rebanding, we see no reason to delay termination pending El Paso's completion of rebanding.

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<sup>25</sup> T-Mobile must pay the Transition Administrator's expenses for these activities. "Nextel will pay for the services of the Transition Administrator and staff as one of the transactional costs borne by Nextel in connection with band reconfiguration." *800 MHz Report and Order*, 19 FCC Rcd at 15070 para. 191. We clarify that after this Order is effective the Transition Administrator no longer need provide concurrence letters to licensees for licensing applications and neither the Transition Administrator nor T-Mobile need furnish the reports required by the *800 MHz Report and Order*. See *800 MHz Report and Order* at 15073, para. 196 .

<sup>26</sup> We refer to this band as the NPSPAC band because it was established by the Commission pursuant to recommendations from the National Public Safety Planning Advisory Committee. See *Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services*, Gen. Docket 87-112, Report and Order, 3 FCC Rcd 905 (1987).

<sup>27</sup> Amendment #5 to Frequency Reconfiguration Agreement between the City of El Paso and Nextel West Corporation, dated July 7, 2020 ("Sprint hereby warrants that it will cover the costs to retune Incumbent's Reconfiguration as outlined in the Agreement, and this Amendment."). See also Waiver Petition at 3.

18. The Transition Administrator states that certification that band reconfiguration is complete in NPSPAC Region 50 is dependent on El Paso filing applications to delete its pre-reconfiguration frequencies and the FCC granting those applications. The licensee anticipates filing such applications by the end of May 2021. The Transition Administrator anticipates filing its “Certification of Completion of Band Reconfiguration in NPSPAC Region 50: Texas – El Paso” 10 business days after the FCC grants the City of El Paso’s applications.<sup>28</sup> Since this has not occurred yet, we waive, on our own motion, the requirement that the Transition Administrator certify that band reconfiguration is complete in NPSPAC Region 50: Texas – El Paso, as a prerequisite for the Commission’s determination that the reconfiguration program is complete.<sup>29</sup> We direct the PSHSB to take any steps necessary to declare rebanding complete in NPSPAC Region 50.

## 2. License Acquisitions

19. License Acquisitions holds multiple 800 MHz geographic-area licenses in Texas, Oklahoma, Arkansas, and New Mexico, but has no physical facilities (infrastructure, radios, etc.) that require retuning. Thus, rebanding of License Acquisitions’ licenses is a “paper” process, *i.e.*, License Acquisitions would need to add replacement frequencies to its licenses, but there are no expenses required under the Frequency Reconfiguration Agreement between License Acquisitions and T-Mobile that either party would need to pay in order to effectuate the transaction.

20. The Commission has previously considered and rejected a petition by License Acquisitions challenging the specific replacement frequencies assigned to it in the rebanding program. In the early stages of the rebanding program, certain 800 MHz incumbents that held geographic area licenses were allowed to choose between two relocation options: (1) remain in the interleaved portion of the band and operate high-site systems, or (2) relocate to the Enhanced Specialized Mobile Radio (ESMR) band (817-824/862-869 MHz) and operate low-site cellular-architecture systems. In 2005, Silver Palm Communications, Inc. (Silver Palm), the predecessor licensee to License Acquisitions, elected to relocate to the ESMR band.<sup>30</sup> In 2010, License Acquisitions acquired the Silver Palm licenses, and in 2011 it affirmed this election.<sup>31</sup>

21. In 2017, however, License Acquisitions sought to rescind its ESMR election and requested to be licensed on non-ESMR channels.<sup>32</sup> PSHSB denied this request as untimely and concluded that License Acquisitions was bound by its prior election to relocate to the ESMR band.<sup>33</sup> In May 2019, the Commission affirmed the PSHSB’s decision in response to License Acquisitions’ application for review.<sup>34</sup>

22. While the Commission’s 2019 order resolved the issue of which replacement frequencies would be assigned to License Acquisitions, the status of License Acquisitions’ licenses nonetheless remains unresolved because it has renewal applications and waiver requests pending before the Wireless Telecommunications Bureau that, if denied, would result in cancellation of its licenses. PSHSB therefore

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<sup>28</sup> Program Completion Notice at 4, n.14.

