

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

In the Matter of

City of Parma, Ohio  
and Sprint Nextel Corporation

Mediation No. TAM-43195

)  
)  
)  
)  
)  
)  
)

WT Docket 02-55

To: Chief, Public Safety and Homeland Security Bureau

**PETITION FOR PARTIAL RECONSIDERATION  
AND STAY**

The City of Parma, Ohio, by and through counsel, in accord with 47 C.F.R. §1.106, hereby respectfully requests partial reconsideration<sup>1</sup> of the Bureau's *Memorandum Opinion and Order* (released September 28, 2010) in the above captioned matter and stay of the effectiveness of the Bureau's order; and in support states the following:

**A Stay Is Appropriate And Necessary**

The Bureau's decision regarding the means of rebanding the fixed network equipment is not in accord with the directions of the equipment manufacturer, Harris, and therefore, the City must consider carefully its reaction to the Bureau's decision. The primary concern is that the City does not have a vendor which has stated a willingness to perform either the recrystalizing of the Master II facilities or the adulteration of the RIC/LIX equipment. This lack of a vendor to perform such services was not addressed by the Bureau and was largely ignored by both Sprint Nextel and the TA Mediator. Accordingly, as an initial matter, Parma seeks a stay of any effectiveness of the Bureau's

---

<sup>1</sup> Parma accepts the Bureau's decision related to the MTD radios.

order until such time as a vendor to perform either methodology might be located via the City's statutory procurement methodology.

The lack of an identified vendor to perform the suggested methods of rebanding also calls into serious question the amounts identified by the parties as in dispute. The amounts proposed by both parties were based on hourly rates and levels of effort to be provided by Cleveland Communications, Inc. (CCI), the primary vendor. However, if CCI will not perform the work, the underlying bases of both parties proposed costs are no longer accurate and must be revised following the identification of a vendor under the circumstances articulated within the Bureau's decision. Therefore, insofar as the Bureau's decision suggests that from the parties' proposals the Bureau is able to determine the appropriate costs associated with rebanding, the Bureau's decision would also be in error.

Absent the identification of a vendor to perform services, no Frequency Reconfiguration Agreement can be formulated by the parties as neither the costs would be known nor would the identity of the vendor for the purpose of future payment and completion of the Schedule C. Therefore, the City is unable to move forward with necessary certainty into an agreement with Nextel.

Since the City is unable under law to commit itself to perform under a contract where an essential element is missing, the identity and the availability of a vendor to perform services, including a reasonable identification of costs to which it would be able to certify in accord with the

Certification statement residing upon Schedule C, the effectiveness of the Bureau's decision must be stayed pending the outcome of the City's procurement of a vendor and resubmission of estimates to Nextel based on the outcome of that procurement effort.

For the above stated reasons and for good cause shown, the City of Parma requests that the effectiveness of the Bureau's decision be stayed pending the outcome of this petition and, if further required, the procurement of a vendor to perform rebanding tasks as set forth in the Bureau's decision.

#### Reconsideration Regarding the Fixed Network Rebanding Is Requested

The Bureau's summary denial of the City's positions regarding Nextel's proposed rebanding methodologies failed to reach all of the issues underlying the City's concerns and suggests an impractical outcome that is potentially dangerous to first responders and persons who rely on first responders' ability to communicate reliably. The Bureau's decision, to be practical in its application to the City's system, is dependent on two risky propositions. First, that the adulterated RIC will not fail during a crisis and second, that the recrystallized Master IIs will not experience frequency drift at an equally inopportune time. As the Commission was made aware during the "Denver" experiment, recrystallized Master II equipment is subject to frequency drift, loss of propagation and failure for communicating with mobile units operating at a distance from the repeater or within buildings due to blockage. What the Bureau has provided in its decision is a cursory examination of the repeater parts, without considering the obvious implications of failure.

For example, when the RIC fails (only Nextel and its unobserved lab experiment states otherwise) there likely will be no technician on site to remedy the situation. If the RIC fails during installation, the spare RIC will be there to minimize the problem, providing the spare does not fail as well. However, once the technician leaves and the RIC fails, that's it. The system's interconnection is lost until the problem can be diagnosed and repaired, if even possible. If this happens during a crisis (and these things seem to fail at just such times) the ramifications could be quite serious and potentially injurious. Yet, for reasons that the Bureau has not explained, it has decided to take the unverified word of Nextel that it was able to make a RIC work in a controlled laboratory setting, i.e. creation of a "lab queen"; and reject the opinion of the manufacturer of the equipment, Harris. Unfortunately, the City cannot easily reject out of hand the cautions of the manufacturer and take the word of Nextel, which possesses an agenda that is wholly contrary to the City's. Nextel, with all due respect, is attempting to keep this cheap. The City is trying to assure the safety of its first responders and citizens.

The City is also concerned about liability. The City having now been notified by Harris that neither rebanding methodology put forth by the Bureau is appropriate or deemed reliable, the City's employment of either method would subject the City to increased liability when the chosen method fails. And all information received by the City from reliable sources indicate that failure is more likely than not. Accordingly, if frequency drift causes a firefighter to not receive vital communications while fighting a blaze within a building, the issue of the level of the City's liability for injury to or the loss of the life of that firefighter is unknown. At present, the system represents a reasonable and prudent operation based on past practices and the recommendations of the

equipment manufacturer. The Bureau's decision directs the City to engage in activity that the manufacturer does not find reasonable or prudent. And, it takes no leap of imagination to consider the possible outcome of litigation arising out of failure of the system when the City would be operating outside the scope of the manufacturer's recommendations.

