

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

In the Matter of)	
)	
)	
License Acquisitions, LLC)	WT Docket No. 02-55
)	
Request to Rescind ESMR Election –)	
Improving Public Safety Communications)	
in the 800 MHz Band)	
)	

To: Secretary, Federal Communications Commission

APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Commission’s rules,¹ License Acquisitions LLC, (“LA”) submits this Application for Review of the Public Safety and Homeland Security Bureau’s (“Bureau’s”) *Reconsideration Order*. That decision dismissed LA’s petition seeking reconsideration of the Bureau’s denial of LA’s request to rescind its Enhanced Specialized Mobile Radio (“ESMR”) election.²

The *Reconsideration Order* was decided solely on a single procedural ground – the petition’s submission to the email address established by the Commission for the filing of 800 MHz rebanding pleadings instead of the Electronic Comment Filings Systems (“ECFS”). The Bureau’s interpretation of the procedural rule was in error, and it was also a misuse of the Bureau’s discretion. In any event, that procedural ground for dismissal does not apply to this

¹ 47 C.F.R. § 1.115.

² License Acquisitions, LLC Request to Rescind ESMR Election – Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, DA 18-768 (July 25, 2018) (“*Reconsideration Order*”). The *Reconsideration Order* followed the Bureau’s initial decision in March 2018 denying the ESMR election rescission request. License Acquisitions, LLC Request to Rescind ESMR Election, WT Docket No. 02-55, *Order*, DA 18-238 (Mar. 12, 2018) (“*Order*”).

Application for Review. Moreover, the underlying Bureau decision contained a serious substantive error that must be corrected – rebanding would be facilitated by the election rescission, not impeded by it. Furthermore, grant of LA’s original ESMR election rescission request would serve the public interest in maximizing use of the spectrum.

The Reconsideration Petition Should Not Have Been Dismissed on Procedural Grounds

The Bureau dismissed the reconsideration petition because LA submitted it through the email address, PSHSB800@fcc.gov, established as a filing system for non-docketed filings related to the 800 MHz rebanding.³ As the Bureau noted, Section 1.106(i) of the Commission’s rules provides that “Petitions [for reconsideration] submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed.”⁴

But the Bureau’s reading of Section 1.106 is incorrect. The purpose of not permitting reconsideration petitions to be filed through electronic mail or directly to staff is so that they are filed in a central location with the Commission. That can be “by commercial courier, by hand, or by electronic filing through the Commission’s Electronic Comment Filing System *or other electronic filing system*...”⁵ For 800 MHz rebanding issues related to a single licensee like the initial ESMR election rescission request and the reconsideration petition, that filing system *is* the email address PSHSB800@fcc.gov through which LA submitted its petition. Notably, LA submitted its reconsideration petition to the Secretary, not any individual staff member.

While the Bureau claims that docketed filings “*should* continue to be filed in the Electronic Comment Filing System (ECFS) or as otherwise provided in Part 1 of the

³ *Reconsideration Order* ¶ 3.

⁴ 47 C.F.R. § 1.106(i).

⁵ *Id.* (emphasis added).

Commission's rules,"⁶ it accepted the original request from LA without returning it, placing it in the docket or seeking public comment on it.⁷ If the underlying request does not belong in an ECFS docket, then it is hard to see how a related reconsideration petition would need to be placed in ECFS. In any event, the language cited by the Bureau only indicates that filings like the reconsideration petition "should" be made through ECFS rather than must.⁸

Further, there is nothing that prevented the Bureau from accepting LA's reconsideration petition, especially given the clear error reflected in the denial of the rescission request and the public interest benefits that would accrue from granting the rescission request. Section 1.106 does not bind the Commission or a Bureau into dismissing a reconsideration petition based on how it is filed. Indeed, the Bureau could even act on its own to set aside the *Order*.⁹

The Commission Can Accept This Application for Review

Fortunately, the Commission can correct the Bureau's procedural and substantive errors. It may accept applications for review of Bureau decisions when there is an "erroneous finding as to an important of material question of fact" or "prejudicial procedural error," both of which apply here.¹⁰ Even if the Bureau is correct that LA did not comply with the letter of Section 1.106, it is within its rights to review that decision. Indeed, as a matter of practice, the Commission and its Bureaus often accept filings that do not strictly comply with the Commission's Part 1 requirements. And the Commission has the power to waive its rules for

⁶ *Reconsideration Order* ¶ 3 (emphasis added).

⁷ Because the initial request and the reconsideration petition were never placed in the docket by the Commission, they are attached here for the full Commission's consideration.

⁸ *Reconsideration Order* ¶ 3

⁹ See 47 C.F.R. § 1.113.

