

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

In the Matter of)	
)	
Improving Public Safety Communications in the)	WT Docket No. 02-55
800 Megahertz Band)	
)	
Comunicaciones Digitales del Norte, S.A. de C.V.,)	
Radio Sistemas de Tamaulipas, S.A. de C.V.,)	
Troncatel, S.A. de C.V., and Union Agricola)	
Regional del Norte de Tamaulipas, Petition for)	
Declaratory Ruling)	

ORDER

Adopted: February 12, 2018

Released: February 12, 2018

By the Chief, Public Safety and Homeland Security Bureau and the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we dismiss a Petition for Declaratory Ruling filed by Comunicaciones Digitales del Norte, S.A. de C.V., Radio Sistemas de Tamaulipas, S.A. de C.V., Troncatel, S.A. de C.V., and Union Agricola Regional del Norte de Tamaulipas (Petitioners).¹ Petitioners seek a Commission order relative to compensation allegedly owed them by AT&T Mexico and Sprint Corporation (Sprint).² The Petition is substantively identical to a previous petition filed by Petitioners, which the Bureaus dismissed in 2016 for lack of jurisdiction.³ Because this latest petition raises no new issues within the Commission's purview, we again dismiss Petitioners' claims as outside our jurisdiction and refer Petitioners to the relevant regulatory authorities in Mexico for the relief they seek.

II. BACKGROUND

2. Petitioners operate 800 MHz trunked mobile systems in Mexico near the U.S.-Mexico border. Pursuant to the June 8, 2012, agreement between the United States and Mexico modifying the international allocation of 800 MHz spectrum in the U.S.-Mexico border region (Amended Protocol),⁴ Petitioners and certain other Mexican 800 MHz licensees in the U.S.-Mexico "Sharing Zone" must

¹ Petition for Declaratory Ruling, Comunicaciones Digitales del Norte, S.A. de C.V., Radio Sistemas de Tamaulipas, S.A. de C.V., Troncatel, S.A. de C.V., and Union Agricola Regional del Norte de Tamaulipas, August 15, 2017 (Second Petition).

² Second Petition at 2-3.

³ *Comunicaciones Digitales del Norte, S.A. de C.V., Radio Sistemas de Tamaulipas, S.A. de C.V., Troncatel, S.A. de C.V., and Union Agricola Regional del Norte de Tamaulipas, Petition for Declaratory Ruling*, Order, 31 FCC Rcd 11885 (PSHSB/IB 2016) (2016 Dismissal Order).

⁴ See Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment, Assignment and Use of the 806-824/851-869 MHz and 896-901/935-940 MHz Bands for Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border (June 8, 2012) (Amended Protocol).

change their operating frequencies to conform to a revised border area band plan contained within the Amended Protocol.⁵

3. On July 29, 2016, Petitioners filed an earlier Petition for Declaratory Ruling requesting that the Commission require AT&T Mexico and Sprint to compensate Petitioners for costs and damages that Petitioners alleged were incurred as a result of being required under the Amended Protocol to relocate their facilities from the 800 MHz Band.⁶ On October 27, 2016, the Bureaus issued the *2016 Dismissal Order*, which concluded that Petitioners had failed to identify “any controversy or uncertainty relating to the Communications Act, other statutes within the Commission’s jurisdiction, or the Commission’s rules or prior orders.”⁷ The Bureaus found that “[t]o the extent that Petitioners seek redress under the Amended Protocol . . . their remedy lies in Mexico, not the United States,”⁸ and therefore dismissed the petition for lack of jurisdiction. Petitioners did not seek reconsideration or review of the *2016 Dismissal Order*.

III. DISCUSSION

4. Under Section 1.2(a) of the rules, the Commission “may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”⁹ A declaratory ruling therefore is typically used to “clarify, interpret, or determine the appropriate application of a provision of the Communications Act (or other statute within its jurisdiction), the Commission’s rules or prior Commission orders.”¹⁰

5. As noted above, this is the second occasion we have had to address Petitioners claims. Once again, Petitioners have failed to identify any statutory or regulatory issue within the Commission’s jurisdiction. Instead, Petitioners merely repeat the allegation that they are due compensation under the Amended Protocol and question the implementation of the Protocol by IFT, the Mexican communications regulator.¹¹ Remarkably, Petitioners do not even mention the *2016 Dismissal Order*.

6. Having already concluded in the *2016 Dismissal Order* that the Commission lacks jurisdiction to address Petitioners’ claims, we dismiss the Second Petition on the same grounds. As Petitioners acknowledge, IFT is responsible for implementing the Amended Protocol in Mexico.¹² To the extent that Petitioners seek redress under the Protocol or object to its implementation by IFT, their remedy lies in Mexico, not the United States. We reaffirm our conclusion in the *2016 Dismissal Order*

⁵ The Sharing Zone is a region extending 110 kilometers from the border into each country. See *Improving Public Safety Communications in the 800 MHz Band*, Fifth Report and Order, 28 FCC Rcd 4085, 4086 para. 2 (PSHSB 2013).

⁶ Petition for Declaratory Ruling, Comunicaciones Digitales del Norte, S.A. de C.V., Radio Sistemas de Tamaulipas, S.A. de C.V., Troncatel, S.A. de C.V., and Union Agrícola Regional del Norte de Tamaulipas, July 29, 2017 (First Petition). In particular, Petitioners sought reimbursement from AT&T Mexico for costs and damages they contend were incurred by reason of implementation of the Amended Protocol. Petitioners also sought reimbursement from Sprint for costs and damages Petitioners contend were incurred as a result of the requirement by IFT to relocate their communications facilities from the 800 MHz Band to the 400 MHz Band. Finally, Petitioners requested that both AT&T Mexico and Sprint report to the Commission payments they have made, if any, to Mexican operators within the Mexico side of the Sharing Zone, pursuant to the Amended Protocol. *Id.* at 2, 5-9.

⁷ *2016 Dismissal Order* at 11887, para 8.

⁸ *Id.*

⁹ 47 CFR 1.2(a).

¹⁰ *Id.*

¹¹ Second Petition at 7-9.

¹² *Id.* at 7.

that where, as here, a petition for declaratory ruling turns on issues beyond our jurisdiction, dismissing the petition is a proper exercise of our discretion.¹³

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, that the Petition for Declaratory Ruling, filed August 15, 2017 by Comunicaciones Digitales del Norte, S.A. de C.V., Radio Sistemas de Tamaulipas, S.A. de C.V., Troncatel, S.A. de C.V., and Union Agricola Regional del Norte de Tamaulipas IS DISMISSED.

8. This action is taken under delegated authority pursuant Sections 0.51, 0.191, 0.261 and 0.392 of the Commission's rules, 47 CFR §§ 0.51, 0.191, 0.261, 0.392; Section 1.2(a) of the Commission's rules, 47 CFR § 1.2(a); and Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes
Chief
Public Safety and Homeland Security Bureau

Thomas P. Sullivan
Chief
International Bureau

¹³ See 2016 Dismissal Order at 11887, para 10.