

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

FILED/ACCEPTED
OCT 23 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
CITY OF BOSTON)	PS Docket No. 07-69
)	
and)	
)	
SPRINT NEXTEL CORPORATION)	Mediation No. TAM-11155
)	
Relating to Rebanding Issues in the)	
800 MHz Band)	

To: Office of the Secretary
Attention: Chief Administrative Law Judge

**NEXTEL COMMUNICATIONS, INC.'S COMMENTS, MOTION TO ENLARGE
ISSUES, AND REQUEST FOR CONFERENCE**

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits its Comments in the above-referenced matter. On October 16, the Enforcement Bureau filed its Motion to Suspend Filing Deadlines in this matter.¹ The Bureau Motion asked the presiding officer to issue an order directing Nextel and the City of Boston ("Boston") to submit their Frequency Reconfiguration Agreement ("FRA") first to the 800 MHz Transition Administrator ("TA") to determine whether the FRA complies with applicable rules and policies and then to submit the FRA for Bureau review.²

¹ Enforcement Bureau's Motion to Suspend Filing Deadlines, PS Docket No. 07-69 (filed Oct. 16, 2007) ("Bureau Motion").

² On October 19, 2007, the presiding officer released an order suspending the Enforcement Bureau's required review of a "final" FRA since none was tendered for review due to Boston's newly raised demands for attorney's fees. *City of Boston and Sprint Nextel*, Order, PS Docket

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Although Nextel has no issue with the rearrangement of the order of FRA review, it notes for the record that the Bureau Motion's request for reordering may not reflect a complete understanding of the usual process of FRA completion and execution. Specifically, once all issues related to the FRA language and the costs and any necessary equipment are agreed upon, Nextel produces a final FRA for review by the licensee, in this case the City of Boston. Boston would then execute the FRA and return it to Nextel, and Nextel then would submit the FRA to the TA for its review and approval. Only after the TA has approved the FRA does Nextel execute the agreement. This ordering reflects Nextel's need to ensure that it not become contractually committed to an agreement that is not approved by the TA and thus be potentially at risk for non-reimbursement under the Commission's rules and policies for 800 MHz reconfiguration.³ The normal order prevents the parties from entering into a binding agreement that may not be approved by the TA. This is prudent and necessary, as there are cases where the TA has required revisions to aspects of particular FRAs prior to their approval.

Thus, assuming that the parties can resolve Boston's newly-raised request for reimbursement of additional legal fees, Nextel would request that it produce a final FRA for each of the two Boston radio systems covered by this proceeding. Boston would then execute the FRAs and return them to Nextel. Nextel will then submit the FRAs to the TA for approval. Once the TA has reviewed and approved the FRAs, they could be submitted to the Enforcement

No. 07-69, FCC 07M-41 (released Oct. 19, 2007). This order further directs Boston and Nextel to resolve this new issue or to resume hearing status by November 19.

³ 800 MHZ TRANSITION ADMINISTRATOR, LLC *800 MHz Band Reconfiguration: Reconfiguration Handbook*, 83 (Version 2.4, May 18, 2007) ("TA Handbook") (available at: http://www.800ta.org/content/PDF/reconfiguration_materials/handbook.pdf) ("Once an agreement is reached on the terms of the FRA, sign the FRA and return it to Sprint Nextel. Sprint Nextel will submit the FRA to the TA for review and approval prior to execution.")

Bureau for any review and comment it deemed necessary or appropriate consistent with the presiding officer's directions. At that point, Nextel would have the assurance that both the TA and the Commission approve the terms of the contracts, and could then execute both FRAs.

Nextel notes that, in correspondence with Nextel's counsel, counsel for Boston has raised the question of whether the recently raised issue of Boston's outside counsel's legal fees is properly before the presiding officer, because this issue was not included in the Hearing Designation Order designating this matter for hearing. Nextel believes that the presiding officer has jurisdiction necessary to hear all matters surrounding the execution of an FRA between the parties that resolves any appeal and moves Boston's reconfiguration forward. Nevertheless, to the extent such motion is necessary, Nextel hereby moves to enlarge the issues at hearing to include the matter of the reimbursement of Boston's newly-identified legal fees pursuant to Section 1.229 of the Commission's rules. Boston's counsel first identified the additional fees on October 9, 2007. Under Section 1.229(b)(3), motions for modifications of issues which are based on new facts or newly discovered facts must be filed within 15 days after such facts are discovered by the moving party.⁴ Thus, this motion is timely filed.

Given that the parties are already before the presiding officer to effect resolution of disputed issues, the interests of efficiency and economy are best served by leaving this issue before the presiding officer. Any remand or other request to re-engage the TA mediator would waste precious time and resources. Any such mediation would likely ultimately lead to review by the Public Safety and Homeland Security Bureau, and could eventually result in the parties coming back before the presiding officer for review of the Public Safety and Homeland Security

⁴ 47 C.F.R. § 1.229(b)(3).

Bureau's ultimate decision. It certainly will not speed the reconfiguration of Boston's radio systems that has ground to a halt as a result of Boston's appeal.⁵ In short, further mediation between the parties may ultimately only delay final resolution of all issues.

To facilitate resolution of the remaining issue, Nextel requests a conference before the presiding officer to discuss the substance of the issue as well as procedures moving forward in this matter.⁶ Nextel requests that such conference be held on October 31, 2007, at 9:30 a.m. or such other date and time as the presiding officer may order.

⁵ Under the TA's Regional Prioritization Plan, Boston, a Wave 1, Stage 1 licensee, was to have completed reconfiguration by mid-2006, to allow reconfiguration of the NPSPAC systems in the region to commence. TA Handbook at 23. Further delay in Boston's reconfiguration will seriously hinder the reconfiguration process in the rest of the region.

⁶ Boston's counsel has not authorized Nextel to state that Boston consents to Nextel's request for a conference unless such conference is strictly confined to matters of procedure. Nevertheless, in accordance with the Commission's *ex parte* rules, Nextel is required to provide Boston and the Enforcement Bureau with advance notice and the opportunity to be present. 47 C.F.R. § 1.1202(b)(2). The Enforcement Bureau indicated that it had no objection to the proposed conference.

Respectfully Submitted,

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October 23, 2007

CERTIFICATE OF SERVICE

I, Patrick R. McFadden, hereby certify that on this 23rd Day of October, 2007, a true copy of the foregoing "Comments of Nextel Communications, Inc." was served via first class, postage paid United States Mail upon the following:

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