

January 9, 2007

VIA ELECTRONIC FILING

David L. Furth, Associate Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT Docket No. 02-55

Dear Mr. Furth:

On December 20, 2006, the Public Safety & Homeland Security Bureau (“Bureau”) issued a Public Notice regarding the 800 MHz band reconfiguration process.¹ The *Public Notice* provided guidance as to whether, and under what circumstances, the Bureau would authorize retuning and cost reimbursement for public safety licensees who operate certain facilities pursuant to Special Temporary Authority (“STAs”).² The Bureau’s *Public Notice* did not, however, address the status of several other forms of non-primary public safety licenses for 800 MHz reconfiguration eligibility and certain other related matters.³ Sprint Nextel Corporation (“Sprint Nextel”) therefore, respectfully requests clarification of the *Public Notice* and further guidance regarding these other types of licenses.

Sprint Nextel requests guidance as to whether the various types of non-primary 800 MHz licenses held by public safety licensees, other than STAs, are eligible for retuning; *i.e.*, new channel assignments in the reconfigured 800 MHz band. If so, then the Bureau should clarify

¹ See *Public Safety and Homeland Security Bureau Provides Guidance for Public Safety Licensees With Regard to License Application and Special Temporary Authorization Procedures and Payment of Frequency Relocation Costs For Public Safety Facilities Added During 800 MHz Band Reconfiguration*, Public Notice, WT Docket No. 02-55, DA-06-2555 (rel. Dec. 20, 2006) (“*Public Notice*”).

² The *Public Notice* provides that Sprint Nextel would receive credit for paying the costs of retuning public safety facilities authorized under STAs granted prior to the end of the 800 MHz band reconfiguration freeze in a NPSPAC region.

³ While the Bureau drew a line between those STAs granted prior to the end of the freeze period and those granted after the end of a licensing freeze, the Bureau left open the possibility that it would grant waivers to allow public safety licensees that obtained STAs after the freeze to negotiate with Sprint Nextel to receive retuning reimbursement. The *Public Notice*, however, does not specify that these funds are creditable against Sprint Nextel’s potential anti-windfall payment obligation. Accordingly, Sprint Nextel request clarification on this point.

that the costs thereof will be creditable against Sprint Nextel's payment obligations as set forth in the Commission's various 800 MHz Orders.⁴

Sprint Nextel is committed to ensuring that NPSPAC and other public safety licensees do not lose existing critical communications capabilities as part of the ongoing 800 MHz band reconfiguration process. A number of public safety licensees, for a variety of reasons, do not in every instance hold permanent, primary status licenses to operate certain of their facilities but rather hold various types of licenses with secondary status, not just STAs.⁵ For example, one state holds a statewide "mobile-only" license under which it is building a system that it intends be reconfigured along with other state-held primary NPSPAC licenses. Another licensee is relying in part on "FB2T" temporary site licenses to construct a statewide public safety system.⁶ Other licensees hold secondary "offset" licenses.⁷ Sprint Nextel therefore requests guidance on (1) whether these various types of licenses should be retuned under the reconfiguration project; (2) whether Sprint Nextel is required to pay for relocation of licensees holding such temporary authorizations; and (3) whether Sprint Nextel will receive credit for the costs of relocating public safety operations under temporary authorizations against its windfall payment obligation.

Clarification and/or guidance on these issues is necessary because of the uncertainty surrounding the 800 MHz reconfiguration status of temporary licenses other than STAs. In addition to the December 20, 2006 *Public Notice*, the Bureau recently issued a Memorandum, Opinion and Order ("MO&O") on the status of a "mobile only" license held by Chevron USA.⁸ The Chevron Order expressly stated that the mobile only license at issue was a "secondary" license and that "the plain language of the *800 MHz Supplemental Order* indicates that Chevron is neither required nor entitled to relocate these facilities."⁹ The Bureau rejected both Chevron's argument that as a critical infrastructure licensee it was entitled to any special treatment, as well as Chevron's assertion that its mobile only license should be afforded primary status based upon its claimed "integration" into a larger trunked system.¹⁰ While the Bureau determined that Chevron could modify its license to move out of the band designated for future NPSPAC use,

⁴ *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, ¶ 178 (2004) as amended by *Erratum*, 19 FCC Rcd 19651 (2004) and *Erratum*, 19 FCC Rcd 21818 (2004) (hereafter "*800 MHz Report and Order*"), *aff'd sub nom. Mobile Relay Assocs. et al. v. FCC et al.*, 457 F.3d 1 (D.C. Cir. 2006).

⁵ The Commission's rules define "Secondary operation" as "Radio communications which may not cause interference to operations authorized on a primary basis and which are not protected from interference from those primary operations." 47 C.F.R. § 90.7.

⁶ See Ex Parte filings of the Commonwealth of Pennsylvania, dated December 18, 2006 filed in WT Docket No. 02-55.

⁷ Sprint Nextel also seeks guidance on the appropriate treatment under the Commission's band reconfiguration orders of any 800 MHz public safety entities operating without having completed all necessary licensing to document their facilities.

⁸ *Chevron USA, Inc. and Sprint Nextel, Mediation No. TAM-11179*, Memorandum Opinion and Order, 21 FCC Rcd 11313 (PSHSB 2006).

⁹ *Id.* at ¶ 12.

¹⁰ *Id.* at ¶ 11.

that move would be without Sprint Nextel's financial support or the TA's technical assistance. The Bureau specifically stated that the resulting license modification would still retain the secondary nature of the original mobile only authorization.¹¹

Sprint Nextel seeks no changes in the Chevron MO&O or the December 20 *Public Notice*. Given these pronouncements, however, further guidance on the 800 MHz reconfiguration requirements for public safety mobile-only, FB2T and similar temporary or secondary licenses is warranted to prevent confusion, uncertainty and unnecessary delay in 800 MHz reconfiguration. As these issues are arising almost daily in negotiations and mediations with NPSPAC public safety incumbents, Sprint Nextel requests expedited Bureau guidance.

Please let me know if you have any questions or desire additional information.

Respectfully submitted,

[/s/ James B. Goldstein](#)

James B. Goldstein
Director – Spectrum Reconfiguration
Sprint Nextel Corporation

cc: Michele Carey
Michael Wilhelm

¹¹ *Id.* at ¶ 12.