

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

In the Matter of )  
 )  
Improving Public Safety Communications in the ) WT Docket No. 02-55  
800 MHz Band )  
 )  
Supplemental Requests for )  
Waiver of June 26, 2008 Rebanding Deadline )

To: Chief, Public Safety and Homeland Security Bureau

**OPPOSITION TO REQUEST FOR PARTIAL RECONSIDERATION**

Sprint Nextel Corporation (“Sprint Nextel”), hereby files this Opposition to the Request for Partial Reconsideration submitted by Lukas, Nace, Gutierrez & Sachs, LLP and Shulman Rogers Gandal Pordy & Ecker, P.A. (“Petitioners” or “Firms”) on April 22, 2010 (“Petition”). Petitioners request partial reconsideration of the Public Safety and Homeland Security Bureau’s (“Bureau”) March 31, 2010 Order addressing supplemental requests for waiver of the Federal Communications Commission’s (“Commission”) June 26, 2008 deadline for completing reconfiguration of the 800 MHz band.<sup>1</sup> For the reasons described below, the Bureau should deny the Petition.

**I. THE BUREAU IMPOSED APPROPRIATE CONDITIONS ON PUBLIC SAFETY LICENSEES SEEKING ADDITIONAL WAIVERS OF THE JUNE 26, 2008 RECONFIGURATION COMPLETION DEADLINE**

The Petitioners claim that the Bureau’s imposition of conditions on those licensees that have not yet submitted cost estimates for reconfiguring their systems somehow violates the rules

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<sup>1</sup> Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, Order, DA 10-574 (PSHSB March 31, 2010) (“*Bureau Order*”).

of the 800 MHz Reconfiguration program. The fundamental flaw in Petitioners' logic is that the licensees subject to these conditions applied for waivers of the Commission's two-year old deadline for completing band reconfiguration. The Bureau imposed conditions designed to monitor the licensees' progress toward carrying out their reconfiguration obligations (and which will likely lead to the waivers requested being granted in whole or in part). Stated another way, it is the licensees seeking further extensions of the reconfiguration deadline who initiated requests for exception from the Commission's rules – any complaint that the Bureau has somehow changed the rules for those licensees is utterly misplaced. Accordingly, the Petitioners' claims that the Bureau has changed the rules of the rebanding program without notice and comment are unavailing.

Similarly, the Bureau's prior orders addressing requests for extensions of the June 26, 2008 deadline for the completion of 800 MHz rebanding imposed conditions on those licensees seeking extensions in order to ensure they continue to make progress in their rebanding efforts.<sup>2</sup> The Commission has "made it abundantly clear that we expect band reconfiguration to move forward expeditiously."<sup>3</sup> Further, the Commission has stated that waiver requests seeking to

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<sup>2</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Order, 24 FCC Rcd 7761 (PSHSB 2009) (*June 2009 Order*); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Order, 23 FCC Rcd 9430 (PSHSB 2008) (*Wave 1 Waiver Order*); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Order, 23 FCC Rcd 9454 (PSHSB 2008) (*Wave 2 Waiver Order*); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Order, 23 FCC Rcd 9476 (PSHSB 2008) (*Wave 3 Waiver Order*).

<sup>3</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Third Memorandum Opinion and Order*, 22 FCC Rcd 17209, ¶ 47 (2007); see also *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, ¶ 8 ("one of the most critical of these goals is timely and efficient completion of the rebanding process, to ensure that the interference problem that threatens 800 MHz public safety systems is resolved as quickly and as comprehensively as possible"); *id.*, Joint

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extend the June 26, 2008 deadline are “subject to a high level of scrutiny.”<sup>4</sup> The Bureau reiterated this concern last year indicating that it would “subject licensees requesting waivers to complete rebanding after July 1, 2009 to a heightened level of scrutiny.”<sup>5</sup> Therefore, it was entirely reasonable for the Bureau to consider appropriate conditions on any further grants of licensee waiver requests, as well as to impose conditions and reporting requirements on those requests the Bureau is holding in abeyance.