¹⁰ 47 C.F.R. § 1.115(b)(2)(iv, v).

good cause shown.¹¹ Each of these reasons provides a sufficient basis for the Commission to review the Bureau's *Order* and *Reconsideration Order*, and reverse them to ensure that the public interest in LA's underlying request is properly evaluated.

The Bureau Erred in Rejecting LA's Rescission Request

The primary reason for the Bureau's rejection of the initial request was that it claimed rescission would require revisions to the 800 MHz band plan.¹² This is incorrect. To the contrary, rescission of the ESMR election will facilitate rebanding. LA has never had the frequencies removed from its licenses, so the old frequencies could not have been properly given to any other licensees and have never been available in the Vacated Spectrum License Database. LA's frequencies therefore are still available to it to reassume as its own. Furthermore, LA's licenses, which contain a very small number of frequencies in the Mexico sharing zone, would still be governed by the Mexico border band plan just as they would if they were assigned to someone else. Further, the conclusion that allowing LA to rescind its ESMR election would entail reopening the rebanding process is also erroneous. Had LA never elected the ESMR channels in the first place, it would have been allowed to stay in the old frequencies as an incumbent, albeit on what is essentially a secondary basis. Indeed, this was the path chosen by some licensees, and it is the path that best suits LA now.

Rescinding LA's ESMR Election Would Serve the Public Interest

Permitting LA to rescind its ESMR election will serve the public interest in maximizing the use of the radio frequencies. LA requested authority to rescind the ESMR election because it believes it can better serve the public by leasing its currently authorized frequencies in the 800 MHz Interleaved, Expansion and Guard bands to its affiliate Iota (formerly known as M2M

¹¹ 47 C.F.R. § 1.3.

¹² *Order* ¶¶ 8-9.

Spectrum Networks). This spectrum is much better suited than the ESMR band frequencies for Iota's machine-to-machine communications. Further, because LA's status will essentially be that of a secondary service, no other potential user is disadvantaged by its use of these frequencies.¹³

Rather than re-opening rebanding, it will also help resolve a long-standing issue that currently prevents the completion of rebanding and implementation of the Mexico border band plan because it would remove coordination obstacles between Sprint's existing ESMR band deployment and LA's potential ESMR band network. A Sprint representative called the proposal an "elegant solution."¹⁴ This would allow Sprint to better use the spectrum it is using in the ESMR band and provide LA an opportunity to immediately deploy on its licensed frequencies.

Resolving this long-standing issue in this win-win manner is equitable as well. It has been 13 years since the initial ESMR election was made by LA's predecessor and eight years since LA acquired the licenses. LA's attempt to deploy service to the public with these licenses has been completely thwarted by delays in the rebanding process and the long-standing dispute over how to coordinate with Sprint. Rescinding the ESMR election would help to remedy the harm done by these delays.

For the foregoing reasons, on review of the Bureau's *Order*, the Commission should grant LA's underlying ESMR election rescission request.

¹³ 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, 15059 ¶ 162 (2004).

¹⁴ Email from James Goldstein, Senior Counsel, Sprint Corporation, to Rob Somers, General Counsel, License Acquisitions (Mar. 15, 2018).

Respectfully submitted,

/s/

Pantelis Michalopoulos

Christopher Bjornson

Step toe & Johnson LLP

1330 Connecticut Avenue, NW

Washington, D.C. 20036

(202) 429-3000

Counsel to M2M Spectrum Networks, LLC

August 24, 2018

Initial Rescission Request and Reconsideration Petition

November 28, 2017

Filed via E-mail to: PSHSB800@fcc.gov
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Petition to Rescind Election to Relocate 800 MHz SMR EA Licenses to ESMR Band. Active Licenses: WPLM227, WPLM228, WPLM229, WPLM230; Affected Renewal Applications and Requests for Waiver: WPSJ755, ULS File No. 0004738836; WPSJ756, ULS File No. 0004738838; WPSJ760, ULS File No. 0004738839; WPSJ761, ULS File No. 0004738840; WPSJ762, ULS File No. 0004738841; WPSJ766, ULS File No. 0004738842; WPSJ767, ULS File No. 0004738843

Dear Ms. Dortch:

License Acquisitions, LLC (“LA”) respectfully requests that the Commission allow it to rescind the election made by Silver Palm Communications, Inc. (“Silver Palm”) on May 13, 2005, affirmed February 6, 2006, with regard to the 800 MHz SMR EA licenses referenced above (the “Election”). The Election was made to relocate the licenses to the ESMR Band as part of the 800 MHz rebanding process. On March 10, 2011, License Acquisitions (“LA”) affirmed the Election in good faith, believing LA could relocate its operations to the ESMR Band. Given the events that have since transpired, it appears LA’s only course of action is to rescind the Election and complete the rebanding process by keeping its licenses’ original frequencies.¹

LA’s licenses currently authorize operations in the SMR portions of the 800 MHz Interleaved, Expansion, and Guard Bands.² After rescinding the Election, the licenses should retain their status as EA licenses on their current frequencies.³ The attached letter dated August 15, 2013 from the 800 MHz Transition Administrator (the “TA”) shows LA’s current

¹ This request was made directly to the 800 MHz Transition Administrator, who advised on November 16, 2017 that it lacked authority to approve it.