<sup>29</sup> See *800 MHz Report and Order*, 19 FCC Rcd at 15067, para. 183 (setting forth the process by which the Transition Administrator certifies that band reconfiguration in a particular NPSPAC region is complete).

<sup>30</sup> Letter from William J. Sill, Esq. and David Judelsohn, Esq. counsel to Silver Palm, to Robert B. Kelly, Esq., 800 MHz Transition Administrator, May 13, 2005.

<sup>31</sup> Letter from William D. Silva, Esq., counsel to License Acquisitions, to Marlene H. Dortch, FCC, WT Docket No. 02-55 (filed Mar. 22, 2011).

<sup>32</sup> The request to rescind the licensee’s ESMR election was made in a Nov. 28, 2017 letter from Rob Somers, Esq., General Counsel, License Acquisitions, LLC, addressed to Marlene H. Dortch, Secretary, Federal Communications Commission.

<sup>33</sup> *License Acquisitions, LLC, Request to Rescind ESMR Election*, Order, 33 FCC Rcd 2211 (PSHSB 2018).

<sup>34</sup> *License Acquisitions, LLC, Request to Rescind ESMR Election*, Order, 34 FCC Rcd 3597 (2019).

directed the Transition Administrator to hold License Acquisitions' Frequency Reconfiguration Agreement in escrow until there is a ruling on the pending renewal applications and waiver requests.<sup>35</sup>

23. We conclude that the disposition of License Acquisitions' pending renewal applications and waiver requests can be addressed outside the rebanding program. Because License Acquisitions has no physical facilities that require retuning and there are no expenses that must be paid under the Frequency Reconfiguration Agreement, T-Mobile has no financial obligation to License Acquisitions under the rebanding rules.<sup>36</sup> The disposition of License Acquisitions' licenses will also have no impact on any other 800 MHz licensee that has already rebanded. If License Acquisitions' renewal applications and waiver requests are granted, it will receive the ESMR band frequencies that have already been designated for it by the Transition Administrator. If the applications and requests are denied, the spectrum reverts to T-Mobile, as successor to Sprint by operation of the rebanding rules.<sup>37</sup> In either case, there is no need for further involvement by the Transition Administrator or continuation of the rebanding program to address these issues. Therefore, we direct PSHSB and the Wireless Telecommunications Bureau to take any additional steps necessary to determine the final disposition of License Acquisitions' licenses and frequency assignments. We also direct the Transition Administrator to release License Acquisitions' Frequency Reconfiguration Agreement from escrow and transfer it to PSHSB.

### C. Other Matters

#### 1. Deletion of Unnecessary Rules

24. In the *800 MHz Report and Order*, the Commission adopted certain rules specifically relating to implementation of the rebanding program.<sup>38</sup> With termination of the rebanding program, there is no continued need for these rules and we therefore delete them. We conclude that this deletion does not require notice and comment. An agency may forego notice and comment rulemaking "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>39</sup> Here, notice and comment is unnecessary and contrary to the public interest because the termination of the rebanding program has rendered the rules moot in accordance with the Commission's rules and the foregoing waivers.<sup>40</sup> As the rules no longer have any practical or legal effect, deleting them from the Code of Federal Regulations will avoid any potential confusion about their continuing applicability.

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<sup>35</sup> *Sprint Corporation and License Acquisitions, LLC*, Order, 29 FCC Rcd 3566 (PSHSB 2014).

<sup>36</sup> See Waiver Petition at 3, 5 (noting that License Acquisition's reconfiguration is a "no cost," "paper retune" since the licensee "has agreed to not receive any payment from T-Mobile if it ultimately must reband its unconstructed licenses.")

