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

MAY 12 2006

FCC Mail Room

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket <u>02-55</u>
)	
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
)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service)	RM-9498
)	
Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service)	RM-10024
)	
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
)	

ORDER

Adopted: May 3, 2006

Released: May 8, 2006

By the Commission: Commissioner Tate not participating.

1. In this Order, we address requests for waiver and extension of time submitted by the 800 MHz Transition Administrator (TA) to allow Sprint Nextel Corporation (Sprint Nextel) and certain 800 MHz Channel 1-120 licensees in Wave 1 of the band reconfiguration process additional time to negotiate Frequency Relocation Agreements (FRAs).

2. Pursuant to the *800 MHz Report and Order* and subsequent orders in this docket,¹ the mandatory negotiation period for 800 MHz Channel 1-120 licensees in Wave 1 ended on December 26,

¹ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*).

2005.² The TA and other mediators attempted to resolve any disputes that remained at the end of this period within thirty working days after the end of the mandatory negotiation period, pursuant to Rule 90.677(d)(2) and the TA's Alternative Dispute Resolution procedures.³ The mediation period for the Wave 1 licensees concluded on February 8, 2006.

3. Rule 90.677(d)(2) also provides that the TA will forward the record of any unsuccessful mediation to the Chief of the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division (PSCID) for *de novo* review of issues that remain unresolved.⁴ Under the referral procedures established by the Bureau, however, the TA may recommend "that the parties to a particular case be given additional time to allow further negotiation under mediation."⁵

4. The TA has filed extension requests in a number of Wave 1 mediation cases in which the mediators recommend allowing the parties additional time to negotiate a Planning Funding Agreement (PFA), or to allow the parties to complete the planning process pursuant to the relevant PFA and subsequently negotiate an FRA.

- City of Reading, Pennsylvania (extension requested until May 22, 2006 for planning purposes)⁶
- City of Boston, Massachusetts (extension requested until September 12, 2006 for the Boston's Department of Management and Information Services, and June 22, 2006 for the Boston Police Department, both for planning purposes)⁷
- Baltimore County, Maryland (extension requested until July 13, 2006 for planning purposes)⁸

² See "Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration Will Commence June 27, 2005, in the NPSPAC Regions Assigned to Wave 1 and Specifies 800 MHz Reconfiguration Benchmark Compliance Dates," *Public Notice*, DA 05-1546, released May 27, 2005. Under the band reconfiguration plan, each of the fifty-five National Public Safety Planning Advisory Committee (NPSPAC) regions is assigned to one of four "prioritization waves" with staggered starting dates. See "Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan," *Public Notice*, DA 05-619, released March 11, 2005. The three-month voluntary negotiation period for Channel 1-120 licensees in Wave 1 began on June 27, 2005 and the three-month mandatory negotiation period for these licensees began on September 27, 2005.

³ 47 CFR § 90.677(d)(2). For the TA's ADR procedures, see <http://800ta.org/content/PDF/policy/ADRPlan.pdf>.

⁴ 47 CFR § 90.677(d)(2). Although the rule does not establish a specific deadline after the end of mediation for the TA to forward the record of unresolved cases, we clarify that the TA must do so within ten days of the end of the mediation period unless the waiver standard established by this order applies. This is consistent with the *de novo* review procedures recently announced by the Wireless Telecommunications Bureau. See *Public Notice*, "Wireless Telecommunications Bureau Announces Procedures for *De Novo* Review in the 800 MHz Public Safety Proceeding," WT Docket No. 02-55, DA 06-224, at 2 (Jan. 31, 2006) (*De Novo Review PN*).

⁵ *De Novo Review PN* at 2.

⁶ City of Reading, Pennsylvania; City of Boston, Massachusetts; County of Baltimore, Maryland; Ameren Services Co.; State of Washington; and Washington County (Oregon) Consolidated Communications Agency, Consolidated Recommended Resolution and Request for Waiver, filed February 13, 2006.

⁷ *Id.* at 5.

⁸ *Id.*

- Illinois Power Company (extension requested until June 7, 2006 for planning purposes)⁹
- State of Washington (extension requested until October 1, 2006 for planning purposes)¹⁰
- Washington County (Oregon) Consolidated Communications Agency (extension requested until August 14, 2006 for planning purposes)¹¹
- City of Virginia Beach, Virginia (extension requested until June 30, 2006 for planning purposes)¹²
- Roanoke County, Virginia (extension requested until June 27, 2006 for planning purposes)¹³
- Henrico County, Virginia, Public Schools (extension requested until May 26, 2006 for planning purposes)¹⁴
- Chesterfield County, Virginia (extension requested until May 26, 2006 for planning purposes)¹⁵
- City of Richmond, Virginia (extension requested until July 12, 2006 for planning purposes)¹⁶
- District of Columbia (extension requested until October 16, 2006 for planning purposes)¹⁷
- Fairfax County, Virginia (extension requested until July 1, 2006 for planning funding purposes)¹⁸

5. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ In the above cases, we conclude that the TA has demonstrated

⁹ Illinois Power Company, Recommended Resolution and Request for Waiver, filed February 21, 2006. This supersedes an earlier request for extension by Ameren Services Co., which owns Illinois Power.