² On May 23, 2011, LA filed applications to renew the licenses. Those renewal applications should now be granted. On May 20, 2011, LA filed a request for a waiver of the deadline to commence ESMR operations, which would become moot if the Election is allowed to be rescinded.

³ The TA has however pointed out that certain licenses within the U.S.-Mexico Sharing Zone will need revised replacement frequencies.

frequencies in the "Frequency Proposal Report for License Acquisitions, LLC" attached thereto. All of the frequencies should still be available to LA because the licenses were never modified to transition to the ESMR frequencies shown in the report. To the extent any frequencies are not available, replacement frequencies should be available in the Interleaved, Expansion or Guard bands. Therefore, no third parties should be prejudiced by the rescission of the Election at this time.

Rescission of the Election will not affect public safety, critical infrastructure, or other incumbent operations. LA does not conduct cellular operations that would be prohibited after rebanding is complete, and its future operations will comply with all interference regulations.

The public will benefit from the rescission because LA and Sprint will not be required to power down systems to avoid interference with each other in the ESMR band. Sprint has likely been concerned that the ESMR operations of LA would potentially cause interference issues due to the proximity of their channels to each other. LA believes the rescission allows Sprint to absorb the ESMR channels allocated to LA into Sprint's EA licenses, allowing Sprint to give better service to its subscribers throughout a large portion of Texas and into Oklahoma. Removing the uncertainty of this process will also allow LA to expand its operations to provide machine-to-machine network services to mobile devices.

Sprint has not paid any of LA's proposed costs to transition its licenses to the ESMR band. The only costs requested were an allowance for attorneys' fees should Sprint and LA not agree to terms on a Frequency Reconfiguration Agreement. The parties did agree to such terms without issue, therefore no costs are due. LA does not foresee requesting any reimbursement for any costs associated with rebanding should the Election be rescinded. The TA has pointed out that certain licenses within the U.S.-Mexico Sharing Zone will need revised replacement frequencies, however LA will not be requesting any reimbursement for retuning costs.

LA looks forward to resolving this situation expeditiously. LA understands and accepts that granting the rescission of the Election may require unforeseen issues to be resolved with the TA to complete the rebanding process.

Respectfully submitted,



Rob Somers
General Counsel
Direct: (602) 808-1020
rob.somers@smartcommllc.com



1-877-248-8993

cc: Michael Wilhelm, FCC
Brett Haan, 800 MHz Transition Administrator, LLC
James Goldstein, Sprint
Carole Downs, License Acquisitions, LLC

August 15, 2013

Reference: 800 MHz Band Reconfiguration Frequency Proposal Reports

License Acquisitions, LLC
c/o Shawn Downs
3131 E. Camelback Road, Suite 450
Phoenix, AZ 85016

Dear Mr. Downs:

The Federal Communications Commission ("FCC") has mandated the reconfiguration of the 800 MHz band throughout the United States to correct interference caused by having both commercial wireless cellular systems (such as Sprint) and Public Safety licensees operating in the same band. As part of this process, radio systems subject to reconfiguration are being provided replacement frequencies that provide greater separation and improved interference protection from the operations of commercial carriers. The 800 MHz Transition Administrator, LLC ("TA") is charged with overseeing 800 MHz band reconfiguration.

You have been identified as a contact for an 800 MHz Economic Area ("EA") licensee with licenses that you elected to reconfigure to the Enhanced Specialized Mobile Radio ("ESMR") Band (817-824/862-869 MHz). Some of these licenses have locations that are in or affected by the Sharing Zone along the U.S.-Mexico border.¹ Due to proximity to the U.S.-Mexico border, your reconfiguration was deferred while the band plan along the U.S.-Mexico border was under development. The FCC released a Fifth Report and Order on April 1, 2013 that adopted a reconfigured channel plan for the 800 MHz band along the U.S.-Mexico border.² Reconfiguration of systems along the U.S.-Mexico border will now commence.

License Acquisitions, LLC ("License Acquisitions") acquired EA licenses that were previously held by Silver Palm Communications, Inc. ("Silver Palm") and included in an EA Election as part of the 800 MHz band reconfiguration. On May 13, 2005, Silver Palm filed with the TA an election to relocate EA licenses to the ESMR Band. Silver Palm affirmed its election on February 6, 2006. Silver Palm did not elect as an EA licensee operating an ESMR system. License Acquisitions affirmed Silver Palm's EA Election in a letter dated March 10, 2011.