<sup>37</sup> See *800 MHz Report and Order*, 19 FCC Rcd at 14984, para. 23 (providing that Sprint will relocate to the 817-824 MHz/862-869 MHz band) and 19 FCC Rcd 15056, para. 162 (providing that licensees relocating their systems into the ESMR portion of the band will share the spectrum with Sprint). If License Acquisitions does not prevail, T-Mobile does not need to share the spectrum with them.

<sup>38</sup> 47 CFR §§ 90.676-677.

<sup>39</sup> 5 U.S.C. § 553(b)(B); see *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (stating that notice and comment is "unnecessary" when it involves a "routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public" (internal quotation marks omitted)); S. Doc. No. 79-248, at 200, 258 (indicating that notice and comment is "contrary to the public interest" when the public lacks interest in a rulemaking).

<sup>40</sup> The Commission has previously found that notice and comment was unnecessary when revisions in an order "merely...delete redundant or obsolete rules." *Amendment of Part 95*, Order, 3 FCC Rcd 5032, 5032, 1988 WL 488084 (1988); see also *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Report and Order, 28 FCC Rcd 12403, 12453 (2013); *Connect America Fund*, R&O, 29 FCC Rcd 7051, 7069 (2014).

## 2. Disposition of Transition Administrator Records

25. The Tri-Party Agreement among the Transition Administrator, Sprint, and the U.S. Bank National Association includes a provision requiring the Transition Administrator to retain the records of the program for a period of at least 18 months (at Sprint's expense) after the completion of the term of the Tri-Party Agreement and to transfer the records to the Commission if the Commission so requests.<sup>41</sup> After examining a summary of records retained by the Transition Administrator, we conclude that it is unnecessary to request that these records be transferred to the Commission. The Commission is not required to request the Transition Administrator's records pursuant to the Federal Records Act or other statute. Further, the actions of the Transition Administrator during the course of the program have been well-documented in its quarterly program status reports and other documents already filed in the docket of this proceeding. Once the rebanding program is concluded, we determine that there is no need for the Commission to request additional material from the Transition Administrator's files. Therefore, we relieve the Transition Administrator of the obligation to retain records for 18 months and authorize it to dispose of such records upon this Order becoming final and non-reviewable. Thus, the Transition Administrator may dispose of such records once the timeframe for seeking judicial review of this Order has expired or, if the Order is the subject of any judicial challenge, a final disposition of the case has been rendered, whichever is later.

## IV. PROCEDURAL MATTERS

26. *Regulatory Flexibility Act.* Under Section 604(a) of the Regulatory Flexibility Act, the Commission is not required to prepare a final regulatory flexibility analysis because the Order does not require notice-and-comment rulemaking.<sup>42</sup>

27. *Paperwork Reduction Act of 1995.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

28. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act. 5 U.S.C. 804(2). The Commission will include a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

29. *Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## V. ORDERING CLAUSES

30. Accordingly, **IT IS ORDERED** that this *Order* in WT Docket No. 02-55 IS ADOPTED, pursuant to the authority contained in Sections 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303, and Section 1.3 of the Commission's rules, 47 CFR § 1.3. The *Order* and the amended rules will become effective thirty days after publication in the Federal Register.

31. **IT IS FURTHER ORDERED** that Part 90 of the Commission's rules **IS AMENDED** as set forth in Appendix A.

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<sup>41</sup> Tri-Party Agreement at Section 3.15.

<sup>42</sup> *See* 5 U.S.C. § 604(a).



32. **IT IS FURTHER ORDERED** that the Petition for Waiver, filed by T-Mobile USA, Inc. on February 26, 2021 **IS GRANTED, to the extent required, and otherwise IS DISMISSED AS MOOT.**

33. **IT IS FURTHER ORDERED** that the Program Completion Notice, filed by the Transition Administrator on March 5, 2021 **IS GRANTED** to the extent described herein.

