

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

In the Matter of)	
)	
County of Charles, Maryland)	WT Docket No. 02-55
and Sprint Nextel Corporation)	
)	
Mediation No. TAM-1203)	
)	DA 09-2252
)	
)	

PETITION FOR RECONSIDERATION OF THE STATE OF CONNECTICUT

The State of Connecticut files this *Petition for Reconsideration* of the *Memorandum Opinion and Order* of the Public Safety and Homeland Security Bureau addressing the dispute between Charles County, Maryland and Sprint Nextel relating to the costs of the 800 MHz rebanding.¹ Connecticut objects to the Bureau’s embrace and reliance on metrics compiled by the Transition Administrator as a factor in resolving disputes between Sprint Nextel and an 800 MHz licensee.

The Commission’s rules at section 1.106(b)(1) provide that any person whose interests are adversely affected by any action may file a petition for reconsideration. The petitioner must state with particularity how its interests are adversely affected and show why it was not possible to participate in the earlier stages of the proceeding. Connecticut is an 800 MHz licensee. Its network is subject to the Commission’s Order requiring public safety licensee’s to relocate to a different segment. The Bureau’s decision precludes Connecticut from receiving comparable facilities as required under the

¹ In the Matter of County of Charles, Maryland and Sprint Nextel Corporation, *Memorandum Opinion and Order*, WT Docket No. 02-55, DA 09-2252 (October 19, 2009)

Commission's rules. Connecticut was unable to participate in this restricted proceeding because there is no notice of disputes between Sprint Nextel and public safety licensees. Public safety licensees have no access to the details of a dispute.

BACKGROUND

A Frequency Relocation Agreement evolves from the decision of the Commission to relocate public safety and other licensees to different channels in the 800 MHz band. The Commission's action culminated an effort to alleviate interference to public safety agencies. Most of the interference is caused by Sprint Nextel. Under the Commission's rules, Sprint Nextel is obligated to pay the cost of the reconfiguration.² A licensee and Sprint Nextel are obligated to enter into a relocation agreement by which Sprint Nextel pays the licensee the costs associated with moving to new channels. The Commission did not dictate the agreement's provisions but did state that relocated licensees must be afforded comparable facilities.³

If a dispute exists between the licensee and Sprint Nextel, the parties submit their positions to a mediator appointed by the Transition Administrator. The Transition Administrator supervises the 800 MHz reconfiguration and reviews agreements between the parties. The mediator submits a recommendation. The Commission, through the Public Safety and Homeland Security Bureau, reviews the dispute *de novo* and issues a decision.

The Transition Administrator has published "metrics" relating to the costs of reconfiguring systems nationwide. These metrics present costs in several categories that

² Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, FCC 04-168 released August 6, 2004, 19 FCC Rcd 19651, WT Docket 02-55 et seq., *and Erratum*, 19 FCC Rcd 19651(August 2004 Order).

³ Sections 90.677(b) and (c) of the Commission's rules.

comprise reconfiguring land mobile radio systems. In its *Charles County* decision, the Public Safety and Homeland Security Bureau stated at paragraph 105:

We further emphasize that at this late stage in the rebanding process, and in light of the substantial cost data that underlie the TA Metrics, we intend to rely increasingly on the TA Metrics as a baseline for determining the reasonability of costs. Licensees claiming costs significantly in excess of the metrics for comparable systems face a high burden of justification.

TRANSITION ADMINISTRATOR METRICS MAY NOT BE APPLIED TO DETERMINE THE REASONABLENESS OF CONNECTICUT'S OR ANY LICENSEE'S REBANDING PROPOSAL

Connecticut objects to any use of the Transition Administrator metrics as it departs from the full Commission's *August 2004 Order* ensuring public safety agencies of comparable facilities. The Commission cannot delegate to a private entity a decision that the law reserves to it alone. The metrics have not been subject to the rigors of the rulemaking process.

The issue at stake is of crucial importance to public safety, that of the reliability of Connecticut's network. The Transition Administrator's comparable metrics cannot be given substantial weight when there is no indication as to how its metrics were compiled or that they even relate to Connecticut's circumstances. Any Commission decision must examine relevant data and analysis and state a satisfactory explanation,⁴ including a rational connection between the facts found and the decision made.⁵ With no ability to examine the Transition Administrator's data or the manner it was compiled, no comparison can be made fairly. Further, the fact that the underlying information, particularly metrics more closely aligned with Connecticut's system, is available to Sprint

⁴ AT&T Corp. v. FCC, 236 F.3d 729, 737(D.C. Cir. 2001), American Radio Relay League, Inc. v. FCC, No. 06-1643 (DC Cir 2008).

⁵ Section 706 of the Administrative Procedure Act, SEC v. Chenery Corp., 318 US 80, 88 (1943), Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983).

Nextel, but not Connecticut, should not be lost.⁶

Connecticut's 800 MHz network is one of the largest and most complex in the nation. Transition Administrator cost metrics provide no rational connection to Connecticut's circumstances. The metrics, whose underlying calculations are not revealed, are skewed enormously against the intense infrastructure associated with Connecticut's network. Use of the metrics violates the Commission's responsibility to base its decisions on known factors that have been subject to the scrutiny of its rulemaking process. A licensee's proposal should be addressed by the Mediator and Commission in the context of actual comparable facilities and the decisions a licensee has made addressing how that network can best serve emergency response.

The Bureau's well intended effort to expedite the 800 MHz reconfiguration is not served by embracing the unknowns of the Transition Administrator metrics. Connecticut's experience

⁶ See Letter of the Association of Public Safety Officials, International (APCO), the International Association of Chiefs of Police (IACP), the International Association of Fire Chiefs to Admiral James A Barrett, Jr., Chief, Public Safety and Homeland Security Bureau, November 5, 2009, set forth WT Docket 02-55.

demonstrates that Sprint Nextel's new found embrace of the metrics will only result in more disputes presented to the Commission.

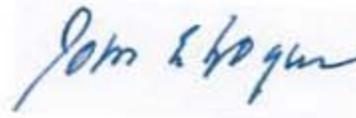
The Bureau's reliance on the Transition Administrator's metrics should be reconsidered and abandoned.

Respectfully submitted,

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A handwritten signature in blue ink that reads "John E. Logan". The signature is written in a cursive style and is positioned above the typed name and address of John E. Logan.

John E. Logan
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November 17, 2009

Certification

On November 17, 2009, the attached *Petition for Reconsideration* of the State of Connecticut was filed electronically with the Commission's Secretary in WT Docket 02-55.

Additionally the following were provided a copy:

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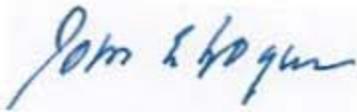
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A handwritten signature in blue ink that reads "John E. Hogan". The signature is written in a cursive style and is located on a light-colored rectangular background.