

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket No. 02-55
)	
)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	
)	
)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems)	ET Docket No. 00-258
)	
)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service)	ET Docket No. 95-18
)	

OPPOSITION OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation ("Sprint Nextel") hereby opposes the petitions for reconsideration filed by various parties regarding the Memorandum Opinion and Order in the above-captioned proceedings.¹ In the *MO&O*, the Commission modified its 800 MHz band reconfiguration plan to give non-Enhanced Specialized Mobile Radio ("non-ESMR") licensees greater retuning rights.² The *MO&O*, *inter alia*, broadened the definition of cellular systems

¹ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005) ("*MO&O*"). See also Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) ("*800 MHz R&O*"); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004) ("*Supplemental Order*").

² Sprint Nextel has asked the Commission to reconsider this decision and other aspects of the *MO&O*. See Petition for Reconsideration of Sprint Nextel Corporation (Jan. 27, 2006) ("*Sprint Nextel Petition*"). (Unless otherwise indicated, all petitions for reconsideration and other pleadings cited herein were filed in WT Docket No. 02-55.)

eligible for retuning to the ESMR block and allowed non-ESMR EA licensees to retune their site-based stations to the ESMR band in certain circumstances.

The Commission should deny the requests of non-ESMR Economic Area (“EA”) licensees for further expansion of their retuning rights. These licensees’ requests for more spectrum would not advance the Commission’s public interest objectives in this proceeding and would further upset the careful balance of interests that the Commission achieved in its earlier 800 MHz rebanding orders. The Commission should also deny petitions filed by a number of broadcast parties that would require Sprint Nextel to fund the relocation of certain Broadcast Auxiliary Service (“BAS”) facilities operated by Television Translator (“TV”) and Low Power Television (“LPTV”) stations. Under well established Commission rules and policies, these facilities are licensed on a secondary basis and therefore are not eligible for relocation cost reimbursement.

I. The Commission Should Reject Requests to Expand Further the Retuning Rights of Non-ESMR EA Licensees

A. Coastal Petition

A group of non-ESMR EA licensees (“Coastal Petitioners”) filed a petition seeking to expand their ESMR band retuning rights in three respects.³ The Commission should reject this petition. It disregards critical distinctions between ESMR and non-ESMR licensees and would further reduce Sprint Nextel’s post-reconfiguration spectrum holdings with no offsetting public interest benefits.

³ Petition for Partial Reconsideration and Clarification of Coastal SMR Network, LLC; A.R.C., Inc. d/b/a Antennal Rentals Corp.; Skitronics, LLC; Waccamaw Wireless, LLC; and CRSC Holdings, Inc. (“Coastal Petitioners”) (Jan. 27, 2006) (“Coastal Petition”).

1. *Request for Incumbent-Free EA Spectrum*

The Coastal Petitioners first argue that non-ESMR EA licensees electing to retune to the ESMR block should be treated the same as ESMR EA licensees and accorded exclusive, encumbrance-free use of their new channels throughout their EAs.⁴ As an initial matter, this request is untimely. The Commission limited retuned non-ESMR EA licensees to their existing “white areas” in the *Supplemental Order* in December 2004.⁵ The Coastal Petitioners failed to address this point in their March 2005 Petition for Reconsideration of that Order,⁶ and should not be allowed to reopen this settled issue almost a year later, well after the reconfiguration process is underway.

In addition to being untimely, the Coastal Petitioners’ argument is based on an incorrect premise. These parties argue that the Commission should treat them the same as ESMR EA licensees, and that they therefore should receive encumbrance-free spectrum in the ESMR band throughout their EAs. These parties, however, are *not* ESMR licensees, and the Commission has a reasonable public interest basis for distinguishing between ESMR and non-ESMR EA licensees, and for providing encumbrance-free spectrum to the former but not the latter. The Commission’s decision to provide ESMR EA licensees with greater retuning rights than their non-ESMR EA counterparts reflects the well-established operational and regulatory differences between these two sets of licensees. For example, the Commission has recognized that low-site, high-density cellular-like ESMR operations are more likely to cause interference to high-site public safety networks operating on adjacent and/or interleaved channels than are high-site, low-

⁴ Coastal Petition at 3-6.

⁵ *Supplemental Order* at ¶ 79.

