

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket No. 02-55
)	
Sprint Nextel Corporation)	
Petition for Declaratory Ruling)	

COMMENTS OF THE CITY OF PHILADELPHIA

The City of Philadelphia (the “City”) submits these Comments in response to the captioned Petition for Declaratory Ruling of Sprint Nextel Corporation (“Nextel”). The City supports and endorses the Comments of Public Safety Licensees filed in this proceeding. For the reasons set forth below, we further urge the Commission to mandate the relief from burdensome and wasteful documentation and auditing requirements on the reconciliation process that Nextel argues will be made unnecessary if its Petition is granted.

Nextel’s Petition asks the Commission for very significant financial and administrative relief, by relaxing certain requirements of the 800 MHz rebanding Orders¹ that were intended to ensure rebanding completion and protect the U.S. Treasury.² Nextel justifies its request, in substantial part, on the ground that the Commission’s granting this relief will enable “the

¹ See *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, 19 FCC Rcd 14969 (“800 MHz Report and Order”) and *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (“800 MHz Supplemental Order”, and jointly with the 800 MHz Report and Order, the “800 MHz Rebanding Orders”).

² Briefly, Nextel requests 1) that the Commission confirm that Nextel will not have to pay an anti-windfall payment to the federal government, based on cost and payment information already available to the TA and the Commission, 2) that the Commission simplify and streamline audit and documentation procedures for PFA and RFA reconciliation that Nextel argues are unnecessary if the anti-windfall threshold is met, thereby reducing substantially reconciliation burden on licensee, and 3) that the Commission reduce from \$850 million to \$457 million the amount of Nextel’s Letter of Credit to reflect the projected remaining reconfiguration cost. *Petition for Declaratory Ruling* filed January 22, 2013 by Sprint Nextel Corporation in WT Docket No. 02-55 (“Petition”), pages iii,iv,4,5,15,16,and 18.

Commission [to] advance the public interest by simplifying and streamlining certain aspects of [the rebanding] project ...”³ and thereby “... will relieve public safety licensees of significant, unnecessary burdens.”⁴ Specifically, Nextel argues that if the Commission finds it has no anti-windfall payment liability, the “extensive TA-conducted audit and reporting program as to their labor costs and equipment purchases and Sprint’s payment of each retuning expense” in reconciliations under Planning Funding Agreements and Frequency Reconfiguration Agreements can be streamlined, “thus allowing public safety operators to focus their resources on their primary public safety mission.”⁵

The City agrees with Nextel that if the Commission finds it has no anti-windfall payment liability, the standard for rebanding cost reconciliation can and should be less stringent than the Transition Administrator’s full audit standard set forth in the TA’s publication *Actual Cost Reconciliation Fact Sheet*, http://www.800ta.org/content/resources/ACR_Fact_Sheet.pdf (“Fact Sheet”).⁶ As Nextel rightly points out, complying with a full audit standard consumes scarce public safety resources that should be dedicated to public safety – and in particular, we would add, to the rapid completion of our rebanding projects. Nextel should not, however, be permitted to re-impose the stringent full audit standard of its own volition, as a means for reducing its

³ Petition, page iii.

⁴ Petition, page 5.

⁵ Ibid. See also Petition at 15 (“[Granting Nextel’s Petition] will also significantly reduce the need for Sprint and public safety licensees to continue to comply with burdensome post-retuning documentation and auditing procedures related to the true-up. For example, after a public safety licensee completes its retuning, it currently must undergo the TA’s Actual Cost Reconciliation, which requires the agencies to dedicate scarce resources to reviewing and documenting every hour worked (by day, by person, by task) and every dollar spent in accordance with the TA-approved FRA or PFA. Any variations from the cost estimates set forth in its FRA and any PFA, regardless of total magnitude, must be explained and documented in detail by the licensee. Sprint also must dedicate staff resources to this process as well as funding the expenditures of the TA’s auditing process.”)

⁶ The Fact Sheet conflates separate documentation standards for “Reconciliation Purposes” and for “TA or External Audit Review Purposes” that were provided in the TA’s 2007 Documentation Requirements referenced below, applying the “TA or External Audit Review Purposes” standard to reconciliations as between the licensee and Nextel. The Fact Sheet’s application of an “external audit standard” to reconciliations between Nextel and licensees, with highly detailed requirements for time sheets, hours, wages and other accounting information, is rightly characterized by Nextel as “burdensome post-retuning documentation and auditing procedures” (Petition, page 15), and is sometimes referred to in these Comments as an “audit standard.”

reimbursement obligations to individual licensees. The Commission should make Nextel's use of a less stringent reconciliation standard a clear condition of the relief Nextel requests, and direct Nextel to use such standard for all reconciliations under Planning Funding Agreements and Frequency Reconfiguration Agreements from this point forward.

As to the appropriate standard, if the Commission grants the relief Nextel requests, the "Documentation Requirements" identified as "For Reconciliation Purposes" in the Transition Administrator's ("TA") publication *Actual Cost Reconciliation: Documentation Required to Support Costs Incurred*, dated January 9, 2007 ("2007 Documentation Requirements") are appropriate and sufficient for all reconciliations, whether entered into under that standard or under the later Fact Sheet audit standard. If the Commission determines that Nextel has no windfall payment liability, then the 2007 Documentation Requirements are sufficient to protect the U.S. Treasury, and also meet Nextel's objective of reducing the documentation and resource burden on licensees imposed by the Fact Sheet. As Nextel persuasively argues, the latter is overly stringent for reconciliation purposes where Nextel has no windfall payment liability and the additional burden on licensees unnecessary. Moreover, the Commission will still hold a letter of credit from Nextel, in whatever amount the Commission determines is appropriate.