## **II. THE BUREAU’S PRESUMPTION THAT CERTAIN COSTS ARE NOT RECOVERABLE IS APPROPRIATE AND CONSISTENT WITH THE COMMISSION’S RULES AND POLICIES**

The *Bureau Order* holds in abeyance waiver requests submitted by non-border region licensees that have not yet submitted cost estimates, and imposes reporting requirements on those licensees. Such reporting requirements are, of course, entirely consistent with the urgency the Commission and the Bureau have expressed with respect to the need to complete 800 MHz reconfiguration. The *Bureau Order* states that the costs of preparing and submitting the reports the Bureau requires are presumptively not recoverable from Sprint Nextel. The Petitioners assert that this conclusion “stands on its head the fundamental predicate of the Commission’s 800 MHz

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Statement of Chairman Kevin J. Martin and Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell (“More important is that rebanding proceed as quickly and effectively as possible. After all, expeditiously eliminating interference between commercial and public safety users is the goal that motivates all of us. And we sincerely hope that all parties will keep their eyes on that prize even as they work through the details of this complex process.”)

<sup>4</sup> FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket 02-55, *Public Notice*, FCC 07-168, 22 FCC Rcd 17227, 17232 (Released September 12, 2007).

<sup>5</sup> *June 2009 Order* at ¶ 3, citing *Wave 1 Waiver Order* at ¶ 5, *Wave 2 Waiver Order* at ¶ 5, *Wave 3 Waiver Order* at ¶ 5.

rebanding decision, deprives those PS Incumbents of the right to demonstrate that their costs satisfy the FCC's standard for cost recovery, is unsupported by any previous Commission decision in this proceeding and serves no public interest purpose."<sup>6</sup> These assertions are entirely without merit.

First, as described above, the *Bureau Order* does nothing to change the rules for those licensees that are acting in compliance with the rules. Indeed, the *Bureau Order* does nothing to affect the nearly 500 Stage 2 licensees who have completed their 800 MHz retunes, or the 300 public safety licensees who have provided valid cost estimates and signed Frequency Reconfiguration Agreements ("FRAs"). Rather, it imposes conditions and requirements only on the small subset of public safety licensees that have not provided a cost estimate – the basic information necessary to commencing retuning agreement negotiations – *five years after rebanding began* and nearly two years after it was to be completed.

Second, the Commission's 800 MHz rebanding orders require Nextel to pay the reasonable, prudent, and minimum necessary costs associated with band reconfiguration. For its part, Sprint Nextel has been and remains committed to taking all reasonable steps to complete reconfiguration as soon as possible and has spent \$1.5 billion as of December 31, 2009 to accomplish the Commission's directive. As it has repeatedly indicated, Sprint Nextel would complete all of its 800 MHz reconfiguration obligations tomorrow were public safety licensees ready and able to do so. The unfortunate reality, however, is that some public safety licensees are approaching the two year anniversary of the Commission's deadline for completing

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<sup>6</sup> Petition at page 5.

reconfiguration without providing a complete retuning cost estimate.<sup>7</sup> The Bureau has reasonably articulated a *presumption* that, under these circumstances, the costs of preparing and filing progress reports are not rebanding activities subject to funding by Sprint Nextel; *i.e.*, the compelling public interest in completing 800 MHz reconfiguration to eliminate the risk of unforeseeable interference warrants more frequent and detailed Bureau monitoring of lagging licensees – which should not be subsidized by Sprint Nextel. The continuing failure of certain licensees to provide cost estimates is particularly disturbing because Sprint Nextel has already provided millions of dollars upfront to public safety in the form of “planning funding agreements” to fund public safety’s (and their vendors and consultants) work in planning for their retunes and creating the required cost estimates. Once Sprint Nextel provides planning funding – as it is required to do when requested – it has virtually no ability to control or influence the delivery of a public safety cost estimate. Yet, the Petition disingenuously states that “delays in submitting cost estimates are [not] necessarily caused by [public safety] incumbents.”<sup>8</sup> Further, the Petition actually attempts to blame Sprint Nextel for a public safety licensee’s failure five years into the band reconfiguration process and two years after the band reconfiguration completion deadline to provide its own cost estimate to retune its facilities.<sup>9</sup> The

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<sup>7</sup> Some of these licensees have even received funding from Sprint Nextel to prepare their retuning cost estimates, as discussed further, below.

<sup>8</sup> Petition at page 4.

