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June 25, 2015

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Federal Communications Commission
Office of the Secretary

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

DOCKET FILE COPY

Re: Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Washington State Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region

Dear Sir or Madam:

Pursuant to Section 1.925 of the Federal Communications Commission's ("FCC") Rules, Sprint Corporation on behalf of its wholly-owned subsidiary Nextel West Corp. (collectively "Sprint") hereby files this Request for Waiver for 800 MHz Economic Area ("EA") call signs WPOH404 and WPOH410 to accelerate Sprint's broadband deployment in Washington State while causing no increased risk of interference to 800 MHz incumbents.

Section 90.209(b)(7) of the Commission's Rules permits Enhanced Specialized Mobile Radio ("ESMR") operators, such as Sprint, to deploy wideband operations in the 817-821/862-866 MHz portion of the ESMR spectrum band during 800 MHz band reconfiguration, and in the 821-824/866-869 MHz portion of the ESMR band after 800 MHz band reconfiguration is completed in a National Public Safety Advisory Committee ("NPSPAC") Region.¹ In accordance with this rule, Sprint is deploying a 1.25 MHz wide CDMA channel in the lower portion of the 800 MHz ESMR band (817 - 821/862 - 866 MHz) throughout the country. Sprint is also deploying a 5 x 5 MHz Long-Term Evolution ("LTE") channel at 819-824/864 - 869 MHz in NPSPAC Regions where 800 MHz band reconfiguration has been completed.

The 800 MHz band reconfiguration effort is complete in Oregon NPSPAC Region 35 and Sprint has deployed both 800 MHz CDMA and 800 MHz LTE in Oregon and the City of Portland, OR. The Greater Portland Urbanized Area, however, is in both the State of Oregon and Washington State. While 800 MHz band reconfiguration is nearing completion in the adjacent Washington NPSPAC Region, eleven licensees in the Seattle, WA area and in Eastern Washington State have not yet completed reconfiguration.²

¹ See Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees, *Report and Order*, WT Docket 12-64, DA 12-55, 27 FCC Rcd 6489 (2012) ("800 MHz Broadband Order").

² See Attachment A listing the eleven public safety licensees in NPSPAC Region 43 which are working to complete 800 MHz band reconfiguration. Two licensees have recently completed

Sprint has identified areas just north of Portland, OR in Washington State where Sprint could utilize the 866-869 MHz portion of the band in advance of NPSPAC Washington Region completion without increasing the risk of interference to the eleven un-retuned licensees.³ Accordingly, Sprint requests a waiver of Section 90.209(b)(7) to permit operations on the 866-869 MHz channels in this area until the remaining public safety NPSPAC licensees in Seattle and Eastern Washington complete their retunes.⁴ Grant of this waiver will accelerate Sprint's broadband deployment in Washington and make more efficient use of the 800 MHz ESMR spectrum with no increased risk of interference to the public safety networks that are still reconfiguring their systems in the Washington NPSPAC Region.

Request for Waiver

Under Section 1.925(b)(3) of its rules, the Commission may grant a request for waiver if it is shown that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that the grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁵ In this case, the requested relief is fully warranted under both prongs of the waiver standard.

In the Washington NPSPAC Region, all but eleven of the public safety licensees required to be retuned from the "old NPSPAC band" at 821-824/866-869 MHz have successfully completed their retunes. These remaining Washington public safety licensees are working diligently to retune their systems and complete their retunes as soon as practicable.⁶ Some of them are expected to

their retunes but have not removed their "old NPSPAC" frequencies (Kitsap County and Snohomish County Emergency Radio System (SERS)).

³ See Attachment B which lists the four partial Washington counties for which Sprint requests the instant waiver to deploy wideband service prior to 800 MHz band reconfiguration completion in the Washington NPSPAC Region.

⁴ Attachment C lists the thirty counties in the Washington NPSPAC Region where Sprint does not seek a waiver and where Sprint would not deploy wideband operations in advance of completing 800 MHz reconfiguration.