¹⁰ City of Reading, Pennsylvania; City of Boston, Massachusetts; County of Baltimore, Maryland; Ameren Services Co.; State of Washington; and Washington County (Oregon) Consolidated Communications Agency, Consolidated Recommended Resolution and Request for Waiver, filed February 13, 2006 at 6.

¹¹ Washington County Consolidated Communications Agency (WCCA), Consolidated Second Recommended Resolution and Renewed Request for Waiver, filed May 5, 2006. This supersedes an earlier request for extension until May 5, 2006.

¹² City of Virginia Beach, Virginia, Recommended Resolution and Request for Waiver, filed February 21, 2006.

¹³ County of Roanoke, Virginia, Recommended Resolution and Request for Waiver, filed February 27, 2006.

¹⁴ Henrico County Public Schools, VA, Third Recommended Resolution and Renewed Request for Waiver, filed April 14, 2006.

¹⁵ County of Chesterfield, VA, Third Recommended Resolution and Renewed Request for Waiver, filed April 14, 2006.

¹⁶ City of Richmond, VA, Third Recommended Resolution and Renewed Request for Waiver, filed April 14, 2006.

¹⁷ District of Columbia, Second Recommended Resolution and Renewed Request for Waiver, filed March 10, 2006.

¹⁸ Fairfax County, VA, Fourth Recommended Resolution and Renewed Request for Waiver, filed May 4, 2006. This supersedes earlier extension requests.

¹⁹ 47 C.F.R. § 1.925(b)(3).

that grant of a waiver is warranted under the first prong of the waiver standard, subject to certain conditions discussed below. In each case, the mediator reports that the parties have been negotiating in good faith, and that each party has promptly responded to requests for information from the other party and the mediator. Moreover, the mediator in each case recommends the requested extension as likely to result in a successfully negotiated agreement, or a substantial narrowing of the issues. Finally, the Transition Administrator has indicated that each of the requested extensions will facilitate negotiations and is unlikely to result in unreasonable delay.

6. Under these circumstances, we conclude that allowing the parties to continue negotiations for a reasonable period and deferring the referral of unresolved issues to PSCID will not frustrate the purpose of our rules, and will further the public interest by promoting timely band reconfiguration and avoiding unnecessarily burdening the parties and the Commission's resources.²⁰ However, we note that in a few of the cases in which PFAs have been negotiated, the TA has requested particularly lengthy extensions of as much as six months for licensees to conduct planning and further negotiations. While we believe that allowing reasonable time for these efforts is in the public interest, we also believe that it is in the public interest to ensure that rebanding continues to move forward in an expedited fashion. Therefore, in those cases in which we have granted extensions of more than thirty days, we will require the TA to report to PSCID every two weeks on the status of planning activities and negotiations. In addition, we will limit the extensions granted by this order to the extension date requested by the TA or July 1, 2006, whichever is earlier. In those cases where the TA has requested an extension past July 1, 2006, we note that the TA may submit a request for further extension, which explains why additional time is required and specifies how much additional time is requested. We delegate authority to PSCID to address any such request.

7. We also believe that it is in the public interest to provide a similar process for grant of reasonable extensions in future 800 MHz mediations. Accordingly, we hereby grant a blanket waiver authorizing the TA to extend any mediation for a period not to exceed thirty days after the end of the mediation period, provided that the mediator confirms that the parties have negotiated in good faith and recommends that mediation be extended, and that the TA believes that the extension will not cause unreasonable delay to the band reconfiguration process. We believe conferring this discretion on the TA should provide sufficient flexibility to cover the vast majority of cases and is consistent with the broad

²⁰ The TA has also submitted some extension requests that have become moot because the parties have subsequently reached agreement or the record has been forwarded to PSCID for *de novo* review and resolution. See State of Maryland and County of Montgomery, Maryland, Consolidated Recommended Resolution and Request for Waiver, filed February 13, 2006; City of Chicago, Illinois, Recommended Resolution and Request for Waiver, filed February 21, 2006; City of Chicago, Illinois, Second Recommended Resolution and Request for Waiver, filed February 21, 2006; PECO Energy Company, State of Hawaii; State of Connecticut, and County of DuPage, Illinois, Consolidated Recommended Resolution and Request for Waiver, filed February 13, 2006 (The TA filed a subsequent Recommended Resolution and Request for Waiver in the case involving the State of Connecticut); County of Rock, Wisconsin, City of New Haven, Connecticut, City of Waterbury, Connecticut, City of Bethlehem, Pennsylvania, Consolidated Recommended Resolution and Request for Waiver, filed February 13, 2006 (only with regard to County of Rock, City of Bethlehem and the City of Waterbury); City of Worcester, Massachusetts, Recommended Resolution and Request for Waiver, filed February 21, 2006; Illinois Cooperative Association, Inc., Recommended Resolution and Request for Waiver, filed February 21, 2006; Fresno Mobile Radio, Inc., Second Recommended Resolution and Renewed Request for Waiver, filed March 3, 2006; State of Maryland Recommended Resolution and Request for Waiver, filed February 23, 2006; State of Massachusetts, Recommended Resolution and Request for Waiver, filed February 21, 2006; County of Atlantic, New Jersey, Recommended Resolution and Request for Waiver, filed February 21, 2006; and State of Connecticut, Recommended Resolution and Request for Waiver, filed February 23, 2006. We dismiss these requests as moot.