<sup>9</sup> The Petition’s reference to the Billings, Montana negotiation has nothing to do with the issue at hand. In the case of Billings, the licensee provided a cost estimate in 2008, thus, it is not even subject to the same reporting requirements as the licensees at issue in the Petition. While there was significant delay in initiating negotiations, it was due to the fact that the licensee provided a cost estimate after the June 26, 2008 band reconfiguration deadline and did not have a valid FCC license that was required to be rebanded. Sprint Nextel raised its objections with the Bureau and, upon a final order, Sprint Nextel has engaged in active negotiations with Billings to

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Petition appears to disavow any responsibility on the part of the public safety licensees to complete even the first step in 800 MHz band reconfiguration. That misperception, perhaps more than any other single factor, dooms the Petition. All 800 MHz licensees have an obligation to expeditiously complete the work necessary to retune their systems in accordance with the Commission's reconfigured band plan; the licensees that Petitioners purport to speak for have fallen short in carrying out that responsibility. Requiring Sprint Nextel to fund the ongoing compliance filings by these non-compliant licensees would be unwarranted and the Bureau acted reasonably, responsibly and completely in accordance with the public interest objectives of the 800 MHz Reconfiguration Program in requiring them to bear the costs of filing extra status reports.

Third, notwithstanding Petitioners' claims, nothing in the *Bureau Order* deprives public safety licensees of the right to demonstrate that their costs meet the Commission's standards for reimbursement. The *Bureau Order* establishes a presumption that certain costs do not meet that standard. Thus, the *Bureau Order* is consistent with other practices in the reconfiguration process, including a licensee's right to demonstrate that certain costs should be reimbursed even if they were disallowed in a different retuning.<sup>10</sup> Of course, given this late date, Sprint Nextel

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fund the retune of its system. There has never been a Change Order and no planning dollars were ever requested. Thus, contrary to the Petition, Billings would not be required to fund the costs of preparing and filing another extension request.

<sup>10</sup> For example, the Bureau has established that the aggregate cost information compiled and published by the Transition Administrator should be "accorded substantial, although not dispositive, weight," and that "the further a licensee's proposed costs for services and equipment exceed the TA Metrics, the higher the licensee's burden to justify those costs with record evidence." County of Charles, Maryland and Sprint Nextel, *Memorandum Opinion and Order*, WT Docket No. 02-55, DA 09-2252, ¶ 5 (PSHSB Oct. 19, 2009). Similarly, the Transition Administrator has developed a Subscriber Equipment Deployment Form, which presents "a set

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submits that a licensee should face a very high burden to overcome the Bureau's reasonable presumption that costs associated with reporting to the Bureau are not recoverable.

**III. THE BUREAU'S LIMITATION ON ELIGIBILITY TO APPLY FOR NEW INTERLEAVED BAND SPECTRUM IS APPROPRIATE AND CONSISTENT WITH THE COMMISSION'S RULES AND POLICIES**

The *Bureau Order* also imposed a restriction on a broader class of public safety licensees by restricting the access of public safety licensees who have not yet signed a Frequency Reconfiguration Agreement to the "vacated" interleaved spectrum made available by Sprint Nextel.<sup>11</sup> Again, the Bureau's adoption of conditions on a subset of licensees which are well-behind in completing 800 MHz band reconfiguration is reasonably related to the Commission's oft-stated reconfiguration objectives and properly focuses public safety's efforts and resources on completing their 800 MHz obligations before diverting their resources to system expansion.

The Commission previously ordered that Sprint Nextel make a portion of the 800 MHz interleaved band available to public safety during the 800 MHz band transition.<sup>12</sup> While the Commission sought to meet some of public safety's need for access to new 800 MHz spectrum, the Commission and the Bureau have since recognized that completion of 800 MHz band

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of activities and levels of effort (LOE, or time per task) associated with the deployment of subscriber units that the TA considers presumptively reasonable and prudent." 800 MHz Transition Administrator LLC, Instructions for Submitting a Subscriber Equipment Deployment Request, 2, available at [http://www.800ta.org/content/resources/SED\\_Instructions.pdf](http://www.800ta.org/content/resources/SED_Instructions.pdf).

<sup>11</sup> *Bureau Order* at ¶ 9.

