

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

In the Matter of)	
)	
Improving Public Safety Communications in)	WT Docket No. 02-55
the 800 MHz Band)	
)	

REPLY COMMENTS

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Executive Summary

Six parties filed comments in response to Sprint Nextel Corporation's January 22, 2013 Petition for Declaratory Ruling seeking a determination that Sprint's expenditures to facilitate 800 MHz band reconfiguration already significantly exceed the \$2.8 billion required to avoid an "anti-windfall" payment to the U.S. Treasury. Numerous commenting parties support Sprint's request for the Commission to make this anti-windfall payment determination now rather than upon completion of 800 MHz band reconfiguration.

Sprint's Petition proposes that upon making this finding, the Commission relieve all 800 MHz licensees of various administrative burdens by streamlining the reconciliation and close-out process to more expeditiously complete 800 MHz band reconfiguration. Industry stakeholders and public safety licensees fully support Sprint's suggestion that the Commission take this opportunity to streamline various administrative processes with the removal of Sprint's anti-windfall payment obligation. In these Reply Comments, Sprint suggests five guidelines for the Commission to consider that may reduce the administrative overhead of all stakeholders if it eliminates the anti-windfall payment contingency.

Sprint also requests elimination of the \$850 million minimum amount for the 800 MHz Letter of Credit Sprint obtained to secure its 800 MHz band reconfiguration funding obligations, in light of the significantly lower expected remaining costs necessary to complete 800 MHz band reconfiguration. Commenters supported eliminating the \$850 million requirement, provided the Commission requires Sprint to maintain a Letter of Credit sufficient to cover the remaining costs of 800 MHz band reconfiguration in the U.S. – Mexico Border Areas. Sprint has no objection to this caveat.

The Commission should treat with extreme skepticism DISH's comments on an 800 MHz reconfiguration proceeding in which it is not a stakeholder, has not previously participated, and in which its current comments are transparently part of its overall meritless and abusive "campaign" against the SoftBank – Sprint merger transaction in a completely unrelated docket.

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REPLY COMMENTS

Sprint Nextel Corporation (“Sprint”) respectfully files these Reply Comments in the above-captioned proceeding.¹ Six parties filed comments² in response to Sprint’s January 22, 2013 Petition for Declaratory Ruling,³ seeking a determination that Sprint’s expenditures to facilitate 800 MHz band reconfiguration already significantly exceed the \$2.8 billion required to avoid an “anti-windfall” payment to the U.S. Treasury. Sprint also requests elimination of the \$850 million minimum amount for the 800 MHz Letter of Credit Sprint obtained to secure its 800 MHz band reconfiguration funding obligations in light of the expected remaining costs to complete 800 MHz band reconfiguration being significantly lower than that amount. Sprint’s Petition proposes that upon making these findings, the Commission relieve all 800 MHz licensees of various administrative burdens by streamlining the reconciliation and close-out

¹ See *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling by Sprint Nextel Corporation Concerning 800 MHz Rebanding “Anti-Windfall” Payment and Letter of Credit Minimum Amount*, Public Notice, DA 13-98, WT Docket 02-55 (rel. Jan. 25, 2013).

² See Comments of Motorola Solutions, Inc. (“Motorola”), Comments of Enterprise Wireless Alliance (“EWA”), Comments of APCO, IACP and IAFC (“APCO”), Comments of Public Safety Licensees (Joint filing on behalf of ten public safety licensees) (“Public Safety Licensees”), Comments of City of Philadelphia (“Philadelphia”), and Dish Network Corporation (“DISH”). All comments were filed in WT Docket No. 02-55 on February 25, 2013.

³ Petition for Declaratory Ruling filed by Sprint Nextel Corporation, WT Docket No. 02-55 (filed Jan. 22, 2013) (“Sprint Petition”).

process to more expeditiously complete 800 MHz band reconfiguration. As discussed further below, the comments provide ample support for all three aspects of Sprint’s Petition.