⁶ Petition for Partial Reconsideration of the Safety and Frequency Equity Competition Coalition (Mar. 10, 2005).

density non-ESMR systems. In light of this difference, the Commission determined that for ESMR EA licensees relocating to the ESMR block, “comparable facilities” should consist of encumbrance-free spectrum throughout the EA. According to the Commission, this approach “may provide an incentive for such licensees to transition from the interleaved spectrum with a consequent reduction in interference to public safety and other systems.”⁷ There is no need to create a similar incentive for non-ESMR incumbents, since they are good neighbors to these public safety operators and in fact have the option of remaining in the non-ESMR band.⁸

The Coastal Petitioners offer no public interest basis for the relief they seek. Their petition merely represents yet another self-serving effort to enhance their spectrum position at the expense of Sprint Nextel. Expanding the Coastal Petitioners’ ESMR-band retuning rights would further reduce the value of the replacement spectrum Sprint Nextel will receive post-reconfiguration. As the Commission is aware, Sprint Nextel has committed to contribute billions of dollars in financial and spectrum resources to implement the Commission’s 800 MHz reconfiguration plan. Sprint Nextel’s commitment is based on the Commission’s careful “value for value” analysis in the *800 MHz R&O* and *Supplemental Order* in this proceeding.⁹ This analysis, based on an exhaustive record, sought to ensure that the value of the replacement spectrum Sprint Nextel receives matches the value of its substantial contributions. Commission grant of the Coastal Petition would ignore this “value for value” principle and undermine the careful balance the Commission struck in ensuring Sprint Nextel is made whole.

⁷ *Supplemental Order* at ¶ 77.

⁸ The Commission should reject the Coastal Petitioners’ claim that they were unable to construct high-density ESMR systems prior to November 22, 2004 because of supposed economic and regulatory uncertainties. As Sprint Nextel has previously explained, this claim lacks both credibility and relevance. *See Opposition and Comments of Nextel Communications, Inc. Regarding Petitions for Reconsideration* at 10 n.21 (Apr. 21, 2005).

⁹ *800 MHz R&O* ¶ 212.

2. *Request to Convert Site-Specific Licenses to EA Licenses*

The Coastal Petitioners also request that they be able to convert site-specific channels retuned to the ESMR band to full-blown EA licenses if the 40 dBuV/m contours of these stations cover at least 50% of the population within the EA.¹⁰ Sprint Nextel opposes this request for the same reasons it sought reconsideration of the Commission's decision in the *MO&O* to permit AIRPEAK and Airtel to similarly convert their site-based stations to EA licenses through a waiver process.¹¹ Sprint Nextel has also asked the Commission to reconsider its decision to permit the Coastal Petitioners and other non-ESMR licensees to retune their site-based licenses to the ESMR block in the first place.¹²

These decisions to expand ESMR band retuning rights are unrelated to the public interest objectives underlying the 800 MHz reconfiguration plan and arbitrarily reduce Sprint Nextel's post-reconfiguration holdings in violation of the "value-for-value" principle established in the *R&O* and *Supplemental Order*. Granting the request in the Coastal Petitioners' Petition for Reconsideration would only exacerbate the legal and public policy flaws in the *MO&O*'s expansion of ESMR band retuning rights.¹³

3. *Request Regarding Transaction Costs*

The Coastal Petitioners also argue that Sprint Nextel should be required to reimburse non-ESMR EA licensees for reasonable transaction costs relating to the *voluntary* retuning of their site-based authorizations to the ESMR block.¹⁴ In the *MO&O*, however, the Commission made clear that non-ESMR EA licensees seeking to relocate their associated site-based licenses

¹⁰ Coastal Petition at 6-7.

¹¹ Sprint Nextel Petition at 2-12.

¹² *Id.*

¹³ *Id.*

¹⁴ Coastal Petition at 7-8.

“must pay all expenses associated with relocating site-based stations to the ESMR band (*i.e.*, hardware, legal, engineering, etc.).”¹⁵ To the extent the Coastal Petitioners are permitted to *voluntarily* retune their site-based stations to the ESMR band, they should bear *all* resulting costs, including transaction costs. Neither Sprint Nextel nor U.S. taxpayers should fund any of these costs, since such a retuning would be purely voluntary and would not advance any public interest objective in this proceeding.