⁵ See 47 C.F.R. §1.925; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁶ 800 MHz band reconfiguration has been delayed in NPSPAC Regions which include the U.S. – Canada Border Areas, such as Washington State. 800 MHz band reconfiguration officially commenced in Washington State in October 2008. See *Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for U.S. – Canada Border Regions, Second Report and Order*, 23 FCC Rcd 7605, DA 08-1094 (PSHSB 2008); See *Public Safety and Homeland Security Bureau Announces That the 30-Month Transition Period for 800 MHz Band Reconfiguration in Regions Along the U.S. – Canada Border Will Commence on October 14, 2008*, Public Notice, WT Docket 02-55, DA 08-2280 (PSHSB October 10, 2008).

complete their retunes this summer. Until all Washington retunes are certified by the licensees as complete, however, Section 90.209(b)(7) of the Commission's Rules does not permit broadband operations at 821-824/866-869 MHz anywhere in the Washington NPSPAC Region. As a result, Sprint is currently prevented from deploying broadband LTE in the old NPSPAC band in those areas of Washington which are fully cleared of public safety communications operations, including suburbs of Portland, Oregon that are in Washington State. With careful engineering and planning, however, Sprint can integrate the 821-824/866-869 MHz spectrum into its broadband network in a small portion of Washington State (essentially the Portland metropolitan or urbanized area) without posing any risk of interference to the remaining eleven un-retuned licensees in the U.S. – Canada Border Area.

Accordingly, Sprint requests a waiver of Section 90.209(b)(7) so that it can launch LTE in portions of the four Washington counties listed in Attachment B. Sprint's planned sites in these four counties are all located more than 70 miles away from the two closest Washington public safety sites still operational in the old NPSPAC band, and are more than 80 miles away from all other public safety sites, as shown in Attachments D (showing the entire Washington NPSPAC Region) and Attachment E (a "close-up" of Waiver area). These separation distances go beyond the Part 90 co-channel separation requirements in Section 90.621(b) of the Commission's Rules which permits 800 MHz co-channel usage at sites as close as 55 miles depending on the technical parameters of the proposed facilities. Sprint proposes herein, however, more than 70 miles between co-channel operations to provide an additional buffer of protection to the remaining public safety operations.⁷

Sprint has discussed this matter with the two public safety licensees (the State of Washington (Call Sign WPHK826) and the City of Puyallup (Call Sign WQNP627) currently operating closest to Sprint's proposed operations. These two public safety sites are located more than 70 miles from Sprint's closest proposed location and each indicated that they do not object to a grant of this waiver request, based on the co-channel distance separation Sprint proposes herein. The State of Washington, the City of Puyallup and the nine other remaining 800 MHz incumbents (who are all at greater distances than the State and the City of Puyallup) are being sent a copy of this request and Sprint will contact them to address any questions they may have.⁸

Sprint's instant waiver request meets both prongs of the Commission's waiver standard and is entirely consistent with similar waivers granted to Sprint in Florida,⁹ California and

⁷ Sprint's operations in these four counties will be designed to protect co-channel operations to ongoing public safety operations in Washington.

⁸ Pursuant to the FCC's rules, all public safety licensees in the State of Washington, in addition to 800 MHz public safety licensees in neighboring NPSPAC Regions will be provided thirty days advance notice of Sprint's deployment and planned initiation date of operations.

⁹ See Letter from Roger S. Noel, Chief, Mobility Division to James B. Goldstein, Sprint Corporation, dated November 25, 2013 (DA 12-2262).