The TA reminds License Acquisitions that EA licensees electing to move to the ESMR Band must relocate and convert their systems to ESMR technology and provide ESMR service to customers by the end of the EA license term. The FCC has stated that failure to certify the implementation of ESMR technology by the end of the EA license term will result in the automatic cancellation of the EA license. You should consult paragraphs 26-27 of the FCC's October 5, 2005 Memorandum Opinion and Order ("MO&O") regarding this FCC requirement. The MO&O can be found on the FCC's website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-174A1.pdf.

¹ Frequencies within a distance of 110 km of the border between the United States and Mexico are within the Sharing Zone. See 47 C.F.R. § 90.619(a) ("All operations in the 806–824/851–869 MHz band within 110 km (68.35 miles) of the U.S./Mexico border ('Sharing Zone') shall be in accordance with international agreements between the U.S. and Mexico.").

² Improving Public Safety Communications in the 800 MHz Band, *Fifth Report and Order*, 28 FCC Rcd 4085 (2013).

This mailing includes a Frequency Proposal Report (“FPR”) identifying each of your EA licenses with frequencies in the 800 MHz band that you elected to reconfigure.³ The FPR identifies your current authorized transmit frequencies (as of the date of this report) designated for reconfiguration and provides proposed replacement frequencies.

This FPR reflects License Acquisitions’ voluntary election to move to the ESMR Band. As an EA licensee that was not operating an ESMR system on November 22, 2004, License Acquisitions is entitled only to the portion of the EA that was unencumbered by earlier-licensed site-specific licenses that it had before it relocated, i.e., its “white area,” and which it had on November 22, 2004.⁴

Reconfiguration costs of EA licensees electing to move to the ESMR Band that did not have a constructed ESMR system as of November 22, 2004 will be limited to reasonable transactional costs (e.g., legal and engineering fees directly related to determining comparable spectrum, such as determining channel assignments or “white area”). Non-ESMR EA licensees are not entitled to costs associated with infrastructure, replacement of subscriber equipment, tower leases, or any other “hardware related” expenses.

Please note that call signs and related frequencies identified by ** after the call sign in the enclosed FPR indicate the replacement frequency will not be authorized for use in the area of the EA within the Sharing Zone (i.e., it will not be authorized for use within 110 kilometers of the U.S.-Mexico border). As noted in the TA’s letter to you dated July 24, 2013, the replacement frequencies in the Sharing Zone are primary to Mexico under the Amended Protocol that the United States and Mexico signed in June 2012.

Please note that an FPR does not constitute authorization to operate on the proposed frequencies. An application must be filed with and granted by the FCC prior to commencing operations on the new frequencies. A copy of the FPR will be provided to Sprint.

Please review the proposed frequency assignments and promptly notify the TA of any errors or omissions.

Information about the Reconfiguration Process

The reconfiguration process consists of planning for your reconfiguration, negotiating a Frequency Reconfiguration Agreement (“FRA”) with Sprint, implementing your reconfiguration, and closing your FRA. Accordingly, you must negotiate with Sprint an FRA setting forth the costs and terms under which your system will be reconfigured. You will be required to certify that the funds requested are the minimum necessary to provide facilities comparable to those presently in use.

The 30-month transition period for reconfiguration along the U.S.-Mexico border begins on August 23, 2013. The TA filed with the FCC on August 6, 2013 a Reconfiguration Timetable for the Reconfiguration of the 800 MHz Band in the Sharing Zone and Affected NPSPAC Regions Along the U.S.-Mexico Border that sets out the specific steps required in each NPSPAC region for the relocation of licensees.

³ Associated mobile frequencies are not listed in this FPR but they will reconfigure 45 MHz below their fixed replacement frequencies.

⁴ See Improving Public Safety in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25155 ¶ 79 (2004); see also 47 C.F.R. § 90.693.



During the planning period, you should plan for the reconfiguration of your radio system and prepare a cost estimate – an estimate of the costs associated with the reconfiguration of your radio system. Information about preparing a cost estimate is available on the TA's website at:

<http://www.800TA.org/content/resources/forms.asp>. As noted above, reconfiguration costs of non-ESMR EA licensees electing to move to the ESMR Band are limited to reasonable transactional costs (e.g., legal and engineering fees directly related to determining comparable spectrum) and no "hardware related" expenses.

If you require funding to conduct planning activities, you should submit a Request for Planning Funding ("RFPF") and negotiate a Planning Funding Agreement ("PFA") with Sprint. Licensees that intend to negotiate a PFA must submit an RFPF by August 23, 2013. After the TA approves your PFA, you must complete planning and submit a cost estimate to Sprint within 90 to 110 days, depending on the number of subscriber units in your system. If you have up to 5,000 subscriber units, the planning period is 90 days; if you have 5,001-10,000 units, the period is 100 days; and if you have more than 10,000 units, the period is 110 days.