I. SPRINT’S EXPENDITURES FAR EXCEED THE \$2.8 BILLION MINIMUM THRESHOLD NECESSARY TO ELIMINATE AN ANTI-WINDFALL PAYMENT

Sprint’s Petition detailed the significant progress 800 MHz licensees have made in completing 800 MHz band reconfiguration. Over 99% of all non-border U.S. and U.S. - Canada border area public safety incumbents have executed Frequency Reconfiguration Agreements (“FRAs”) with Sprint to retune their systems and over 80% of them are operating on their new channel assignments in the reconfigured 800 MHz band.⁴ With the expected imminent release of a Report and Order finalizing a reconfigured band plan and procedures for retuning incumbents in the U.S. – Mexico Border areas, now is the opportune time to review and improve existing processes so 800 MHz band reconfiguration can be brought to a successful conclusion.

Sprint’s Petition detailed that Sprint has already spent more than \$3.1 billion to carry out its responsibilities under the Commission’s 800 MHz Reconfiguration Plan and is contractually committed to spend at least \$309 million more to complete this project consistent with the Commission’s 800 MHz Reconfiguration Orders.⁵ When added to the Commission-determined \$2 billion value of the 800 MHz spectrum Sprint contributed to make 800 MHz band reconfiguration possible, Sprint’s expenses and contributions far exceed the Commission-determined \$4.8 billion value of the 1.9 GHz “G Block” “replacement” spectrum the

⁴ In addition, working with Broadcast Auxiliary Service (“BAS”) licensees, Sprint and the broadcasters completed clearing the 1990-2025 GHz band in 2010.

⁵ Using the 800 MHz Transition Administrator’s Cost Metrics, Sprint estimates that licensees not currently under a TA-approved contract, including those impacted by the delayed Mexican border area reconfigured band plan, will add approximately \$147 million in costs to these commitments.

Commission assigned to Sprint in exchange for its financial and spectrum contributions to carrying out the Reconfiguration Plan.

As detailed in the Sprint Petition, the Commission has adequate cost and payment information available to make a determination that Sprint's expenditures exceed the Commission's anti-windfall payment threshold and therefore Sprint does not and will not owe an "anti-windfall" payment to the U.S. Treasury under the terms and provisions of the Commission's 800 MHz Reconfiguration Plan.

Numerous commenting parties support Sprint's request for the Commission to make this anti-windfall payment determination *now* rather than upon completion of 800 MHz band reconfiguration. EWA agrees that there is no reason to defer the true-up assessment until rebanding is completed nationwide.⁶ Motorola similarly "urges the Commission to embark on a process to consider whether Sprint's unreimbursed expenditures have exceeded the amount necessary to avoid the anti-windfall payment."⁷ Philadelphia "recommends the Commission grant Nextel's request for a finding that no anti-windfall payment shall be due."⁸ Public safety commenters such as APCO and the Public Safety Licensees support the Commission making an anti-windfall determination now if it leads the Commission to reduce the administrative and record-keeping burdens imposed on public safety incumbents under the current 800 MHz reconfiguration cost reconciliation process.⁹

⁶ EWA Comments, at 3. ("Any steps that promise to bring this very lengthy proceeding closer to completion should be implemented promptly.")

⁷ Motorola Comments, at 3.

⁸ Philadelphia Comments, at 5.

⁹ See APCO Comments, at 2 ("The Public Safety organizations take no position on Sprint's specific request. However, should the Commission grant the Petition, it should relax many of the audit and accounting requirements implemented by the Transition Administrator to protect the

DISH, the only commenting party that is not an 800 MHz stakeholder impacted by 800 MHz band reconfiguration, is also the only commenter that fails to recognize the value in undertaking the anti-windfall analysis without further delay. DISH offers no facts or analysis to support its speculation that “further scrutiny” and a “careful audit” of Sprint’s claimed expenditures is needed before the anti-windfall true-up occurs.¹⁰ Nor does it provide any facts or legal argument for delaying the anti-windfall review process until after the 800 MHz transition is completed.¹¹ DISH’s unsupported arguments echo those of it and its 2 GHz Mobile Satellite Service predecessor licensees previously made during their unsuccessful attempts to evade their 2 GHz BAS clearing reimbursement obligations to Sprint. DISH either mischaracterizes or ignores numerous Commission decisions establishing the structure, purpose and goals of the anti-windfall payment mechanism as well the context in which Sprint agreed to settle earlier reimbursement cost claims.