Nevada,¹⁰ as well as San Antonio¹¹, West Texas and New Mexico.¹² The purpose of the *800 MHz Broadband Order* was to permit increased flexibility and broadband competition opportunities for 800 MHz ESMR band licensees while ensuring the protection of public safety licensees who had yet to complete 800 MHz band reconfiguration. The requirement that an entire NPSPAC Region be completed prior to initiation of broadband technology on 866-869 MHz in a Region was intended to ensure that an ESMR band licensee not operate wideband technology on the same spectrum and in the same geography as yet-to-retune public safety licensees.¹³ The Commission's rule did not take into account the significant size of some NPSPAC Regions or terrain factors in establishing its restriction. Sprint's proposed broadband operations pursuant to this waiver would provide more than adequate distance separation from existing public safety operations and Sprint's proposed operations therefore pose no increased risk of interference to them.¹⁴ The proposed waiver serves the public interest by permitting Sprint to immediately operate 800 MHz LTE at sites in the southernmost part of Washington, near Portland, OR, where Sprint's customers are demanding improved network capacity, speed and reliability for both 3G/4G voice and data communications. Absent this waiver, 800 MHz ESMR channels fully capable of providing LTE 4G service to thousands of Sprint's customers would remain fallow in the Washington NPSPAC Region until 800 MHz band reconfiguration is complete in Seattle, WA area in conjunction with individual U.S. – Canada Border Area NPSPAC retune schedules.

¹⁰ See Letter from Roger S. Noel, Chief, Mobility Division to James B. Goldstein, Sprint Corporation, WT Docket 14-29, dated June 23, 2014 (DA 14-866).

¹¹ See Letter from Roger S. Noel, Chief, Mobility Division to James B. Goldstein, Sprint Corporation, WT Docket 14-133, dated November 18, 2014 (DA 14-1663).

¹² See Letter from Roger S. Noel, Chief, Mobility Division to James B. Goldstein, Sprint Corporation, WT Docket 14-133, dated November 21, 2014 (DA 14-1687).

¹³ Sprint's prospective wideband operations pose no risk of the intermittent CMRS–public safety interference. CMRS–public safety interference typically can occur when low-site, low-power commercial systems operate in the same or interleaved spectrum *and* in the same geography as high-site, high-power public safety communications systems. That set of circumstances cannot occur under the proposed waivers because Sprint's base station sites and service area will not overlap with or be anywhere near the subject un-reconfigured public safety systems or users; thus the circumstances that underlie CMRS-public safety interference will not exist.

¹⁴ Moreover, if any public safety communications operator believes that its 800 MHz public safety radio system is experiencing CMRS-public safety interference at any time, a well-developed process exists to address interference via the industry-developed and maintained interference notification website at <http://www.publicsafety800mhzinterference.com>. This website immediately notifies Sprint as well as the other cellular carriers operating in a given area to commence interference investigation and mitigation procedures in accordance with the FCC's mandated 24 hour interference response timelines and the requirements specified in Section 90.674 and 22.974 of the FCC's rules.

Sprint's waiver also meets the Commission's second prong of its waiver standard given the unique factual circumstances of the instant case. Sprint has performed all of its obligations to complete 800 MHz band reconfiguration in the entire Washington State NPSPAC Region. Sprint has provided millions of dollars in funding and 800 MHz replacement spectrum for all public safety incumbents. Completion of 800 MHz band reconfiguration in the entire Washington NPSPAC Region, however, is wholly outside of Sprint's control. It would be inequitable and unduly burdensome for Sprint and its wireless customers were Sprint not able to deploy broadband LTE in Washington so long as it fully protects ongoing public safety operations. Continuing application of the Commission's restriction would prevent LTE operations, limit consumer choice and be contrary to the public interest.

For the foregoing reasons, Sprint requests this waiver to accelerate its broadband deployment in the Portland metropolitan area to better serve its customers, consistent with the Commission's goals of expanded competitive wireless broadband availability, while fully protecting ongoing public safety operations in the 866-869 MHz portion of the 800 MHz band until they are fully retuned.

Should there be any questions, please contact the undersigned.