If you will not have a PFA, you must complete planning and submit a cost estimate to Sprint within 90 to 110 days of August 23, 2013, depending on the number of subscriber units in your system. If you have up to 5,000 subscriber units, the planning period is 90 days; if you have 5,001-10,000 units, the period is 100 days; and if you have more than 10,000 units, the period is 110 days.

If you complete your cost estimate prior to the deadlines noted above, please submit it to Sprint as soon as it is ready. You can email the cost estimate to 800mhz@sprint.com and copy TAMediation@squiresanders.com.

After submitting the cost estimate, you will have 30 days to negotiate an FRA with Sprint. A TA Mediator will monitor the negotiations. During the negotiation period, you must negotiate in good faith with Sprint. If an FRA has not been submitted to the TA by the end of the 30-day negotiation period, you and Sprint will enter the TA's Alternative Dispute Resolution ("ADR"), or "mediation," process. The mediation period will last for 20 working days. During the mediation process, the licensee and Sprint must identify specific issues in dispute, state their positions with respect to those issues, and work towards reaching an agreement with the assistance of a TA Mediator. If the parties do not reach agreement during the mediation period, the TA Mediator will refer any remaining disputed issues to the FCC within 10 days after the close of the mediation period.

Additional information about the reconfiguration process, including the TA's Reconfiguration Handbook, can be found on the TA's website at <http://www.800TA.org>. If you have any questions regarding reconfiguration, you may contact the TA by phone at 888.800.8220 or via email at comments@800TA.org.

Sincerely,

Brett Haan
800 MHz Transition Administrator, LLC

Enclosure: Frequency Proposal Report

cc: Sprint



About the 800 MHz Transition Administrator, LLC

800 MHz Transition Administrator, LLC ("TA LLC") is the Transition Administrator ("TA") for the reconfiguration of the 800 MHz band mandated by the Federal Communications Commission ("FCC"). TA LLC has contracted with Deloitte Consulting LLP, Squire Sanders (US) LLP and Baseline Wireless Services, LLC to perform the duties of the TA. Among its duties, the TA establishes reconfiguration guidelines, specifies replacement channels, reviews reconfiguration cost estimates, monitors payment of reconfiguration costs, manages the relocation schedule, facilitates issue resolution and administers the alternative dispute resolution process. TA LLC uses information it receives solely for the purposes of administering the 800 MHz reconfiguration process and may disclose such information to the FCC or other authorized parties pursuant to the requirements of the 800 MHz Order or other applicable laws.



Frequency Proposal Report for License Acquisitions, LLC

This proposal covers EA licenses in BEA 126 (Western Oklahoma), 127 (Dallas, TX), 128 (Abilene, TX) 129 (San Angelo, TX), 130 (Austin, TX), 134 (San Antonio, TX), and 138 (Amarillo, TX – NM), elected by Silver Palm and reaffirmed by License Acquisitions to move to the ESMR Band. Sprint and License Acquisitions may negotiate to reconfigure to other frequencies subject to TA review and approval:

Row #	Call Sign	Licensee Name	SC	EA	EA Name	Auction Block	Current Frequency*	Proposed Frequency
1	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.0125	862.0125
2	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.0375	862.0375
3	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.0625	862.0625
4	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.0875	862.0875
5	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.1125	862.1125
6	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.1375	862.1375
7	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.1625	862.1625
8	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.1875	862.1875
9	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.2125	862.2125
10	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.2375	862.2375
11	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.2625	862.2625
12	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.2875	862.2875
13	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.3125	862.3125
14	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.3375	862.3375
15	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.3625	862.3625
16	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.3875	862.3875
17	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.4125	862.4125
18	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.4375	862.4375
19	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.4625	862.4625
20	WPLM227	License Acquisitions	YC	126	Western, OK	A	861.4875	862.4875
21	WPSJ760	License Acquisitions	YC	126	Western, OK	K	856.1125	862.5125
22	WPSJ760	License Acquisitions	YC	126	Western, OK	K	857.1125	862.5375
23	WPSJ760	License Acquisitions	YC	126	Western, OK	K	858.1125	862.5625