As Sprint’s Petition well documented, the Commission fully anticipated that the anti-windfall review process could occur well before the completion of 800 MHz band

Treasury against overpayment of reconfiguration expenses that could reduce the anti-windfall payment.”); Public Safety Licensees Comments, at 2 (“If the FCC were to issue the central non-windfall ruling sought by Nextel, and were to approve subsequent relaxation of financial record-keeping and other requirements, the sooner the better.”); *see also* State of Washington, Oakland County, Michigan, and Orleans County, New York Reply Comments, WT Docket No. 02-55, at 1 (filed Feb. 26, 2013) (“Generally, the Licensees agree with Nextel and commenters that the TA review and post-closing auditing procedures have little value if Nextel is not going to be required to make an anti-windfall payment.”).

¹⁰ DISH Comments, at 8.

¹¹ *Id.* DISH also requests that the Commission hold Sprint’s Petition in abeyance pending the outcome of the Sprint – Softbank merger proceeding. *See id.* at 3. *The Commission should reject this request.* The Sprint – Softbank merger proceeding is irrelevant to the Commission’s obligation now or in the future to review Sprint’s costs and determine whether an anti-windfall payment will be required under its 800 MHz Reconfiguration Program.

reconfiguration.¹² DISH provides no reason why the Commission cannot and should not review Sprint's reconfiguration expenditures. If anything, a later review will only result in a larger difference between the \$2.8 billion minimum expenditure requirement and the final costs Sprint will be found to incur.¹³ As Sprint's Petition detailed, the only question at issue is whether Sprint has expended more than the required \$2.8 billion; how much more Sprint spends (given its uncapped obligation) is irrelevant.¹⁴ In either case, Sprint will not owe an anti-windfall payment to the U.S. Treasury. DISH's request that the review process be delayed benefits no one and would require keeping in place the record-keeping and associated administrative burdens that could be reduced or eliminated for many public safety and other incumbents if the Commission finds no anti-windfall payment warranted.¹⁵

II. BY ELIMINATING THE ANTI-WINDFALL PAYMENT OBLIGATION THE COMMISSION CAN REDUCE BURDENS ON ALL 800 MHz LICENSEES AND STREAMLINE THE REMAINDER OF 800 MHz BAND RECONFIGURATION

Sprint's Petition requests that upon concluding that no anti-windfall payment is required, the Commission advance the public interest by simplifying and streamlining certain aspects of

¹² Sprint Petition, at 14.

¹³ Sprint's obligation to pay 800 MHz band reconfiguration expenses does not disappear with the removal of the possibility of an anti-windfall payment. Sprint's obligation to pay 800 MHz band reconfiguration expenses is uncapped.

¹⁴ As Sprint's Petition detailed, Sprint's current spend in support of 800 MHz band reconfiguration is \$3.1 billion, with additional contractual commitments that will take it to \$3.4 billion. *See* Sprint Petition, Appendix A. Once Mexico border area retunes are added to this figure, Sprint's total spend for 800 MHz band reconfiguration will be in excess of \$3.6 billion. *See id.*, Appendix B.

¹⁵ It is unclear how DISH would benefit by delay of the anti-windfall payment review; certainly, DISH offers no demonstration of how the public interest would benefit therefrom. Moreover, DISH has already reached a settlement agreement with Sprint for its share of BAS relocation expenses and that settlement will not change regardless of whether the anti-windfall determination is made now, next year or at some future date.

the rebanding process to facilitate the completion of the 800 MHz Reconfiguration. Sprint suggests that some of the record-keeping requirements the TA imposes on 800 MHz public safety incumbents would no longer be necessary once the anti-windfall payment determination is completed. Similarly, the TA would no longer need some of the post-retuning audit and documentation processes it currently imposes on Sprint and other incumbents if Sprint will not be making an anti-windfall payment. Sprint's Petition argued that elimination of unneeded administrative and record-keeping burdens would free all parties to focus their resources on bringing 800 MHz rebanding to a successful conclusion as expeditiously as possible.