Sincerely,

/s/ James B. Goldstein

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Attachment A

List of Un-retuned Public Safety Licensees in Washington NPSPAC Region 43

State of Washington, Department of Transportation
State of Washington, Department of Corrections
Eastside Public Safety Communications Agency
City of Seattle
City of Tacoma
City of Puyallup
King County
Skagit County
Valley Communications Center
Spokane Regional Emergency Communications Systems (STA only)
Island County Public Transportation Benefit Area

Attachment B

List of Washington NPSPAC Region 43 Counties Sprint Requests Waiver

Sprint (Partial) Counties Included in FCC Waiver Request
Clark
Cowlitz
Pacific
Skamania

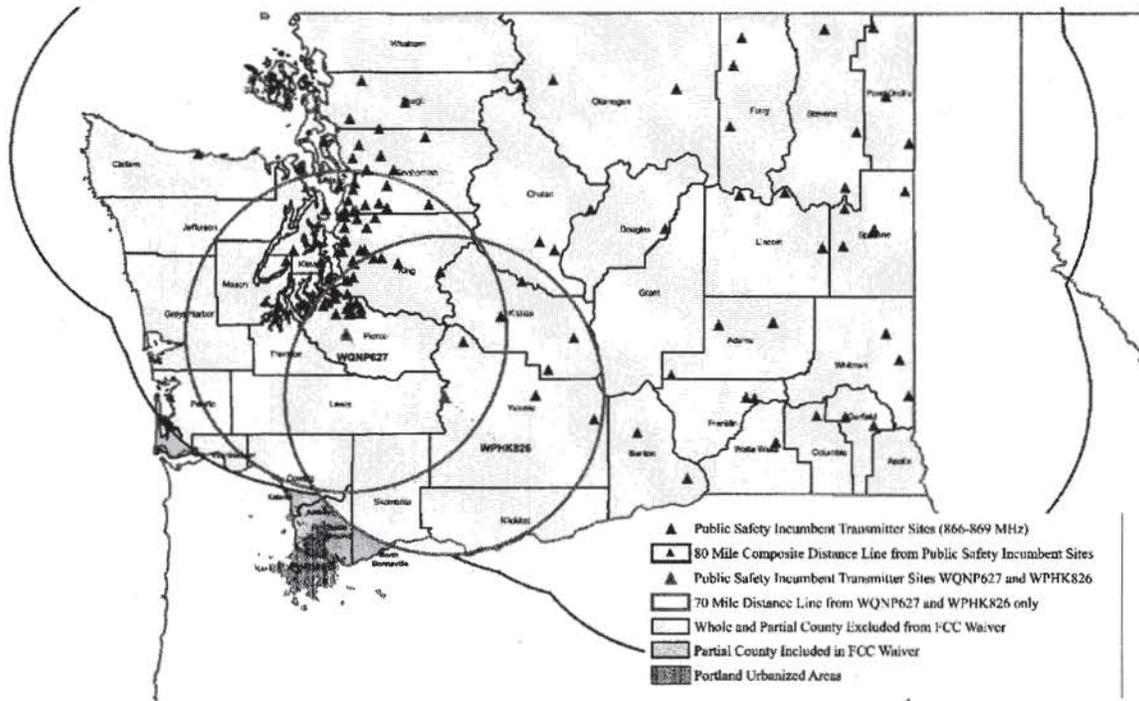
Attachment C

List of Washington NPSPAC Region 43 Counties Excluded from Sprint Waiver Request

Sprint Counties Excluded From FCC Waiver Request
Adams
Asotin
Benton
Chelan
Clallam
Douglas
Franklin
Grant
Grays Harbor
Island
Jefferson
King
Kitsap
Kittitas
Klickitat
Lewis
Lincoln
Mason
Pend Oreille
Pierce
San Juan
Skagit
Snohomish
Spokane
Stevens
Thurston
Walla Walla
Whatcom
Whitman
Yakima

Attachment D

Map Showing Requested Waiver Counties in Washington NPSPAC Region 43 and Locations of Current Public Safety Licenses in Washington



Attachment E

Map Showing Requested Waiver Counties in Washington NPSPAC Region 43
and Locations of Current Public Safety Licenses in Washington (Close-up Version)