Row #	Call Sign	Licensee Name	SC	EA	EA Name	Auction Block	Current Frequency*	Proposed Frequency
24	WPSJ760	License Acquisitions	YC	126	Western, OK	K	859.1125	862.5875
25	WPSJ760	License Acquisitions	YC	126	Western, OK	K	860.1125	862.6125
26	WPSJ767	License Acquisitions	YC	127	Dallas, TX	Q	856.5625	862.0125
27	WPSJ767	License Acquisitions	YC	127	Dallas, TX	Q	857.5625	862.0375
28	WPSJ767	License Acquisitions	YC	127	Dallas, TX	Q	858.5625	862.0625
29	WPSJ767	License Acquisitions	YC	127	Dallas, TX	Q	859.5625	862.0875
30	WPSJ767	License Acquisitions	YC	127	Dallas, TX	Q	860.5625	862.1125
31	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.0125	862.0125
32	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.0375	862.0375
33	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.0625	862.0625
34	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.0875	862.0875
35	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.1125	862.1125
36	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.1375	862.1375
37	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.1625	862.1625
38	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.1875	862.1875
39	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.2125	862.2125
40	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.2375	862.2375
41	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.2625	862.2625
42	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.2875	862.2875
43	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.3125	862.3125
44	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.3375	862.3375
45	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.3625	862.3625
46	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.3875	862.3875
47	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.4125	862.4125
48	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.4375	862.4375
49	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.4625	862.4625
50	WPLM228	License Acquisitions	YC	128	Abilene, TX	A	861.4875	862.4875
51	WPSJ761	License Acquisitions	YC	128	Abilene, TX	K	856.1125	862.5125



Row #	Call Sign	Licensee Name	SC	EA	EA Name	Auction Block	Current Frequency*	Proposed Frequency
52	WPSJ761	License Acquisitions	YC	128	Abilene, TX	K	857.1125	862.5375
53	WPSJ761	License Acquisitions	YC	128	Abilene, TX	K	858.1125	862.5625
54	WPSJ761	License Acquisitions	YC	128	Abilene, TX	K	859.1125	862.5875
55	WPSJ761	License Acquisitions	YC	128	Abilene, TX	K	860.1125	862.6125
56	WPSJ755	License Acquisitions	YC	129	San Angelo, TX	H	856.0375	862.0125
57	WPSJ755	License Acquisitions	YC	129	San Angelo, TX	H	856.7250	862.0125
58	WPSJ762	License Acquisitions	YC	129	San Angelo, TX	K	856.1125	862.0375
59	WPSJ762	License Acquisitions	YC	129	San Angelo, TX	K	856.8000	862.0375
60	WPSJ755	License Acquisitions	YC	129	San Angelo, TX	H	857.0375	862.0625
61	WPSJ755	License Acquisitions	YC	129	San Angelo, TX	H	857.8000	862.0625
62	WPSJ762	License Acquisitions	YC	129	San Angelo, TX	K	857.1125	862.0875
63	WPSJ762	License Acquisitions	YC	129	San Angelo, TX	K	857.9500	862.0875
64	WPSJ755	License Acquisitions	YC	129	San Angelo, TX	H	858.0375	862.1125
65	WPSJ755	License Acquisitions	YC	129	San Angelo, TX	H	859.7250	862.1125
66	WPSJ762	License Acquisitions	YC	129	San Angelo, TX	K	858.1125	862.1375
67	WPSJ762	License Acquisitions	YC	129	San Angelo, TX	K	859.8000	862.1375
68	WPLM229	License Acquisitions	YC	129	San Angelo, TX	A	860.9250	862.1625
69	WPLM229	License Acquisitions	YC	129	San Angelo, TX	A	861.1625	862.1625
70	WPLM229	License Acquisitions	YC	129	San Angelo, TX	A	860.9500	862.1875
71	WPLM229	License Acquisitions	YC	129	San Angelo, TX	A	861.1875	862.1875
72	WPLM229	License Acquisitions	YC	129	San Angelo, TX	A	860.9750	862.2125
73	WPLM229	License Acquisitions	YC	129	San Angelo, TX	A	861.2125	862.2125
74	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.2375	862.2375
75	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.2625	862.2625
76	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.2875	862.2875
77	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.3125	862.3125
78	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.3375	862.3375
79	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.3625	862.3625