B. Puerto Rico SMR Petitioners

A group of SMR licensees in Puerto Rico have filed a petition for reconsideration asking the Commission to depart from certain 800 MHz reconfiguration policies in the Puerto Rico EA.¹⁶ Specifically, these petitioners ask the FCC to clarify that if a *pro rata* apportionment of ESMR band spectrum becomes necessary in Puerto Rico, this apportionment should not require incumbent ESMR EA licensees already operating in the ESMR block to surrender spectrum. These petitioners have failed to demonstrate, however, that conditions in Puerto Rico warrant such exceptional action. There is no valid basis for giving special treatment to incumbent ESMR EA licensees already licensed in the ESMR portion of the band. As would be the case in other markets, a *pro rata* apportionment in Puerto Rico should encompass all licensees in the ESMR block, with all licensees required to surrender some fraction of their spectrum if necessary to accommodate all of them.

C. Cost of Appeals to the Commission

The Commission should reject the request of SMR Petitioners and Schwaninger & Associates that incumbent 800 MHz licensees be permitted to recover from Sprint Nextel the

¹⁵ *MO&O* ¶ 26 n.51.

¹⁶ Request for Clarification of Communications & Industrial Electronics, Inc.; North Sight Communications, Inc.; and Ragan Communications, Inc. (“SMR Petitioners”), at 5-8 (Jan. 27, 2006) (“SMR Petition”).

costs of successful appeals to the Commission of a Mediator's recommended decision resulting from the Alternative Dispute Resolution ("ADR") process.¹⁷ All parties should bear their own costs during any *de novo* review at the Commission. Because Sprint Nextel already has a disproportionate burden placed on it by having to fund the legal costs of licensees in the ADR process regardless of the outcome, having Sprint Nextel fund ongoing appeals creates a significant disincentive to reach resolution during the ADR process. While Sprint Nextel accepted the obligation to fund ADR legal costs in order to expedite implementation of the FCC's rebanding rules and the elimination of public safety interference, it would be unfair to extend that obligation further and would only result in more issues being taken to the Commission, thereby frustrating the relocation process. The Commission's policy statement in its December 30, 2005 Public Notice established the right balance of procedural safeguards and retuning efficiency, providing licensees with appropriate incentive to reconcile disputed issues and reach relocation agreements through the mediation process.¹⁸ The Commission's efforts to encourage settlements between Sprint Nextel and 800 MHz incumbents has worked well, with less than a half dozen Phase I Wave 1 incumbent relocations coming before the Commission for *de novo* review.

D. Guskey Petition

Finally, the Commission should summarily deny the petition for reconsideration filed by Charles D. Guskey ("Guskey").¹⁹ In the *MO&O*, the Commission rejected Charles D. Guskey's assertions regarding the valuation of 1.9 GHz spectrum and the retuning rights of Preferred

¹⁷ SMR Petition at 9-11; Petition for Reconsideration of Schwaninger & Associates (Jan. 24, 2006).

¹⁸ *Wireless Telecommunications Bureau Reminds 800 MHz "Wave One" Channel 1-120 Licensees of Band Reconfiguration Negotiation and Mediation Obligations*, Public Notice, 20 FCC Red 20561 (DA 05-3355) (2005).

¹⁹ Second Petition for Reconsideration of Charles D. Guskey (Jan. 27, 2006).

Communications, Inc. (“Preferred”). In his January 27 Petition, Guskey simply repeats these same arguments. Accordingly, this filing should receive no consideration.

In any case, to the extent that Guskey is speaking on behalf of Preferred – he has previously described himself as a “stake holder” in Preferred subsidiaries²⁰ – he no longer has any direct interest in the Commission’s 800 MHz reconfiguration proceeding. Given Preferred’s failure to meet its construction deadlines, its 800 MHz EA licenses have automatically cancelled and reverted to the Commission. Accordingly, Preferred has no 800 MHz licenses that need to be retuned and Guskey’s petition should be denied.²¹

II. TV TRANSLATOR AND LPTV STATIONS ARE INELIGIBLE FOR BAS RELOCATION COMPENSATION UNDER THE FCC’S RULES

A number of broadcast parties argue that the Commission should require Sprint Nextel to fund the relocation of BAS facilities licensed to TV translator stations and LPTV licensees.²² These arguments, however, overlook Commission rules that make it clear that BAS facilities operated by TV translator and LPTV stations are secondary and therefore are ineligible for relocation cost reimbursement. TV translator and LPTV licensees have been on notice since the day they were licensed that their systems are secondary not only to primary BAS systems, but also to any primary new entrants to the band.²³ The FCC’s BAS relocation rules limit the right

²⁰ See Petition for Reconsideration of Charles D. Guskey at 1 (Dec. 22, 2004).