Industry stakeholders fully support Sprint's suggestion that the Commission take this opportunity to streamline administrative processes with the removal of the anti-windfall payment contingency. EWA "fully supports efforts to streamline and simplify the rebanding process, a process that has proven highly demanding and complex for all incumbents including, but not limited to, public safety entities."¹⁶ Sprint agrees with EWA that "all incumbents would benefit from a more streamlined process both during the post-retuning and documentation period and in all other stages of rebanding."¹⁷ Motorola agreed that process simplification is warranted and that it supports Sprint's proposal to review and revise the current process which would "result in significant benefits to incumbent 800 MHz licensees that continue to wait to be rebanded."¹⁸

Public safety commenters agree. APCO noted that many of the audit and accounting requirements implemented by the 800 MHz Transition Administrator have "in some cases

¹⁶ EWA Comments, at 4.

¹⁷ *Id.* It was certainly not Sprint's intention to limit its discussion of potential record-keeping improvements to public safety licensees, but rather to include all 800 MHz incumbents subject to 800 MHz band reconfiguration.

¹⁸ Motorola Comments, at 3.

imposed substantial administrative costs on public safety incumbents, diverting time and resources from other critical agency tasks” and therefore agreed that these requirements be relaxed.¹⁹ The Public Safety Licensees are similarly intrigued by the prospect that these requirements be relaxed.²⁰ These licensees support Sprint obtaining the “freedom to forgive relatively small cost-over-runs, or to treat their documentation more liberally” and “more flexibility in payments across categories.”²¹ Philadelphia also urges the Commission to mandate relief from “burdensome and wasteful documentation and auditing requirements on the reconciliation process.”²²

EWA, Philadelphia, and the Public Safety Licensees each requested further clarity from Sprint as to what changes to the auditing and reconciliation requirements it would make if the anti-windfall contingency is eliminated. Sprint’s Petition was intentionally non-specific on this point. Sprint’s Petition suggested that if the Commission were to remove the anti-windfall payment contingency at this juncture it would provide an opportunity *for the Commission to direct the Transition Administrator* (with input from all stakeholders) to minimize its requirements going forward for the benefit of 800 MHz licensees who have not completed their reconciliations or their retunes.

¹⁹ APCO Comments, at 2.

²⁰ Public Safety Licensees Comments, at 1.

²¹ *Id.* at 2.

²² Philadelphia Comments, at 1. Philadelphia requests the use of the 800 MHz Transition Administrator’s older 2007 documentation standard. While Sprint agrees that the 800 MHz Transition Administrator’s 2007 requirements were much more reasonable than today’s standards, Sprint would suggest using those as a starting point and look for further ways to simplify and streamline reconfiguration documentation absent an anti-windfall payment contingency.

Sprint believes that nearly all 800 MHz Planning Funding Agreements (“PFAs”) and Frequency Reconfiguration Agreements (“FRAs”) were negotiated in good faith with detailed up-front reviews by the 800 MHz Transition Administrator, a process which should not change. Sprint also believes that certain basic requirements must continue to be met by incumbent licensees, particularly with regard to equipment returns and audits, and change orders; for example, Sprint does not support eliminating all audit procedures just because it does not owe an anti-windfall payment to the U.S. Treasury. On the other hand, Sprint would support allowing incumbents to re-allocate expenses between and among categories in an approved PFA or FRA without extensive documentation and justification.²³

Sprint suggests that the Commission use the following guidelines in considering how it may reduce the administrative overhead of all stakeholders if it eliminates the anti-windfall payment contingency. Sprint emphasizes that while each licensee's set of facts and circumstances may be different, these recommendations should permit the flexibility necessary to deal with each licensee and its specific issues.

