PUBLIC NOTICE

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FCC ANNOUNCES SUPPLEMENTAL PROCEDURES AND PROVIDES GUIDANCE FOR COMPLETION OF 800 MHZ REBANDING

WT Docket No. 02-55

By this *Public Notice*, the Federal Communications Commission (Commission) announces supplemental procedures and provides guidance for completion of 800 MHz rebanding by National Public Safety Planning Advisory Committee (NPSPAC) licensees. As part of the rebanding process, NPSPAC licensees are being relocated to new frequencies in the 800 MHz band, with all rebanding costs to be paid by Sprint Corporation (Sprint). The Commission's orders provide for the rebanding process to be completed by June 26, 2008.

The following procedures and guidelines are intended to expedite: (1) rebanding planning activities undertaken by NPSPAC licensees; (2) negotiation of Frequency Reconfiguration Agreements (FRAs) with Sprint; and (3) physical implementation of rebanding. This *Public Notice* also provides guidance to Sprint and the 800 MHz Transition Administrator (TA) to help expedite cost review and approval, and ultimately to ensure that rebanding is accomplished in a reasonable, prudent, and timely manner.

Completion of Planning

The following time limits shall apply to planning activities for NPSPAC licensees that have negotiated a Planning Funding Agreement (PFA) with Sprint or are engaged in planning without a PFA[1]:

- All NPSPAC licensees must complete planning (either with or without a PFA) and submit a cost estimate to Sprint in accordance with the following timelines:
  - NPSPAC licensees with systems of up to 5,000 subscriber units must complete planning and submit a cost estimate within 90 days of TA approval of the PFA.[2]
  - NPSPAC licensees with more than 5,000 units must complete planning and submit a cost estimate as follows:
    - 5,001-10,000 units: 100 days
    - Over 10,000 units: 110 days.[3]

[1] These planning timelines also apply to licensees who are reconfiguring Expansion Band frequencies in Stage 2.

[2] For licensees who conduct planning without a PFA, the TA shall designate an equivalent starting date for the planning period.

[3] Wave 4 licensees that are subject to deferred mediation due to pending international border issues will receive updated timelines once the revised band plans are available. Wave 4, Stage 2 licensees in mediation are subject to the timelines in this Public Notice.

- NPSPAC licensees in Waves 1-3 that are already engaged in planning on the release date of this Public Notice must complete planning and submit a cost estimate to Sprint as follows:[4]
  - Wave 1 – by October 15, 2007
  - Wave 2 – by November 15, 2007
  - Wave 3 – by December 15, 2007
- Sprint shall cooperate with and fully support NPSPAC licensee planning efforts in accordance with these time limits. We discourage licensees from requesting extensions of time for planning that assert arguments on behalf of Sprint. Requests for extension based on delay caused by Sprint will not be routinely granted.
- To facilitate completion of planning within these time limits, we advise NPSPAC licensees to provide in their contracts with equipment vendors and consultants that such vendors and consultants will make sufficient resources available to support licensee planning efforts. Licensee requests for extension of planning time based on claimed unavailability of vendor or consultant resources will not be routinely granted.
- Subject to the above limitations, a NPSPAC licensee may request that the Public Safety and Homeland Security Bureau (PSHSB) allow additional time for planning, but any such request must explain why more time is necessary as well as demonstrate that the licensee has exercised diligence in the time already allotted. Factors that will be considered in evaluating a request include system size and complexity, degree of interoperability with other systems, and level of effort required to prepare a reasonable cost estimate.
- During planning, NPSPAC licensees shall provide the TA with biweekly updates regarding the status of their planning activities in such form as the TA may request. The licensee's cost of preparing such updates shall be a recoverable cost from Sprint.

Frequency Reconfiguration Agreement Negotiations

The following time limits shall apply to FRA negotiations between NPSPAC licensees and Sprint:

- Following completion of planning and submission of a cost estimate to Sprint by the licensee, parties have 30 days to negotiate a FRA. Licensees shall complete their cost estimate in accordance with the Cost Estimate guidance provided by the TA.[5] Negotiations shall be subject to monitoring by the TA mediator, who shall confirm the date on which a cost estimate was submitted to Sprint, but the mediator is not required to participate in negotiations.
- If the parties are unable to negotiate an FRA within 30 days, the parties shall participate in mediation for 20 days. The TA shall refer any remaining disputed issues to PSHSB within 10 days of the close of the mediation period, during which time the parties will complete the briefing of such issues. In referring such disputes, the TA mediator shall provide a record summary to PSHSB, and shall provide a Recommended Resolution unless the Bureau notifies the mediator that a mediator recommendation is not required.