²¹ While Preferred has requested a waiver and extension of the construction deadline for its EA licenses at 800 MHz, Sprint Nextel has demonstrated that there is no public interest basis for such relief. See Request for Waiver, Preferred Acquisitions, Inc., ULS File Nos. 0002408877 through 0002408914 (dated Dec. 1, 2005; filed Dec. 14, 2005; amended Dec. 22-23, 2005); Opposition of Sprint Nextel Corporation (Jan. 27, 2006).

²² Petitions for Clarification or Reconsideration filed by Mohave County Board of Supervisors; Fox Television Stations, Inc.; KTVK, Inc.; Meredith Corp.; Multimedia Holdings Corp.; and Scripps Howard Broadcasting Co. (Jan. 27, 2006), and Petition for Clarification of The Association for Maximum Service Television, Inc. (Jan. 27, 2006).

²³ 47 C.F.R. § 2.105(c)(2)(i) (secondary operators “[s]hall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at

to reimbursement to “existing licensees,” which are defined as “licensees operating on a primary basis.”²⁴ The Commission has emphasized that under its “relocation policies only stations with primary status are entitled to relocation. Because secondary operations, by definition, cannot cause harmful interference to primary operations, new entrants are not required to relocate secondary operations.”²⁵

Contrary to the suggestions by broadcast parties, neither the joint request Sprint Nextel filed with the broadcast industry on June 20, 2005 nor the *MO&O* alter the policy that TV translator and LPTV stations are not entitled to reimbursement for BAS relocation costs.²⁶ The *MO&O* held that Sprint Nextel could receive credit against its prospective anti-windfall payment to the U.S. Treasury for the costs of relocating BAS incumbents licensed after the FCC’s original reimbursement cut-off date (June 27, 2000) but before the Federal Register publication date of the *R&O* (November 22, 2004). The Commission stated, however, that the question of whether Sprint Nextel should be credited for these costs was “the only issue we are considering here” and that it was “not alter[ing] the well established principle . . . [and] our overall relocation policy that secondary operations are not entitled to relocation or reimbursement from new entrants.”²⁷ Sprint Nextel notes that neither the Joint Request nor the broadcaster pleadings seeking reconsideration of the Commission’s June 2000 reimbursement cut-off date requested or even

a later date”); 47 C.F.R. § 74.602(f) (TV auxiliary stations licensed to TV translator and LPTV stations are “assigned on a secondary basis”).

²⁴ 47 C.F.R. § 74.690(a).

²⁵ *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, ¶ 55 n.142 (2003) (citations omitted). *See also Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315, ¶ 37 (2000) (“Our relocation policy has never provided for secondary licensees or secondary uses.”).

²⁶ Sprint Nextel/MSTV/NAB Request for Declaratory Ruling, WT Docket No. 02-55, ET Docket Nos. 00-258 & 95-18, at 2-6 (June 20, 2005) (“Joint Request”).

²⁷ *MO&O* ¶ 107.

mentioned altering the FCC's general policy that secondary licensees such as translator and LPTV stations are not eligible for relocation compensation. This general policy still stands and requires TV translator and LPTV stations to fund their own relocation costs.²⁸

III. Conclusion

For the aforementioned reasons, Sprint Nextel opposes the petitions for reconsideration of the *MO&O* described herein.

Respectfully submitted,

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²⁸ Prior to the release of the *MO&O*, Sprint Nextel initially indicated to TV translator and LPTV licensees that it intended to fund their BAS relocation costs. As discussed above, however, the *MO&O* reaffirmed that secondary services such as TV translator and LPTV licensees are not entitled to compensation in the BAS relocation process. *Sprint Nextel has offered to reimburse these licensees for any documented relocation expenses they incurred in reliance on Sprint Nextel's early communications up until December 1, 2005.*

Certificate of Service

I, Claudia Del Casino, hereby certify that on this 23rd day of March 2006, I caused true and correct copies of the foregoing Opposition of Sprint Nextel Corporation to be mailed by first-class mail to:

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