1. Sprint agrees that it cannot arbitrarily re-define audit requirements; however, Sprint needs to retain its rights to require documentation in any case where it has reason to believe that a licensee has committed fraud or is willfully providing misleading or inaccurate statements and/or supporting documentation.
2. Sprint does not support wholesale elimination of post-retuning equipment audits. Sprint continues to require the ability to examine each licensee’s audit exceptions on a case-by-case basis to determine underlying facts and circumstances accounting for equipment and accessory return shortfalls.
3. Sprint would still require basic documentation, such as is currently required for radio counts and infrastructure; however, Sprint would not require change orders if Sprint determines that funds were reasonably spent differently between and among categories but the overall cost does not exceed the total approved PFA or FRA.

²³ Public Safety Licensees Comments, at 2.

4. Sprint would still require change orders to provide additional funds for 800 MHz retunes, and those change orders should demonstrate why the additional funds are necessary. For example, in the case of requesting more internal funds for radio work, licensees would still be required to provide evidence, in the form of time sheets, of actual hours worked with an explanation of why the licensee exceeded its FRA allocation.
5. Sprint would support working with the Commission, the TA and public safety licensees that have negotiated compensation for a “second touch” to remove old frequencies from their mobiles and portables, to negotiate an agreed buy-out of the “second touch.” The buy-out would allow the close-out of the contract well before any second touch work was finished and would mean that the second touch could be accomplished over a longer time period or during normal maintenance efforts, without the licensee having to provide any further documentation to Sprint about actual costs.²⁴

The above proposed simplifications are intended to be representative of the process, record-keeping and administrative improvements that would be feasible if the Commission eliminates its anti-windfall payment contingency. The Commission should direct the Public Safety and Homeland Security Bureau and the 800 MHz Transition Administrator to expeditiously review current processes and adopt ways to streamline them upon a finding that there will be no anti-windfall payment.

III. COMMENTERS AGREED THAT REDUCTION IN THE 800 MHz LETTER OF CREDIT BELOW \$850 MILLION IS WARRANTED AS LONG AS FUNDS REMAIN TO COMPLETE REBANDING

Sprint also respectfully requests that the Commission eliminate the minimum amount of the Letter of Credit (“LOC”) it requires Sprint to maintain to backstop its relocation funding obligations. The Commission has never had to draw on the LOC to fund 800 MHz

²⁴ Sprint does not believe that any of these suggestions would require contract amendments or extensive negotiations; that would defeat the goals of minimizing costs and accelerating band reconfiguration. For example, a cash-out of the “second touch” could be handled through a “tried and true” closing adjustment process, which many licensees and their counsel have already done.

Reconfiguration, as Sprint has over the past eight years timely paid the retuning expenses of nearly 1,800 public safety and other incumbent 800 MHz band licensees. With the non-border and U.S. – Canada border area reconfiguration nearly complete, Sprint requests that the Commission eliminate the current \$850 million LOC “floor”, adjust the LOC to reflect remaining 800 MHz reconfiguration costs, and continue to authorize quarterly reductions consistent with Sprint’s then-remaining expenditure obligations.

Sprint’s Petition proposed that the adjusted 800 MHz LOC be reduced to \$457 million based on the remaining outstanding payments under executed PFAs and/or FRAs (“\$309 million), plus an allowance based on the TA’s comprehensive funding metrics database to cover all remaining licensees, including those in the U.S. – Mexico border, that have not yet executed either PFA and/or FRA agreements with Sprint (\$147 million).

No commenter opposed the Commission reducing the 800 MHz LOC below \$850 million to an amount more consistent with the remaining projected expenditures to complete the 800 MHz transition.²⁵ The Public Safety Licensees did not oppose a reduction, but requested that the Commission “take a hard look” at Sprint Nextel’s estimated costs for U.S. – Mexico Border Area rebanding.²⁶ APCO similarly requested that the Commission “scrutinize” Sprint Nextel’s Petition to ensure that the 800 MHz LOC is adequate to address a “worst case” scenario.²⁷

²⁵ EWA Comments, at 5 (“EWA has no objection to Sprint Nextel’s proposal that the Commission reduce the LOC to an amount estimated by the TA to cover all remaining rebanding costs once the TA is capable of making that calculation. . . .The Alliance will rely on the TA and the FCC to determine when there is sufficient information to perform that calculation with the necessary degree of certainty.”); Philadelphia Comments, at 3 (“Moreover, the Commission will still hold a letter of credit from Nextel, in whatever amount the Commission determines is appropriate.”).

