

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

In the Matter of)	
)	
City of Reading, Pennsylvania)	WT Docket No. 02-55
)	Mediation No. TAM-12275
and)	TA Mediator: John Henry
)	
Nextel Communications, Inc.)	
To: The Commission		

REQUEST FOR WAIVER

The City of Reading, Pennsylvania (“City” or “Reading”), 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 Certain of 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), as further defined in FCC Rule Section 90.699(d). For this reason, the City requests a waiver of the current Reconfiguration Schedule and authority to defer the reconfiguration of a portion of its 800 MHz NPSPAC facilities until a reasonable time after Ch 69 has ceased operation, as described more fully below.

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).

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

1. Reading operates two 800 MHz facilities using NPSPAC channels under call sign WNXC912. One is a trunked system operated in downtown Reading (“Courthouse System”). The second is located on Mt. Penn near Reading and utilizes two NPSPAC mutual aid channels (“Mutual Aid System”) (the Courthouse System and Mutual Aid System, collectively, the “Systems”). The Systems have been on the air for approximately fifteen (15) years and have never experienced interference from Ch 69 or, on anything other than a temporary, intermittent basis, from any other source.
2. The City understands that it is obligated to reconfigure the Systems in accordance with the directives set out in WT Docket No. 02-55.² In fact, Reading already has substantially completed the reconfiguration of its non-NPSPAC 800 MHz facilities, call sign WNVL764.
3. Upon receipt of the FPR for the Systems, Reading recognized that the proposed replacement frequencies for the Mutual Aid System, frequencies 15 MHz below the City’s currently assigned channels, were extremely close to the spectrum assigned to Ch 69. The designated replacement channels were 806/851.0125 MHz, the channel immediately adjacent to Ch 69, and 806/851.5125 MHz, a channel only one-half megahertz away from Ch 69. Similarly, the Courthouse System has been assigned three replacement channels in the 806-807/851-852 MHz band.
4. Because it was aware of the historical interference problems between Ch 69 transmitters and land mobile systems in various markets around the county, particularly those land mobile systems operating on frequencies in the 806-808/851-853 MHz range, the City

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).

undertook a technical analysis to assess the likely impact of the Ch 69 transmitter on the proposed replacement frequencies. The testing indicated that, with respect to the Mutual Aid System, the channels closest to Ch 69 would be severely degraded at the Mt. Penn transmitter location, and the other channel at that site also would experience unacceptable degradation, albeit to a somewhat lesser degree. The Courthouse System has greater geographic separation from the Ch 69 transmitter, and Reading is prepared to move forward with the reconfiguration of that portion of its facilities.

5. The City 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 Systems for well over a year. Nextel and the TA’s technical advisors are in agreement that the proposed replacement channels for the Mutual Aid System would not be usable while Ch 69 continues to operate. Thus, the City would not enjoy comparable facilities, as defined in FCC Rule Sections 90.677(f) and 90.699(d), should it be required to relocate to those channels prior to the date when Ch 69 ceases operations on its current channel.
7. Reading 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, Reading has determined that there are no technically or financially prudent steps that could be taken now in anticipation of a reconfiguration of its Mutual Aid System, since that reconfiguration cannot be completed

for at least two more years. However, the City and Nextel have reached agreement with respect to the reconfiguration of the Courthouse System, and a Frequency Reconfiguration Agreement (“FRA”) for that system is pending before the TA. The FRA also specifically notes that the parties intend to negotiate an amendment to the FRA covering the reconfiguration of the Mutual Aid System once the Ch 69 interference problem has been resolved.

8. The proximity of Ch 69 affects the City’s ability to reconfigure the Mutual Aid 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 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, Reading did receive an FPR from the TA, but it since has been determined that the Mutual Aid System 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, Reading requests a waiver of the 800 MHz reconfiguration schedule, which currently is set to end on June 26, 2008, with respect to the Mutual Aid System. Specifically, the City requests that mediation of this matter be suspended and that its

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).

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).

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 an amended FRA between the City and Nextel with respect to the Mutual Aid System.

10. Additionally, to the extent the Commission and/or the Transition Administrator designated by the FCC to administer the 800 MHz reconfiguration process believe that reconfiguration costs incurred after the current June 26, 2008 program completion date are not routinely reimbursable by Nextel, the City requests that the FCC affirmatively declare that deadline as inapplicable with respect to the City's Mutual Aid System.

Kindly refer any questions regarding this matter to the undersigned.

Respectfully submitted,

CITY OF READING, PENNSYLVANIA

By: _____ /s/
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July 10, 2007

CERTIFICATE OF SERVICE

I, Linda J. Evans, of the law office of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that I have, on this 10th day of July 2007, caused to be mailed, postage pre-paid, a copy of the foregoing Request for Waiver to the following:

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_____/s/
Linda J. Evans

*Via e-mail