Row #	Call Sign	Licensee Name	SC	EA	EA Name	Auction Block	Current Frequency*	Proposed Frequency
80	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.3875	862.3875
81	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.4125	862.4125
82	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.4375	862.4375
83	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.4625	862.4625
84	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.4875	862.4875
85	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.0125	862.5125
86	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.0625	862.5375
87	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.1125	862.5625
88	WPSJ755**	License Acquisitions	YC	129	San Angelo, TX	H	859.0375	862.5875
89	WPSJ755**	License Acquisitions	YC	129	San Angelo, TX	H	860.0375	862.6125
90	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.0375	862.6375
91	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.0875	862.6625
92	WPLM229**	License Acquisitions	YC	129	San Angelo, TX	A	861.1375	862.6875
93	WPSJ762**	License Acquisitions	YC	129	San Angelo, TX	K	859.1125	862.7125
94	WPSJ762**	License Acquisitions	YC	129	San Angelo, TX	K	860.1125	862.7375
95	WPSJ766	License Acquisitions	YC	130	Austin, TX	O	856.5125	862.0125
96	WPSJ766	License Acquisitions	YC	130	Austin, TX	O	857.5125	862.0375
97	WPSJ766	License Acquisitions	YC	130	Austin, TX	O	858.5125	862.0625
98	WPSJ766	License Acquisitions	YC	130	Austin, TX	O	859.5125	862.0875
99	WPSJ766	License Acquisitions	YC	130	Austin, TX	O	860.5125	862.1125
100	WPSJ756	License Acquisitions	YC	134	San Antonio, TX	H	856.0375	862.0125
101	WPSJ756	License Acquisitions	YC	134	San Antonio, TX	H	856.7250	862.0125
102	WPSJ756	License Acquisitions	YC	134	San Antonio, TX	H	857.0375	862.0375
103	WPSJ756	License Acquisitions	YC	134	San Antonio, TX	H	857.8000	862.0375
104	WPSJ756	License Acquisitions	YC	134	San Antonio, TX	H	858.0375	862.0625
105	WPSJ756	License Acquisitions	YC	134	San Antonio, TX	H	859.7250	862.0625
106	WPSJ756**	License Acquisitions	YC	134	San Antonio, TX	H	859.0375	862.0875
107	WPSJ756**	License Acquisitions	YC	134	San Antonio, TX	H	860.0375	862.1125



Row #	Call Sign	Licensee Name	SC	EA	EA Name	Auction Block	Current Frequency*	Proposed Frequency
108	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.0125	862.0125
109	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.0375	862.0375
110	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.0625	862.0625
111	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.0875	862.0875
112	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.1125	862.1125
113	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.1375	862.1375
114	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.1625	862.1625
115	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.1875	862.1875
116	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.2125	862.2125
117	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.2375	862.2375
118	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.2625	862.2625
119	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.2875	862.2875
120	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.3125	862.3125
121	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.3375	862.3375
122	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.3625	862.3625
123	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.3875	862.3875
124	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.4125	862.4125
125	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.4375	862.4375
126	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.4625	862.4625
127	WPLM230	License Acquisitions	YC	138	Amarillo, TX - NM	A	861.4875	862.4875

* EA 129 and EA 134 extend into the Sharing Zone. Within the Sharing Zone, EA licensees are authorized for fewer frequencies on each license than they are outside the Sharing Zone. In addition, Sharing Zone frequencies currently are offset 12.5 kHz from standard frequencies. As part of the U.S.-Mexico border area reconfiguration, frequencies in the Sharing Zone are moving from offset to standard channels. Therefore the Sharing Zone frequencies can be proposed replacement frequencies consistent with those outside the Sharing Zone.

** The proposed replacement frequency will not be authorized for operation in the Sharing Zone (i.e., within 110 kilometers of the U.S.-Mexico border).

April 9, 2018

Filed via E-mail to: PSHSB800@fcc.gov
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Petition to Reconsider Petition to Rescind Election to Relocate 800 MHz SMR EA Licenses to ESMR Band. Active Licenses: WPLM227, WPLM228, WPLM229, WPLM230; Affected Renewal Applications and Requests for Waiver: WPSJ755, ULS File No. 0004738836; WPSJ756, ULS File No. 0004738838; WPSJ760, ULS File No. 0004738839; WPSJ761, ULS File No. 0004738840; WPSJ762, ULS File No. 0004738841; WPSJ766, ULS File No. 0004738842; WPSJ767, ULS File No. 0004738843

Dear Ms. Dortch:

On November 28, 2017, License Acquisitions, LLC (“LA”) requested that the Commission allow it to rescind the election made by Silver Palm Communications, Inc. (“Silver Palm”) on May 13, 2005, affirmed February 6, 2006, with regard to the 800 MHz SMR EA licenses referenced above (the “Election”). The Election was made to relocate the licenses to the ESMR Band as part of the 800 MHz rebanding process. On March 10, 2011, License Acquisitions (“LA”) affirmed the Election in good faith, believing LA could relocate its operations to the ESMR Band. On March 12, 2018, the FCC issued an Order denying LA’s request. For the reasons stated herein, LA requests that the FCC reconsider the decision in that March 12, 2018 Order.

In paragraphs 5 and 7 of the Commission’s Order, the Commission points out that it has been 12 years since the election was made in 2005. Now it is almost 13 years. LA only took ownership of the licenses in 2010, 5 years after the ESMR election was first made. In May of 2011, LA requested that the FCC waive certain construction deadlines and grant renewal of LA’s licenses as part of the rebanding process. That request has been held up now for nearly 7 years. LA has made repeated requests for action on that request after responding to objections from Sprint and follow-up requests by the Commission, yet the Commission acknowledges in the Order that the matter is still unresolved even today. The Commission’s point that it has taken 12 years for LA to request rescission of the election is not a reflection of any lackadaisical conduct by LA. If anything, the delays at the Commission are exactly the reason for the request to

rescind the election, and fundamental fairness dictates that the request should be granted to offer at least a token remedy to LA for these years of delay.