²⁶ Public Safety Licensees Comments, at 3.

²⁷ APCO Comments, at 2-3.

Sprint Nextel’s cost estimate for 800 MHz incumbent licensee rebanding costs in the U.S. – Mexico Border areas (\$123 million) is based on use of the well documented 800 MHz Transition Administrator’s Cost Metrics appropriate to the size of each remaining licensee. The TA’s Cost Metrics present aggregated data on reconfiguration costs approved by the 800 MHz Transition Administrator for the reconfiguration of 800 MHz public safety systems.²⁸ The Public Safety and Homeland Security Bureau has stated that, “the TA Metrics provide a useful measure of cost reasonableness, because they are based on increasingly large amounts of historical information regarding the cost of rebanding public safety systems.”²⁹ Continued use of the TA Cost Metrics is therefore the appropriate benchmark in setting and evaluating the amount of the 800 MHz LOC.

APCO’s suggestion that all licensees in the U.S. – Mexico Border region be placed not at the 50% percentile mean, but at the highest TA Cost Metric percentile category for each to derive the highest possible or “worst case” U.S. – Mexico total licensee cost estimate, is not warranted and would be entirely inconsistent with the last eight years of data relied upon by Sprint, the TA and the Commission in evaluating appropriate costs for band reconfiguration.³⁰

²⁸ The TA Cost Metrics data is classified by both the function of particular costs (*e.g.*, engineering, project management, legal and training costs) as well as by system size. *See* 800 MHz Transition Administrator, Frequency Reconfiguration Agreement Cost Metrics, available at: http://www.800ta.org/content/resources/FRA_Metrics.pdf (last visited March 11, 2013).

²⁹ County of Charles, Maryland and Sprint Nextel, *Memorandum Opinion and Order*, 24 FCC Rcd 12749, ¶ 5 (PSHSB 2009).

³⁰ 800 MHz band reconfiguration in the U.S. – Mexico border areas will not present any special or unique circumstances that have not already been addressed in the 800 MHz program across the rest of the United States; therefore, the TA Cost Metrics can be adequately relied upon by the Commission, Sprint, the TA and incumbent licensees and their vendors to evaluate and estimate proposed costs.

Moreover, APCO's concern that the U.S. – Mexico border area licensees are the last licensees to retune and therefore need assurances that adequate funds will be available for their retunes (*i.e.*, the “worst case scenario”) is misplaced. The 800 MHz LOC serves as a backstop to Sprint Nextel's funding obligations – it does not serve as the funding source for 800 MHz incumbent retunes. There is no less funding available for 800 MHz incumbents in the U.S. – Mexican border region simply because they have not yet retuned – Sprint's obligation to these licensees is no different than the nearly 1,000 public safety incumbents that came before them.

Accordingly, by using the TA Cost Metrics most applicable for each remaining licensee, Sprint and the TA can derive a reasonable cost estimate for retuning all remaining licensees that have not executed FRAs, whether in the U.S. – Mexico border area or not, that can be relied on in determining how much to require under the LOC as a backup to Sprint's ongoing 800 MHz reconfiguration funding obligation under the Commission rules and policies.³¹ The Commission should therefore direct the 800 MHz Transition Administrator to confirm Sprint's estimate of the remaining costs to complete 800 MHz band reconfiguration, recommend a reduction in the 800 MHz LOC from \$850 million to that amount, and continue to recommend reductions in the 800 MHz LOC based on estimates of remaining required expenditures updated on a quarterly basis.