34. **IT IS FURTHER ORDERED** on our own motion, that the requirement that the Transition Administrator certify that band reconfiguration is complete in NPSPAC Region 50: Texas – El Paso, as a prerequisite for the Commission’s determination that the reconfiguration program is complete, **IS WAIVED.**

35. **IT IS FURTHER ORDERED** that the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau undertake such actions as are necessary to effectuate this *Order Terminating Proceeding*.

36. **IT IS FURTHER ORDERED** that this proceeding **IS TERMINATED.**

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

The Federal Communications Commission amends 47 CFR part 90 as follows:

**PART 90 – PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

2. Amend Section 90.674 by revising the section heading as follows:

**§ 90.674 Interference Resolution Procedures.**

3. Remove and reserve Section 90.676 and Section 90.677.

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Order (April 22, 2021)

It may not seem that long ago, but 2004 was a different time when it comes to technology. The mobile phone market was dominated by flip phones and the digital television transition was still years away. The Federal Communications Commission was laying the groundwork for its very first 3G spectrum auction—which was exciting. In 2004 the agency also began vitally important work to prevent interference on public safety systems from new commercial wireless uses.

This last effort—known formally as the 800 MHz rebanding program—is finally coming to an end. As a result, public safety, critical infrastructure, and other 800 MHz licensees can operate in a reconfigured band free of the interference that plagued first responders’ mission-critical communications before the FCC began this process.

As we look to the future of spectrum policy, I’m proud to bring the 800 MHz rebanding chapter to a close. There are too many people to name who participated in writing this spectrum history, but I would be remiss if I didn’t take a moment to recognize Michael Wilhem for his contribution. He was there at the start in 2004 and he is here at the end in 2021. He deserves a special thank you for his public service, which has made it possible for both first responders and consumers to use these airwaves without interference. We are also grateful to all the other agency staff who helped us with this decision today, including John Evanoff, Lisa Fowlkes, David Furth, Brian Marengo, Roberto Mussenden, and Renee Roland from the Public Safety and Homeland Security Bureau; Deborah Broderson, David Horowitz, and Bill Richardson from the Office of General Counsel; Emily Talaga from the Office of Economics and Analytics; and Katherine Nevitt, Roger Noel, and Catherine Schroeder from the Wireless Telecommunications Bureau.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Order (April 22, 2021)

Seventeen years ago, a high-pitched and pesky noise emerged for which there was no easy or quick solution. It was a nuisance that garnered the attention of both Democrats and Republicans in Washington. I am not referring to the interference concerns that motivated the FCC to initiate this rebanding program in 2004, of course, but to the Brood X cicadas that are emerging again this year after a 17-year slumber.

Unlike cicadas, the FCC team that has staffed this proceeding since 2004 has not enjoyed a whole lot of rest. The staff of the Public Safety and Homeland Security Bureau in particular has worked tirelessly on this important issue to address the interference concerns that plagued public safety operations in the 800 MHz band. I want to congratulate and thank you all for your efforts to move this proceeding across the finish line. And, unlike in 2004, when advocates argued that FCC Commissioners could be put in jail over the agency's 800 MHz proceeding, I am glad no one at the agency ended up in the pokey over this one.

Jokes aside, I want to especially recognize the hard work and devotion of Michael Wilhelm—who is not only Chief of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau, but also my next-door neighbor and friend. Michael, as many of you know, first joined the Commission in 1997 as an attorney in the Public Safety & Critical Infrastructure Division of the Wireless Telecommunications Bureau. Since 2004, he has overseen this proceeding and been a guiding force in the rebanding of the 800 MHz band. This rebanding process involved the spectral reconfiguration of tens of thousands of base stations owned by more than 2,000 licensees. It presented a myriad of complex issues but with Michael at the helm, we were able to get it done. Having seen this project through to completion, Michael will be heading off for a much-deserved retirement. So I want to thank you, Michael, for your years of public service at the FCC. The American people have benefited greatly from your service. I wish you the best in your retirement and hope you can devote less time to spectrum and more time to your family and doing the things you enjoy.

I approve.