

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

In the Matter of)	
)	
City of Bethlehem, Pennsylvania)	WT Docket No. 02-55
)	Mediation No. TAM-12369
and)	TA Mediator John Henry
)	
Nextel Communications, Inc.)	

To: The Commission

REQUEST FOR WAIVER

The City of Bethlehem, Pennsylvania (“City” or “Bethlehem”), by its attorneys and in accordance with Sections 1.925 and 90.677(e) of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully requests a waiver of the Basic Reconfiguration Schedule developed by the 800 MHz Transition Administrator (“TA”) and endorsed by the FCC pursuant to Public Notice.¹ The replacement channels identified in the Frequency Proposal Report (“FPR”) provided to the City by the TA have been determined not to be comparable to the City’s current channels because of destructive interference they will receive from WFMZ-TV (Ch 69) in Allentown, Pennsylvania (“Ch 69”) and, therefore, do not satisfy the comparability standard set out in FCC Rule Section 90.677(f). For this reason, the City requests a waiver of the current Reconfiguration Schedule and authority to defer the reconfiguration of its 800 MHz NPSPAC system until a reasonable time after Ch 69 has ceased operation.

In support of this request, the following information is provided:

¹ See , Public Notice, *Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator’s 800 MHz Regional Prioritization Plan*, WT Docket No. 02-55 (DA 05-619) (rel. Mar. 11, 2005).

1. Bethlehem operates an 800 MHz NPSPAC system under call sign WNWQ636 (“System”) at a transmitter location in Bethlehem, Pennsylvania, approximately two miles from the site from which Ch 69 transmits. The City’s system has been on the air for approximately fifteen years and has never experienced interference from Ch 69 or any other source.
2. The City understands that it is obligated to reconfigure the System in accordance with the directives set out in WT Docket No. 02-55.² In fact, Bethlehem already has completed the reconfiguration of its non-NPSPAC 800 MHz system, call sign WPFA301.
3. Upon receipt of the FPR for the System, Bethlehem recognized that the proposed replacement frequencies, frequencies 15 MHz below the City’s currently assigned channels, were extremely close to the spectrum assigned to Ch 69. The designated replacement channels included 851.0125 MHz, the channel immediately adjacent to Ch 69, two additional channels within 1 MHz of Ch 69, 851.1375 MHz and 851.8000 MHz, as well as channels with some greater frequency separation.
4. Because it was aware of the historical interference problems between Ch 69 transmitters and land mobile systems, particularly those operating on frequencies in the 851-853 MHz range, the City undertook a technical analysis to assess the likely impact of the Ch 69 transmitter on the proposed replacement frequencies. The testing indicated that the channels closest to Ch 69 would be entirely unusable, while those with greater frequency separation would experience a lesser degradation in quality. The results were shared with the TA.

² *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004).

5. The City also contacted Ch 69 in the hope that the broadcaster might be planning an earlier than required migration from its current channel assignment to its replacement digital channel. Unfortunately, the City was advised that Ch 69 plans to remain on its current channel until required by law to vacate it, a date that currently is set for February 2009.
6. The City has been actively engaged in discussions with Sprint Nextel Corporation (“Nextel”) with respect to the reconfiguration of the System for well over a year. Nextel and the TA’s technical advisors are in agreement that certain of the proposed replacement channels would not be usable while Ch 69 continues to operate. Thus, the City would not enjoy comparable facilities, as defined in FCC Rule Section 90.677(d), should it be required to relocate to those channels prior to the date when Ch 69 ceases operations on its current channel.
7. Bethlehem has explored with Nextel, with the TA, and with the Mediator assigned to this matter what, if any, reconfiguration activities the City could reasonably undertake in advance of that date. After thorough consideration, Bethlehem has determined that there are no technically or financially prudent steps that could be taken now in anticipation of a reconfiguration that cannot be completed for at least two more years.
8. In this respect, the proximity of Ch 69 affects the City’s ability to reconfigure its System in a manner that is closely analogous to the situation that impacts 800 MHz incumbents operating in the border areas near Canada and Mexico (“Border Areas”) where channel availability is governed by treaty.³ 800 MHz incumbents in the Border Areas are prevented from proceeding with reconfiguration at this time. They have not received

³ See, e.g., Letter from Steve Taylor, Chair, NPSPAC Region 43 Regional Planning Committee, to Chairman Kevin J. Martin, FCC (Mar. 21, 2007, filed Mar. 23, 2007) (addressing issues related to international coordination in US-Canadian Border Areas).

FPRs because it is known, in advance, that their reconfiguration must be deferred until treaty issues have been resolved and suitable replacement frequencies can be provided.⁴

Unlike Border Areas incumbents, Bethlehem did receive an FPR from the TA, but it since has been determined that the replacement frequencies proposed by the TA are not usable, and thus will not provide comparable facilities, until Ch 69 terminates its operation.

9. For this reason, Bethlehem requests a waiver of the 800 MHz reconfiguration schedule which currently is set to end on June 30, 2008. Specifically, the City requests that mediation of this matter be suspended and that its reconfiguration deadline be designated as no earlier than six months after the later of 1) notification by Ch 69 to the FCC that it has terminated its operation on channel 69; and 2) the execution of a Frequency Reconfiguration Agreement between the City and Nextel with respect to the System.

Kindly refer any questions regarding this matter to the undersigned.

Respectfully submitted,

CITY OF BETHLEHEM, PENNSYLVANIA



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⁴ See, e.g., Public Notice, *Public Safety and Homeland Security Bureau Announces that 800 MHz Band Reconfiguration Will Commence February 1, 2007, in the NPSPAC Regions Assigned to Wave 4 for NPSPAC Channels*, WT Docket No. 02-55 (DA 06-2618) (rel. Dec. 29, 2006).

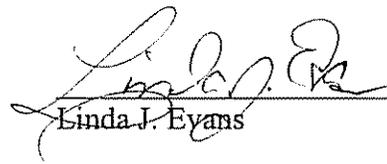
CERTIFICATE OF SERVICE

I, Linda J. Evans, secretary of the law office of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that I have, on this 30th day of May, 2007, caused to be mailed, postage pre-paid, a copy of the foregoing Request for Waiver to the following:

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Linda J. Evans

*Via e-mail