IV. DISH'S ATTEMPTS TO INJECT UNCERTAINTY INTO THIS PROCESS ARE MERITLESS

A number of 800 MHz licensees note that they are not in a position to determine the amount that Sprint spent in accordance with the program, and therefore take no position in that

³¹ As the Sprint Petition noted, in the unlikely event that the 800 MHz LOC is ever reduced to a figure that is later deemed insufficient to cover the remaining costs of 800 MHz band reconfiguration, the Bureau can direct Sprint to increase the 800 MHz LOC.

regard.³² Curiously, DISH, with no prior experience with the 800 MHz reconfiguration program, nonetheless portrays itself as qualified to comment for all 800 MHz licensees, and then speculates that the costs for which 800 MHz licensees have been reimbursed were excessive and not thoroughly documented.³³ Sprint respectfully suggests that the 800 MHz licensees actually participating in this lengthy and complicated reconfiguration process would likely disagree with many of DISH's characterizations of Sprint's purported incentive to be more generous than is reasonable or necessary in the reconfiguration costs which they incurred.³⁴

Further undercutting DISH's credibility in asserting that Sprint's 800 MHz expenditures have not been sufficiently reviewed despite the fully transparent, regulated, and heavily documented nature of this process, is the fact that DISH takes the exact opposite position on its

³² See APCO Comments, at 2 (“Sprint argues in its Petition that its costs have now exceeded that threshold, eliminating any potential for anti-windfall payments. The Public Safety organizations take no position on Sprint’s specific request.”); EWA Comments, at 3 (“EWA is not in a position to confirm Sprint Nextel’s statements regarding its incurred and committed costs and will leave that analysis to the FCC and the TA.”); Public Safety Licensees Comments, at 3 (“The BB&K licensees have no way to evaluate the accuracy of Nextel’s enumeration of rebanding expenses to date . . .”).

³³ DISH Comments, at 1, 6-7. As discussed below, DISH’s purchase of the licenses of two bankrupt MSS licensees, and subsequent settlement of their BAS retuning reimbursement obligations to Sprint, does not make DISH an expert on 800 MHz incumbent reconfiguration expenses.

³⁴ Sprint Petition, at pages 12-13. In the BAS relocation, the Commission conclusively addressed this very issue when it issued its final order concluding the longstanding efforts to relocate BAS licensees from the 1990-2110 MHz band to the 2025-2110 MHz band. See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket Nos. 00-258 and 95-18, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd. 13874 (2010) (“2010 Declaratory Ruling”). In that order, the Commission specifically held that “Sprint Nextel had substantial incentives to minimize relocation costs and, moreover, there are suitable safeguards to prevent cost inflation.” See *id.* at ¶ 59. The Commission also noted that, with respect to frequency relocation agreements, “Sprint Nextel had every reason to keep the frequency relocation costs low,” in part because Sprint “now is unlikely to obtain credit for these costs against the anti-windfall payment. *Id.* at ¶ 69.

potential relocation expenses associated with the Broadcast Incentive Auction.³⁵ Specifically, Dish (and DirectTV) argue that their MVPD relocation costs should be based on “estimates” (not actual costs) and that “all reasonable and foreseeable costs” should be eligible for reimbursement.³⁶ In other words, when DISH’s costs are at issue, they should be considered reasonable and prudent and reimbursed based on “estimates,” whereas Sprint’s 800 MHz expenditures – despite having been subject to much more rigorous, expensive, and time-intensive standards and processes applied to both upfront contract negotiations and the back end audit process -- should be audited multiple times. DISH’s argument is irrational and should receive no weight.

DISH also attacks Sprint’s costs by obliquely referring to several arguments that it pursued in various litigations -- when it was acquiring the MSS licenses previously held by TerreStar and DBSD -- in attempting to avoid those entities’ reimbursement obligations.³⁷ For example, DISH once again suggests that Sprint’s costs should be subject to heightened scrutiny because they allegedly exceed soft cost “caps” applied in other relocations.³⁸ The Commission,

³⁵ See Joint Comments of DIRECTV and DISH Network, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket 12-268, at 7 (filed Jan. 25, 2013) (“The Commission should adopt a simple and transparent reimbursement methodology under the Relocation Fund based on estimated costs. The *Notice* correctly notes that ‘speed and efficiency [are] important goals of any reimbursement methodology. The use of estimated costs would simplify the administration of the program, reduce paperwork burdens on industry and Commission staff, and protect against the risk of inflated actual cost reimbursement claims. An estimated cost-based methodology is particularly appropriate in situations such as this one in which the relevant costs can be identified in advance.’”) (footnotes omitted).

