

Sprint

ACCEPTED/FILED

MAR 13 2014

February 12, 2014

Federal Communications Commission
Office of the Secretary

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Northern California Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region

Dear Sir or Madam:

Pursuant to Section 1.925 of the Federal Communications Commission's ("FCC") Rules, Sprint Corporation ("Sprint") hereby files this Request for Waiver for 800 MHz Economic Area ("EA") call signs WPOH360, WPOH391, WPOH394, WPOH397, WPOH399 and WPOH401 to accelerate its broadband deployment in Northern California while causing no increased risk of interference to 800 MHz incumbents.

Section 90.209(b)(7) of the Commission's Rules permits Enhanced Specialized Mobile Radio ("ESMR") operators, such as Sprint, to deploy wideband operations in the 817-821/862-866 MHz portion of the ESMR spectrum band during 800 MHz band reconfiguration, and in the 821-824/866-869 MHz portion of the ESMR band after 800 MHz band reconfiguration is completed in a National Public Safety Advisory Committee ("NPSPAC") Region.¹ In accordance with this rule, Sprint is deploying a 1.25 MHz wide CDMA channel in the lower portion of the 800 MHz ESMR band (817 - 821/862 - 866 MHz) throughout the country. Sprint is also deploying a 5 x 5 MHz Long-Term Evolution ("LTE") channel in the 800 MHz ESMR band at 819-824/864 - 869 MHz in NPSPAC Regions where 800 MHz band reconfiguration has been completed.

On June 30, 2013 Sprint decommissioned its 2G 800 MHz iDEN® Network and is now integrating the former iDEN 800 MHz spectrum into its 3G/4G Network Vision build-out. Adding 800 MHz spectrum to Sprint's 3G/4G network will improve coverage and in-building penetration due to the propagation characteristics of the 800 MHz band providing a more consistent and improved experience for Sprint's customers.

The 800 MHz band reconfiguration effort is complete in the Northern California NPSPAC Region 6 in all areas of the Region but for two sites licensed to San Bernardino County, a Southern California (NPSPAC Region 5) licensee ("SBC"). SBC's two "Northern

¹ See Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees, *Report and Order*, WT Docket 12-64, DA 12-55, 27 FCC Rcd 6489 (2012) ("800 MHz Broadband Order").

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California” NPSPAC Region sites are located in Inyo County which is just north of San Bernardino County and is at the southernmost edge of the Northern California NPSPAC Region.² Sprint respectfully requests this waiver to permit it to use the 866-869 MHz portion of the band outside of the Inyo County and San Bernardino County area in the 46 Northern California NPSPAC Region counties listed in Attachment A in advance of full NPSPAC Northern California Region completion.³ This waiver would be necessary only until the one remaining public safety NPSPAC licensee, SBC, completes its retune.⁴ Grant of this waiver will accelerate Sprint’s broadband deployment in Northern California and make more efficient use of the 800 MHz ESMR spectrum with no increased risk of interference to the one public safety network that is still reconfiguring its system in the Northern California NPSPAC Region or to the remaining public safety licensees in the adjacent Southern California NPSPAC Region. Sprint has discussed this waiver request with SBC and they have indicated no objection to the Commission providing the relief requested herein.

Request for Waiver

Under Section 1.925(b)(3) of its rules, the Commission may grant a request for waiver if it is shown that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that the grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁵ In this case, the requested relief is fully warranted under both prongs of the waiver standard.

In the Northern California NPSPAC Region, 54 of the 55 public safety licensees required to be retuned from the “old NPSPAC band” at 821-824/866-869 MHz have successfully completed their retunes. The one remaining Northern California NPSPAC Region 6 licensee, SBC, has two sites in Inyo County which is one of the southernmost counties in the Northern California NPSPAC Region. The bulk of the SBC radio system is physically located in the adjacent Region 5 Southern California NPSPAC Region, and the retuning process in that Region

² See Attachment A map showing location of the closest San Bernardino sites relative to both the Northern California and Southern California NPSPAC Regions.

³ See Attachment B which lists the 46 Northern California counties for which Sprint requests the instant waiver to deploy wideband operations in advance of 800 MHz band reconfiguration completion in the NPSPAC Region for Northern California.

⁴ Attachment C lists the 2 counties in the Northern California NPSPAC Region where Sprint does not seek a waiver and where Sprint would not deploy wideband operations in advance of completing 800 MHz reconfiguration. Sprint also does not request a waiver for any counties in the Southern California NPSPAC Region.

⁵ See 47 C.F.R. §1.925; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

has only recently begun.⁶ Sprint and SBC are working diligently to negotiate the retune of its system and complete its retune as soon as practicable. Until this retune is certified by the licensee as complete, however, Section 90.209(b)(7) of the Commission's Rules does not permit broadband operations at 821-824/866-869 MHz anywhere in the Northern California NPSPAC Region.

As a result, Sprint is currently prevented from deploying broadband LTE in the old NPSPAC band in those areas of Northern California which are fully cleared of public safety communications operations, including populous metropolitan areas such as San Francisco, Oakland and Sacramento, among others. These areas are more than 300 miles distant from SBC's sites in Inyo County. As a result, Sprint can integrate the 821-824/866-869 MHz spectrum into its broadband network in much of Northern California without posing any risk of interference to the remaining un-retuned SBC operations in Inyo County.

Accordingly, Sprint requests a waiver of Section 90.209(b)(7) so that it can launch LTE in the 46 Northern California counties listed in Attachment B that are no longer impacted by 800 MHz band reconfiguration.⁷ Each of these 46 counties is more than 80 miles away from the closest SBC site still operational in the old NPSPAC band, as shown in Attachment A. This more than 80-mile co-channel separation of Sprint's proposed 821-824/866-869 use goes well beyond the Part 90 co-channel separation requirements in Section 90.621(b) of the Commission's Rules which permits 800 MHz co-channel usage at sites as close as 55 miles depending on the technical parameters of the proposed facilities. Sprint proposes herein, however, at least 80 miles between co-channel operations to provide an additional buffer of protection to the remaining SBC public safety operations.