LA requested to rescind the ESMR election because it was negotiating for an opportunity to sell or lease its licenses to M2M Spectrum Networks, a company creating a new, nationwide network dedicated to machine-to-machine communications. LA's currently authorized 800 MHz frequencies in the Interleaved, Expansion, and Guard Bands are better suited for M2M's network than the ESMR Band frequencies.¹ The ESMR band frequencies require a more onerous buildout that is better suited for low-site cellular communications. The proposed ESMR frequencies are also restricted by a patchwork geographical layout that would require difficult network design around Sprint's ESMR facilities. The best use for LA's licenses is in their existing (pre-Election) frequency bands, whether by M2M or LA providing its own services.

LA disagrees that revisions to the band plan are necessary to rescind this election. LA has never had the frequencies removed from its licenses, so the old frequencies could not have been properly given to any other licensees—they were never available in the Vacated Spectrum License Data database. LA's frequencies should still be preserved for it to reassume as its own.

LA's licenses, which contain a very small number of frequencies in the Mexico sharing zone, could still be governed by the Mexico border band plan just as they would had they been assigned to someone else. LA's ownership of those frequencies does not change how the frequencies are treated under the plan. To the extent border regions affect certain licenses, then at a minimum the licenses not affected by the Mexico sharing zone should be immediately allowed to revert back to LA. This does not need to be an all-or-nothing proposition. LA should then be allowed to move forward with the Mexico border band plan along with similarly situated licensees. The additional effort from the TA should be minimal for the number of channels involved.

The conclusion that allowing LA to rescind the ESMR election for non-border areas would entail reopening the rebanding process where rebanding has been completed does not make sense. Had the Election never been attempted, LA would have been allowed to stay in the old frequencies as an incumbent. LA should therefore be allowed to operate on those old frequencies while obeying any requirements to avoid interference. LA would not need any new frequencies, and any adjacent operators should have already been planning to not interfere with LA's frequencies in those areas, whether operated by LA or a subsequent licensee.

LA is not, contrary to the Commission's Order at paragraph 9, receiving any preferential access to these channels. They are LA's channels right now. New licensees have no entitlement

¹ M2M hopes to obtain Interleaved, Expansion, and Guard Band licenses for its network from other licensees in these same markets.

to these frequencies because, as stated above, LA had the right to stay in them in 2005. The public interest benefit is two-part: first, a new, pioneering network gets spectrum to provide services in markets that are as yet unavailable to it; and second, the FCC can finally resolve a long-standing issue that currently prevents the completion of rebanding and the Mexico border band plan.

LA disagrees that the Commission's Order denying the request was not inequitable. As noted earlier, LA has been suffering for nearly 7 years just trying to get the status of its licenses established once and for all. It has spent thousands of dollars on FCC attorneys and missed out on years of potentially greater earning potential for the licenses due to the uncertainty. The FCC acknowledges that LA has had to maintain a level of preparedness to build an entire ESMR system stretching from Oklahoma to the Mexican border while waiting for the FCC to grant its ESMR Election and request for waivers and renewals. It is clearly an incredible hardship on LA to wait so long for resolution of such a simple request.

Ironically, the party most affected by LA's request to rescind the Election is fully in favor of it under the present circumstances. Based on conversations between LA and Sprint's Senior Counsel for Spectrum in its Legal and Government Affairs Department, James Goldstein, Sprint supports rescission of the Election and is expected to support this Petition to Reconsider. Sprint agreed that rescinding the Election (and allowing LA to remain on its existing frequencies rather than relocate to the ESMR Band) would accelerate the ultimate completion of 800 MHz band reconfiguration and would remove coordination obstacles between Sprint's existing ESMR Band deployment and LA's potential ESMR Band deployment. These obstacles could be wholly avoided were the Election rescinded. The Petition to Rescind was a potential win-win for all parties involved, which made the Order denying the request quite puzzling.

LA looks forward to resolving this situation expeditiously. The Commission should allow LA to abandon the ESMR election made by its predecessors, making moot the request for waiver, and then grant the license renewals with ten-year terms starting from the date the renewals are granted. LA and Sprint can then complete any rebanding requirements, and LA's border licenses can be officially subjected to the Mexico border band plan.

Respectfully submitted,



Rob Somers
General Counsel
Direct: (602) 808-1020
rob.somers@smartcommllc.com



1-877-248-8993

cc: Michael Wilhelm, FCC
Brett Haan, 800 MHz Transition Administrator, LLC
James Goldstein, Sprint
Carole Downs, License Acquisitions, LLC