<sup>12</sup> *See Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Order*, 23 FCC Rcd 15966 (2008);

reconfiguration should be the primary goal of this proceeding – not 800 MHz system expansion.<sup>13</sup>

To date, hundreds of public safety licensees have applied for and been granted 800 MHz interleaved channels vacated by Sprint Nextel, including a mixture of public safety licensees that have fully completed band reconfiguration, those that are still working to complete 800 MHz band reconfiguration, some who have not signed FRAs and even some that have not completed the planning and cost estimates necessary to initiate band reconfiguration. Thus, much of public safety’s most immediate demand for 800 MHz spectrum has been met in many areas. While Sprint Nextel would have preferred an even broader restriction on eligibility; *i.e.*, that applicants complete retuning their systems before being eligible for vacated interleaved channels, the Bureau reasonably decided to restrict eligibility until the licensee executes an FRA and commences rebanding activities. A public safety licensee must not waste any resources on system expansion when its primary task – band reconfiguration – has not begun.<sup>14</sup>

The Petition argues that public safety licensees do not control the FRA negotiation process; accordingly they are unfairly penalized for not having an FRA. The Petition ignores several critical facts. First, as noted above, until the public safety licensee provides a valid cost estimate there is nothing to negotiate. Thus, the cost estimate is wholly within the licensee’s control. As to the negotiations themselves, Sprint Nextel agrees that in many cases negotiations

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<sup>13</sup> Once 800 MHz rebanding is done in given NPSPAC Region, all of Sprint Nextel’s interleaved spectrum will be made available to the Commission for relicensing to public safety. Thus, the Commission has already created an “incentive” process to help drive public safety to completion of band reconfiguration.

<sup>14</sup> The Petition itself notes that public safety licensees face “limitations on incumbent resources in a time of fiscal devastation for many municipalities and substantial reductions in personnel.” Petition at page 4.

have dragged on far too long. Public safety licensees bear significant responsibility for these delays. Sprint Nextel submits that some public safety licensees have not felt any concrete pressure to complete their obligation and in many cases have chosen to re-litigate settled questions or to challenge the use of the TA Cost Metrics which were designed to help guide all parties as to what costs are reasonable and prudent. The Bureau's adoption of one small incentive for a public safety licensee to complete its retuning negotiation before asking for more channels is fully consistent with the Commission's reconfiguration goals and the essential objective of minimizing the risk of future commercial - public safety interference.

Sprint Nextel's incentive is to complete 800 MHz rebanding as quickly as possible. Sprint Nextel has already spent billions of dollars to do so. The Petitioners are wrong to assume that Sprint Nextel will use the Bureau's restriction as a leverage point in ongoing negotiations.<sup>15</sup> Sprint Nextel wants to see every single licensee sign an FRA and move on to initiate and complete rebanding. Sprint Nextel would make its entire interleaved spectrum available for public safety to gain additional capacity and improve their communications networks for it would mean that rebanding was complete, interference within the 800 MHz band would be virtually eliminated and that Sprint Nextel would have properly received its 6 MHz of contiguous replacement spectrum and be fully retuned to its final "home" of 14 MHz contiguous spectrum. While the Petitioners argue that restricting public safety access to Sprint Nextel's vacated spectrum will not accelerate 800 MHz band reconfiguration<sup>16</sup>, Sprint Nextel respectfully

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<sup>15</sup> *Id.* at page 7. Petitioners advance no evidence, facts or even credible supposition demonstrating that Sprint Nextel would deviate from its commitment (and obligation) to engage in "good faith" negotiations with public safety incumbents. Petitioners' flippant assertion is unwarranted.

<sup>16</sup> *Id.*

disagrees. Anything that takes public safety's attention and resources from completing the Commission's 800 MHz Reconfiguration Program runs the risk of further delay which Sprint Nextel cannot tolerate or support.

#### **IV. CONCLUSION**

The Petitioners claim that the Bureau's imposition of conditions on those licensees that have not yet submitted cost estimates for the reconfiguration of their systems violates the rules of the rebanding program. Such reporting requirements are, of course, entirely consistent with the urgency the Commission and the Bureau have expressed with respect to the need to complete 800 MHz reconfiguration. Requiring Sprint Nextel to fund the ongoing compliance filings by these same licensees would be unwarranted and the Bureau made the proper determination that Sprint Nextel should not bear these cost or responsibilities at this point in the band reconfiguration process. Similarly, the Bureau's adoption of a small incentive for public safety licensees to complete their FRAs, by requiring that they complete their planning and negotiations for their existing systems prior to system expansion, is also appropriate and will help ensure that licensees keep their focus on the task at hand. For all of these reasons, Sprint Nextel requests that the Bureau deny the instant Petition.

Respectfully submitted,

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May 3, 2010

**CERTIFICATE OF SERVICE**

I, James B. Goldstein, hereby certify that I have, on this 3rd day of May 2010, caused to be delivered by electronic mail, a copy of the foregoing Opposition to Request for Partial Reconsideration to the following:

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