authority the Commission has bestowed on the TA.²¹ The TA shall notify PSCID of any extension that it grants pursuant to this waiver. In addition, we delegate to the Chief of PSCID the authority, consistent with this order, to grant mediation extensions requested by the TA for a period not to exceed six months after the end of the mediation period, subject to the same bi-weekly reporting requirement described above.²²

8. Finally, we issue the following *errata* to clarify the procedures that apply to mediation, arbitration, and referral of unresolved cases to PSCID, and/or to address certain discrepancies between our 800 MHz orders and the text of Rule 90.677(d)(1) and 90.677(d)(2) as amended by the *800 MHz MO&O*.²³

- The second sentence of paragraph 120 of the *800 MHz MO&O* should read: “Although the rule section requires the TA to resolve any disputed issues remaining at the end of the mandatory negotiation period ‘within thirty working days,’ it, inconsistently, requires that “[i]f disputed issues remain **thirty days** after the end of the mandatory negotiation period, the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division. (emphasis added).”
- The last sentence of paragraph 120 of the *800 MHz MO&O* should read: “We agree with Entergy and will modify section 90.677(d) of our rules to codify the dispute resolution procedures set forth in the text of the 800 MHz R&O and to clarify that the Transition Administrator must forward to the Chief of the Public Safety and Critical Infrastructure Division unresolved disputed issues that remain thirty working days after the end of the mandatory negotiation period.”
- The third sentence of 47 CFR § 90.677(d)(1) and the sixth sentence in paragraph 194 of the *800 MHz R&O* should read “Should issues still remain unresolved after mediation or arbitration they shall be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within ten days of the Transition Administrator’s or other mediator’s advice, or if arbitration has occurred, within ten days of the completion of arbitration.”
- The first sentence of 47 CFR § 90.677(d)(2) should read “If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator, or other mediator, who shall attempt to resolve them.”

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(f) and (r) of the

²¹ For example, the Commission stated that the overriding obligation of the TA is to facilitate timely band reconfiguration in a manner that is equitable to all concerned. In this regard, the Commission noted that the TA had the discretion to change the band reconfiguration schedule to meet unanticipated needs. Also, the TA’s portfolio includes taking “the most effective actions, in the short-term and long-term, to promote robust and reliable public safety communications in the 800 MHz band to ensure the safety of life and property.” See *Supplemental Order*, 19 FCC Rcd 25152.

²² In the *800 MHz Report and Order*, the Commission stated that it would impose a freeze on 800 MHz applications in a region commencing from the date of the Public Notice announcing the date when voluntary negotiation of relocation agreements must be concluded until thirty days after the completion of mandatory negotiations for that region. See *800 MHz Report and Order* ¶ 204. This Order does not affect the duration of that filing freeze for Wave 1 or any other wave.

²³ See *Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015 (2005) (*800 MHz MO&O*) ¶ 120.

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f) and (r) this *Order* IS HEREBY ADOPTED.

10. IT IS FURTHER ORDERED that the amendments of the Commission's Rules as set forth in Appendix A ARE ADOPTED, effective thirty days from the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Marlene H. Dortch". The signature is written in a cursive style with a large, looped initial "M".

Marlene H. Dortch
Secretary

APPENDIX
FINAL RULES

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

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

AUTHORITY: 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Paragraph (d) in Section 90.677 is amended to read as follows:

§ 90.677 Reconfiguration of the 806-824/851-869 MHz band in order to separate high-density cellular systems from non-cellular systems.

* * * * *

(d) *Transition Administrator.*

(1) The Transition Administrator, or other mediator, shall attempt to resolve disputes referred to it before the conclusion of the mandatory negotiation period as described in § 90.677(c) within thirty working days after the Transition Administrator has received a submission by one party and a response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. Should issues still remain unresolved after mediation or arbitration they shall be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within ten days of the Transition Administrator's, or other mediator's advice, or if arbitration has occurred, within ten days of the completion of arbitration. When referring an unresolved matter to the Chief of the Public Safety and Critical Infrastructure Division, the Transition Administrator shall forward the entire record on any disputed issues, including such dispositions thereof that the Transition Administrator has considered. Upon receipt of such record and advice, the Commission will decide the disputed issues based on the record submitted. The authority to make such decisions is delegated to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau who may decide the disputed issue or designate it for an evidentiary hearing before an Administrative Law Judge. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in § 90.677(c) shall be resolved as described in § 90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator, or other mediator, who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period; the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, *de novo*. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the

dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

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