The liability issue is, in part, driving the problem with securing a vendor. No vendor wants to accept the liability which arises out of jerry rigging a RIC, based on a twenty-year old paper which the manufacturer presently disallows. Were the subject radio system employed for, say, operating a distribution warehouse, this problem would not be so acute. However, when a system is deployed for safety of life purposes, it is incumbent on vendors, the City and the Bureau to look well beyond a parts list and consider the jeopardy in taking what only appears to be an easy road.

Regarding the costs approved by the Bureau, those costs do not reflect the heightened level of liability that any election of the two Nextel-suggested methods would impose upon Parma. To accept either method, the City would need to seek proper indemnification from a vendor of the services and any resulting failure that will result from employing either method. Parma would not elect to request that Nextel provide that necessary indemnification for two reasons: (1) Nextel stands in opposition and, therefore, has a conflict that would undermine its promise to provide such necessary indemnification; and (2) the indemnification would need to come from the vendor that performed the work to assure that responsibility lies with the entity that made those changes to the fixed network equipment. Since Nextel would not perform such services, any indemnification for the results of those changes would likely be rejected by Nextel as outside of its scope and control,

and contrary to its policies reflected in the language of all previous FRAs. Accordingly, additional reconsideration of the Bureau's decision is required to adjust any proposed costs to reflect the liability issue, including identification of a vendor that is willing to provide the necessary indemnification and the costs associated therewith.

That such reconsideration is required to be borne out by the statements made by ICOM into this proceeding. With all due respect to ICOM, its warranty that extends only to replacement of crystals that suffer problems or result in drift is an insurance policy worth extremely little to the City. Concurrently, Nextel's parsimonious gesture of providing one additional RIC is also little or no comfort to the City. This is not a problem that can be solved simply by the provision of parts and labor, because by the time the goods or services are delivered, someone has already had their life placed at risk or worse, lost that life.

Since the safety of life and liability issues were not addressed to determine the appropriate means of rebanding the fixed network equipment, much less the unavailability of a vendor to perform the recommended rebanding services, the City of Parma hereby respectfully requests reconsideration of the Bureau's decision and adoption of the City's rebanding methodology, which is the only method proposed which focuses on seamlessness, liability and the safety of first responders.

### Reconsideration of the Legal Costs Is Requested

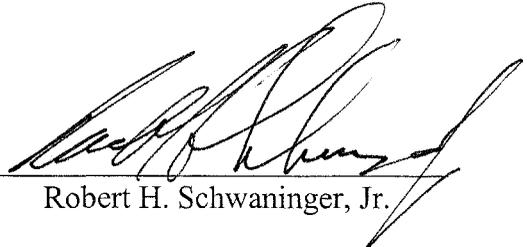
In an effort to be complete in addressing the issues and proposed costs of the parties and the TA Metrics, Parma properly revised upward its proposed legal costs to reflect the additional work that counsel performed in the protracted negotiations and subsequent litigation before the mediator. At no time prior to the drafting of the PRMs would Parma been able to accurately predict the level of effort required by legal counsel. Accordingly, the alternative, re-estimate upon re-estimate was not employed and the original projected cost was left stand until such time as the parties could adequately address that issue with greater assurance and less speculation. In fact, despite the passing reference to this amount in the TA Mediator's Recommended Resolution, Parma is not aware that this is an issue in dispute since it was not identified as such by either party. Accordingly, there is nothing for the Bureau to decide or direct regarding this matter.

What Parma is quite aware of, however, is the fact that the additional legal costs do not reflect "the need to file license applications" as was curiously found by the Bureau at ¶ 23 of its *Memorandum Opinion and Order*. That amount is not in dispute and is accounted for in another category of costs that arises from services to be performed by another vendor. Rather, the amount reflects a rising target of legal costs that continue over time and based on the demands of the negotiations and associated proceedings. Accordingly, insofar as the MO&O suggests a contrary interpretation of those estimated costs, that interpretation is in error and should be corrected upon reconsideration.

Conclusion

For the above stated reasons and for good cause shown, the City of Parma requests that upon reconsideration, the Bureau reverse its earlier determination to allow the City to engage in a rebanding methodology that comports with the agreement between Nextel and Harris regarding rebanding of Master II stations; will provide for necessary safety for first responders; will not create undue liability in the City; and will allow the City to employ its present vendor for performance of the rebanding, thus, expediting this rebanding. Additionally, the City requests that the Bureau immediately stay the effectiveness of its *Memorandum Opinion and Order* to provide to the parties the ability to address the issues stated above.

Respectfully submitted,  
CITY OF PARMA, OHIO

By   
Robert H. Schwaninger, Jr.

Dated: October 7, 2010

Robert H. Schwaninger, Jr.  
Schwaninger & Associates, Inc.  
6715 Little River Turnpike, Suite 204  
Annandale, Virginia 22003  
[rschwanager@sa-lawyers.net](mailto:rschwanager@sa-lawyers.net)

CERTIFICATE OF SERVICE

I, Robert H. Schwaninger, Jr., certify that on October 7, 2010, a copy of the foregoing Petition For Reconsideration and Stay was sent electronically to the following person:

Elizabeth Ewert  
[elizabeth.ewert@dbr.com](mailto:elizabeth.ewert@dbr.com)



A handwritten signature in black ink, appearing to read "Robert H. Schwaninger, Jr.", is written over a horizontal line.