Sprint has discussed this matter with SBC, has provided it with details of Sprint's proposed deployment and the measures it proposes herein to protect it from any risk of interference. SBC indicated it would interpose no objection to a grant of this waiver request, based on the co-channel distance separation Sprint proposes herein. SBC has been sent a copy of this request.⁸

⁶ See Improving Public Safety Communications in the 800 MHz Band, New M800 MHz Band Plan for U.S. – Mexico Sharing Zone, Fifth Report and Order, WT Docket 02-55, 28 FCC Rcd 4085 (PSHSB 2013); Public Safety and Homeland Security Bureau Announces That the 30-Month Transition Period for 800 MHz Band Reconfiguration in Regions Along the U.S. – Mexico Border Will Commence on August 23, 2013, Public Notice, WT Docket 02-55, DA 13-1770 (PSHSB August 16, 2013).

⁷ Sprint's operations in these 46 counties will be designed to protect co-channel operations of not only SBC's remaining sites in Inyo County but any remaining NPSPAC licensee in the Southern California NPSPAC Region 5.

⁸ Pursuant to the FCC's rules, SBC, as well as all other public safety licensees in the State of California, in addition to 800 MHz public safety licensees in neighboring NPSPAC Regions will be provided 30 days advance notice of Sprint's deployment and planned initiation date of operations.

Sprint's waiver request meets both prongs of the Commission's waiver standard and is entirely consistent with a similar waiver granted to Sprint in November 2013 in Florida.⁹ The purpose of the *800 MHz Broadband Order* was to permit increased flexibility and broadband competition opportunities for 800 MHz ESMR band licensees while ensuring the protection of public safety licensees who had yet to complete 800 MHz band reconfiguration. The requirement that an entire NPSPAC Region be completed prior to initiation of broadband technology on 866-869 MHz in a Region was intended to ensure that an ESMR band licensee not operate wideband technology on the same spectrum and in the same geography as yet-to-retune public safety licensees. The Commission's rule did not take into account the significant size of some NPSPAC Regions in establishing its restriction. Sprint's proposed broadband operations pursuant to this waiver would provide more than adequate distance separation from existing public safety operations and Sprint's proposed operations therefore run no risk of interference. Sprint's early deployment of broadband LTE serves the public interest by permitting Sprint to immediately operate 800 MHz LTE at hundreds of sites in the Northern parts of California where Sprint's customers demand improved network capacity, speed and reliability for both 3G/4G voice and data. Absent this waiver, 800 MHz ESMR band spectrum fully capable of serving thousands of Sprint's customers with the improved benefits of LTE would remain fallow in the Northern California NPSPAC Region until 800 MHz band reconfiguration is complete in faraway Inyo County in conjunction with the Southern California NPSPAC retune schedule.

Sprint's waiver also meets the Commission's second prong of its waiver standard given the unique factual circumstances of the instant case. Sprint has performed all of its obligations to complete 800 MHz band reconfiguration in the entire Northern California NPSPAC Region. Sprint has provided millions of dollars in funding and 800 MHz replacement spectrum for all public safety incumbents and only one public safety licensee remains. Completion of 800 MHz band reconfiguration in the entire Northern California NPSPAC Region is wholly outside of Sprint's control. It would be inequitable and unduly burdensome for Sprint and its wireless customers if Sprint were not permitted to deploy broadband LTE in Northern California in a manner that would fully protect ongoing public safety operations when Sprint has no ability to accelerate the Northern California public safety licensee's ability to complete 800 MHz band reconfiguration. In fact, the remaining public safety licensee, SBC, has no objection to Sprint being permitted to move forward with its LTE deployment in Northern areas of California fully separated from its ongoing operations. Continuing application of the Commission's restriction would prevent LTE operations, limit consumer choice and be contrary to the public interest.

For the foregoing reasons, Sprint requests this waiver in order that it can accelerate its broadband deployment to better serve its customers, consistent with the Commission's goals of expanded competitive wireless broadband availability, while fully protecting ongoing public safety operations in the 866-869 MHz portion of the 800 MHz band until they are fully retuned.

⁹ See Letter from Roger S. Noel, Chief, Mobility Division to James B. Goldstein, Sprint Corporation, dated November 25, 2013 (DA 12-2262).

Should there be any questions, please contact the undersigned.

Sincerely,

/s/ James B. Goldstein

James B. Goldstein
Senior Counsel
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Reston, VA 20196

Attachment B – List of Northern California
NPSAC Region 6 Counties Sprint Requests Waiver

Sprint Counties Included In FCC Waiver Request		Sprint Counties Included In FCC Waiver Request
Alameda		Napa
Alpine		Nevada
Amador		Placer
Butte		Plumas
Calaveras		Sacramento
Colusa		San Benito
Contra Costa		San Francisco
Del Norte		San Joaquin
El Dorado		San Mateo
Fresno		Santa Clara
Glenn		Santa Cruz
Humboldt		Shasta
Kings		Sierra
Lake		Siskiyou
Lassen		Solano
Madera		Sonoma
Marin		Stanislaus
Mariposa		Sutter
Mendocino		Tehama
Merced		Trinity
Modoc		Tuolumne
Mono		Yolo
Monterey		Yuba

Attachment C – List of Northern California
NPSPAC Region 6 Counties Excluded from Sprint Waiver Request

Sprint Counties Excluded From FCC Waiver Request
Inyo
Tulare