³⁶ *Id.* at 6-8.

³⁷ DISH Comments, at 6-7.

³⁸ *Id.*

however, explicitly rejected that argument when it was made on behalf of DBSD and accordingly, should reject it here.³⁹

In addition to repeating previously rejected arguments, DISH seems to suggest that Sprint's settlement of its BAS reimbursement claims against DBSD and TerreStar somehow proves that Sprint's total 800 MHz expenditures are suspect.⁴⁰ First and foremost, the reimbursement settlement for BAS reimbursement costs has absolutely nothing to do with Sprint's 800 MHz reconfiguration expenditures; DISH's disingenuous attempt to conjoin them merits no consideration at all. Sprint's settlement with DISH for less than the full amount that it sought to recover from DBSD and TerreStar was negotiated in the context of both DBSD and TerreStar having declared bankruptcy. In one of those proceedings, the Bankruptcy Court had determined that the value of DBSD's assets was insufficient to satisfy all of its obligations.⁴¹ In the other proceeding, significant uncertainty existed as to whether the value of TerreStar's assets would enable any significant distribution to creditors.⁴² Under those circumstances, a negotiated BAS reimbursement settlement with DISH as the successor licensee to DBSD and TerreStar has no bearing and no relevancy to the accuracy of Sprint's 800 MHz expenditures.

The Commission is well aware, given its own involvement in the relevant proceedings, that DISH conveniently omits the fact that the settlement agreement and payments occurred within the context of the two bankruptcy proceedings involving the MSS licensees from whom

³⁹ 2010 Declaratory Ruling, at ¶ 60.

⁴⁰ DISH Comments, at 7.

⁴¹ See Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code, *In re DBSD North America, Inc., et al, Debtors*, Case No. 09-13061 (Bankr. S.D.N.Y. July 5, 2011).

⁴² See Sale Order, *In re TerreStar Networks, Inc., et al., Debtors*, Case No. 10-15446 (Bankr. S.D.N.Y. July 7, 2011).

Sprint was owed money.⁴³ It followed years of aggressive attempts by the licensees to evade their reimbursement obligations both before the Commission and in other forums. In the bankruptcy proceedings, there simply was not enough money to satisfy the obligations owed to all unsecured creditors – including Sprint. Sprint further observes that, after MSS licensee TerreStar had the opportunity to perform a significant level of due diligence with regard to Sprint’s claim, and in the context of settlement, TerreStar withdrew its objection to the Sprint claim with prejudice, and Sprint’s settlement payment represented TerreStar’s *pro rata* share of the bankruptcy proceeds eligible to be paid within its class. In the DBSD bankruptcy, DISH, as the purchaser of DBSD’s MSS license and potential successor in interest, essentially purchased Sprint’s claim after extensive and wide-ranging litigation.

Accordingly, Sprint respectfully suggests that the Commission treat with extreme skepticism DISH’s comments on an 800 MHz reconfiguration proceeding in which it is not a stakeholder, has not previously participated, and in which its current comments are transparently part of its overall meritless and abusive “campaign” against the SoftBank – Sprint merger transaction in a completely unrelated docket.

V. CONCLUSION

Commenters overwhelmingly recognize the significant benefits of the Commission performing a review of Sprint’s costs now, in advance of completion of 800 MHz band reconfiguration. This review will ultimately confirm Sprint’s expenses to date exceed the Commission’s minimum threshold of \$2.8 billion and that no anti-windfall payment will be necessary. Upon this finding, commenters agreed that changes to the 800 MHz cost

⁴³ *Arizona v. California*, 530 U.S. 392, 414 (2000) (“[S]ettlements ordinarily occasion no issue preclusion . . . unless it is clear . . . that the parties intend their agreement to have such an effect.”) (emphasis in original).

reconciliation process should be undertaken immediately to more expeditiously bring 800 MHz band reconfiguration to a close. In light of the well documented TA metrics and remaining expected costs to complete rebanding, Sprint also requests a modification to the 800 MHz Letter of Credit to be more aligned with these remaining expected costs.

Respectfully submitted,

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