I. Nextel Must State Clearly the Documentation and Auditing Procedures It Will Apply If Its Petition Is Granted.

As stated above, in its petition Nextel states that a declaratory ruling in its favor will reduce the need for public safety licensees to "comply with burdensome post-retuning documentation and auditing procedures related to the true-up."⁷ However, there is no indication beyond these and similar vague assertions (*see* above and Note [5]) as to what documentation requirements Nextel would remove or modify, or what would replace them. The City asks that

⁷ Petition, page 15.

the Commission require Nextel to identify the documentation requirements it would apply in lieu of full audit standard, and to state whether it reserves the right to require an “audit” separate from and in addition to completion of the reconciliation process. If Nextel does reserve that right, it would defeat entirely Nextel’s argument that the relief it requests will facilitate reducing the burden on licensees. If Nextel’s position is that it can, in its discretion, re-impose the same stringent auditing procedures it says would be unnecessary with the relief it asks, then of course the City opposes the Petition. Before deciding the Petition, the Commission should require Nextel to describe clearly all procedures and standards it will use for reconciliation, including audits, as a condition of deciding this Petition.

II. The 2007 Documentation Requirements Should Apply if Nextel’s Petition is Granted.

If the Commission determines that the relief Nextel asks should be granted for the reasons set forth in the Petition, the 2007 Documentation Requirements are the appropriate documentation standards for FRA and PFA reconciliation. Where reimbursement is on a “per unit basis,” those standards requires a certified statement of the number of planning or reconfiguration tasks performed using internal labor, as specified in the TA-approved Cost Estimate included in the applicable PFA or FRA. Where reimbursement is on a “per hour basis,” those standards require a certified statement of the number of internal labor hours in performing those planning or reconfiguration tasks for each labor category specified in the TA-approved Cost Estimate included in the applicable PFA or FRA.⁸

If the Commission grants Nextel’s petition, it will determine that Nextel’s actual and projected payments toward 800MHz Reconfiguration will exceed the anti-windfall threshold.

⁸ As noted above, the 2007 Documentation Requirements are set forth in the TA’s *Actual Cost Reconciliation Fact Sheet, V1.0, January 7, 2007*, in the chart titled “Documentation Requirements”. That chart provides additional documentation requirements that are explicitly identified as “for TA or External Audit Review Purposes.” These requirements were not intended to govern the reconciliation procedure as between the licensee and Nextel and should not be applied to it by Nextel if Nextel’s rationale of reducing the burden on the licensee is to be credited.

Confirming that Nextel will not have to make payments to the US Treasury at the completion of the rebanding process, as Nextel argues, effectively removes the federal interest from the Actual Cost Reconciliation.⁹ Any further post-retuning accounting will be between the City and Nextel. It follows that the TA will no longer need to follow the stringent documentation requirements in place under the Fact Sheet currently in effect, and the requirements for Reconciliation set forth by the 2007 Documentation Requirements can be substituted without risk to the U.S. Treasury or to completion of the rebanding process.

Adoption of the 2007 Documentation Requirements will go far towards easing the administrative burden of reconciliation on public safety licensees. The current documentation standard requires, e.g. detailed individual employee time-sheets, inventory ledgers, invoice and sales orders, and other forms of highly meticulous record keeping that public safety agencies simply do not have the resources to maintain and produce. Requiring licensees that have already expended enormous effort in the reconfiguration of 800 MHz channels to now spend additional time and money to review and document, in cumbersome detail, every hour worked and every dollar expended in that effort is a waste of scarce resources that are much better spent on public safety, and for the City and many others, on finishing an already very lengthy rebanding project as quickly as possible – a goal the Commission certainly shares. Coupled with the lack of a federal interest in maintaining this heightened standard, and if alleviating the administrative costs of post-retuning documentation is a valid reason for granting Nextel’s petition, as we certainly believe it is, then the 2007 Documentation Requirements are both sufficient and appropriate.

III. Conclusion

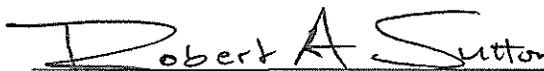
For the reasons discussed above, The City of Philadelphia recommends the Commission grant Nextel’s request for a finding that no anti-windfall payment shall be due, and further grant

⁹ Petition, page 14.

Nextel and public safety licensees relief from burdensome post-retuning documentation processes that therefore no longer serve any federal interest. However, such relief to Nextel should be clearly conditioned on Nextel's passing on the benefit of less burdensome reconciliation procedures to licensees, and not re-imposing them on licensees by its own reconciliation policies. If Nextel's Petition is granted, the City urges that the Commission mandate use of the 2007 Documentation Requirements in reconciliation of Planning Funding Agreements and Frequency Reconfiguration Agreements as between licensees and Nextel.

Respectfully submitted,

CITY OF PHILADELPHIA
LAW DEPARTMENT
Shelley R. Smith, City Solicitor

A handwritten signature in black ink that reads "Robert A. Sutton". The signature is written in a cursive style with a horizontal line underneath the name.

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