

August 11, 2014

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Improving Public Safety Communications In the 800 MHz Band,*
WT Docket No. 02-55; Notice of Ex Parte Communication

Dear Ms. Dortch:

This constitutes notice pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. §1.1206(b)(2), that on Friday, August 8, 2014, Brett Haan and Matt Dowell representing Deloitte Consulting LLP, Rear Admiral (Ret.) Jamie Barnett of Venable LLP, and I met with the following FCC personnel concerning the above-captioned matter: Erin McGrath, Legal Advisor to Commissioner O'Rielly; Louis Peraertz, Legal Advisor to Commissioner Clyburn; and Brendan Carr, Legal Advisor to Commissioner Pai.

Response to Statements Characterizing the 800 MHz Transition

In these meetings, Deloitte addressed recent *ex parte* communications by Sprint Corporation ("Sprint") concerning the agreed-upon process for reviewing Sprint's expenditures in connection with the 800 MHz band reconfiguration. Deloitte noted that Sprint's characterization of the process as "an unnecessary and unwarranted audit of the records of each state or local government public safety communications operator (or law enforcement agency) after it has completed the required retuning of its public safety communications system and is operating on the prescribed replacement channels" is inconsistent with the record in this proceeding.¹

¹ See, e.g., *Ex Parte* Notice to Marlene H. Dortch, Secretary, from James B. Goldstein, Sprint Corporation, in WT Docket No. 02-55 (filed July 17, 2014) (the "Sprint Letter").

Deloitte explained that the Commission's rules governing the 800 MHz band reconfiguration established certain financial controls that have been at the heart of the activities of the Transition Administrator ("TA") in this proceeding. These controls have their basis in the Commission's rules and the 800 MHz Report and Order, and were further developed by the TA in coordination with Sprint and formalized in a contract, as required by the Report and Order.² They may not be altered without Commission approval.

The Commission requires *inter alia* that (a) the TA review and approve each licensee's cost *estimate* as reasonable, prudent and directly related to the licensee's required retuning; (b) the licensee's *actual* cost expenditure be audited by the TA at the time of closing and reconciled with its approved cost estimate; and (c) the TA prepare a final statement of program expenditures to facilitate the calculation of any anti-windfall payment that might be due to the U.S. Treasury.³ The anti-windfall calculation requires a determination that Sprint has paid out at least \$2.8 billion in legitimate reimbursement of expenses, or else Sprint is obligated to pay the difference to the U.S. taxpayers.⁴

The Commission found that the procedures adopted for licensee reimbursement in connection with the 800 MHz band reconfiguration are necessary to ensure against waste, fraud and abuse, preventing licensees from "gold plating" at the expense of the program, and providing a sound basis for the anti-windfall calculation, while also ensuring that all licensees receive appropriate reimbursement of eligible expenses on a non-discriminatory basis.⁵ The goal of ensuring that licensees are reimbursed only for the cost of comparable facilities, minimizing waste, fraud and abuse, is *separate from and in addition to* the goal of correctly determining whether an anti-windfall payment is required of Sprint.⁶

The Commission's Incentive Auction Rules Confirm the Desire for Oversight

Deloitte pointed out that the Commission reaffirmed its commitment to sound program management as recently as May 15, when it adopted extensive rules governing

² *Improving Public Safety Communications In the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969, ¶199 (2004) ("Report and Order").

³ *Id.* at ¶¶196, 198.

⁴ *Id.* at ¶5.

⁵ *See, e.g., id.* at ¶¶198, 330.

⁶ *See, e.g., State of Indiana and Nextel Communications, Inc.*, Memorandum Opinion and Order 27 FCC Rcd 11469, 11473 (2012) ("Payments to licensees from Sprint must be limited to the minimum necessary cost of rebanding, regardless of whether or not Sprint claims credit for those payments in the final true-up.").

television licensee reimbursement procedures in the Incentive Auctions Order.⁷ Significantly, the Commission adopted a process for expense reimbursement very similar to the process employed in the 800 MHz proceeding, to protect the public interest as well as to prevent waste, fraud and abuse.⁸ The Commission found that basing reimbursement exclusively on estimated costs would be insufficient to accomplish its goals, and expressly endorsed requiring entities seeking reimbursement to document their expenses, subject to audit both during and after the statutory reimbursement period.⁹ The Commission stated that lack of proper documentation of expenses could result in disgorgement of improper payments after the close of the reimbursement program.¹⁰

The Role of Auditing Public Safety Licensee Reimbursements

Sprint asserts that the Commission did not intend an audit as part of the 800 MHz band oversight process.¹¹ In the Report and Order, the Commission expressly ordered the TA to provide annually an “audited statement of relocation funds expended to date.”¹² Thus, an audited statement of relocation funds has been required from the outset, under specific terms that were developed in coordination with both Sprint and the Commission.

The final program statement cannot be conducted until expense documentation, such as receipts, invoices, and timesheets, are provided by the public safety licensees, via Sprint, to the TA. Sprint has undertaken to obtain this documentation from the licensees, with whom it has contractual relationships. The examination of evidence such as actual receipts from licensees is necessary to confirm that reimbursed expenditures were reasonable and necessary within the guidelines of the program.

Importantly, while the TA has completed up-front reviews for each Frequency Relocation Agreement, this is only the first step in the Commission-ordered oversight process, based principally on cost estimates from the licensees. Not until the retuning has been completed, and the underlying documentation of actual expenses is provided, can the TA complete its review. Any prior determination of the applicability of an anti-windfall payment would be premature. In fact, Deloitte noted, retuning is still ongoing for a number of licensees, including some very large jurisdictions such as San Diego.

⁷ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, FCC 14-50 (rel. June 2, 2014) (the “Incentive Auctions Order”).

⁸ *Id.* at ¶¶605-17.

⁹ *Id.* at ¶¶631-32, ¶¶635-36.

¹⁰ *Id.* at ¶636.

¹¹ Sprint Letter at 1.

¹² Report and Order at ¶196. *See also id.* at ¶198 (“At the conclusion of system configuration the Transition Administrator will audit the amount expended...”).

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Thus far, the TA has determined approximately \$1.18 billion in public safety reimbursement expenditures made by Sprint to be creditable expenditures, coupled with approximately \$595 million in expenditures for clearing the 1.9 GHz spectrum of incumbents. That means that Sprint potentially could be \$1 billion short of validated expenditures in order to avoid an anti-windfall payment – a sum that would be owed to U.S. Treasury under the Report and Order if Sprint cannot adequately document its expenditures.

Finally, Deloitte advised the Commission that it cannot speak for the independent auditor. Changes to financial controls may impact the ability of that firm to complete the annual audits required under the terms of the program.¹³

Please direct any questions concerning this matter to me.

Very truly yours,



Karen Brinkmann
Counsel for Deloitte Consulting LLP

cc: Daniel Alvarez
Brendan Carr
David Goldman
Erin McGrath
Louis Peraertz
Rear Admiral David Simpson

¹³ See Report and Order, 19 FCC Rcd at 15073 & n. 515.