[4] In instances where these deadlines would result in a licensee having less than 90, 100, or 110 total days to complete planning (based on the size of its system) in accordance with this Public Notice, the 90, 100, and 110-day planning timelines established above will control. For example, a Wave 1 licensee with 1000 units that began planning on August 1, 2007 would have 90 days from that date, *i.e.*, until October 30, 2007, to complete planning.

[5] *See* http://www.800ta.org/content/documents/cost_estimate.asp.

Change Notice Process

The Change Notice process is designed to address unanticipated changes in cost, scope, or schedule that occur during implementation or in the case of an emergency.[6] Some NPSPAC licensees have expressed concern that uncertainty regarding the Change Notice process has prolonged initial planning and FRA negotiations. We therefore offer the following guidance with respect to the Change Notice process:

- The Change Notice process is subject to the Commission's *Rebanding Cost Clarification Order*.[7] Accordingly, the negotiation and approval of Change Notice requests should take into account the overall goals of this proceeding, not just the issue of minimum cost.[8]
- Licensees may not use the Change Notice process to recover costs that were reasonably foreseeable during planning or FRA negotiations but were not raised in negotiations, or that were considered and rejected. However, licensees that comply with the planning and FRA time limits discussed above may seek to recover costs incurred that could not reasonably be anticipated within such time limits.
- Licensees should submit Change Notice requests concurrently to Sprint and the TA.[9] To facilitate Change Notice review and approval, both Sprint and the TA should have requests reviewed by personnel that are already familiar with the licensee's FRA and rebanding requirements wherever possible.
- Sprint shall respond to all Change Notices requests within 10 working days of receipt. If negotiations are unsuccessful, either party may request mediation from the TA and parties shall participate in mediation for 15 working days, with any remaining disputes referred to PSHSB at that time. If parties agree to an amendment to their FRA, the TA shall review all such amendments within 10 working days from the date submitted by the parties for approval.

Rebanding Implementation

Rebanding implementation consists of: (1) replacement and retuning of subscriber equipment; (2) retuning of base stations to the licensee's new channel assignments and commencement of system operations on the new channels (sometimes referred to as the system "cutover"); and (3) additional post-cutover system modifications (e.g., disposal of temporary or legacy equipment, removal of pre-rebanding channels from subscriber units). NPSPAC licensees should initiate specific tasks and activities associated with these implementation steps as early in the rebanding process as possible. Some of these tasks can be initiated prior to the conclusion of FRA negotiations, and licensees should be prepared to proceed rapidly with implementation once the FRA is finalized. We encourage NPSPAC licensees to take the following steps:

- Use the resources offered by the TA to prepare for and expedite system reconfiguration. Guidance on key processes and procedures is available on the TA's website at http://www.800TA.org/org/reconfig_phase/reconfig1.asp.

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[6] *See* http://www.800ta.org/content/documents/change_notice.asp for TA procedures and recommended Change Notice forms.

[7] *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

[8] *Id.* at 9821 ¶ 8.

[9] Requests should be submitted using the TA's Change Notice Process Fact Sheet, available at http://www.800ta.org/content/PDF/forms/Change_Notice_Process_Fact_Sheet.pdf.

- Provide for early replacement/retuning of equipment.[10] Engage vendors and consultants in reconfiguration implementation and begin to replace or retune equipment as early as possible.
- Finalize contracts with vendors and consultants to ensure that equipment will be delivered and implementation work completed in accordance with the FRA rebanding schedule and FCC requirements.
- Create and distribute lists of key licensee personnel and contacts, as well as contacts for vendors, consultants, Sprint, and the TA. Designate an internal or vendor contact who will respond to requests from the TA for status updates regarding the implementation schedule and progress.
- Maintain an inventory of all subscriber and infrastructure equipment affected by rebanding, and verify the receipt of all loaner and replacement equipment.
- Notify Sprint when channels in the new NPSPAC band need to be made available to allow system testing or operation on the licensee's new channel assignments. Coordinate with Sprint regarding filing license modifications needed to add the new frequencies to the licensee's authorizations.
- For systems that use mutual aid channels, have a plan in place to maintain mutual aid operations during reconfiguration. Coordinate efforts to ensure continuity of mutual aid interoperability arrangements with neighboring licensees.
- Notify the TA if an issue affecting implementation is identified that vendors, consultants, or Sprint cannot quickly resolve, or that materially affects the implementation schedule.

Regional Implementation Planning

NPSPAC licensees and Sprint are encouraged to define implementation schedules, including the clearing of necessary frequencies for licensee reconfiguration and filing of license modifications, in the FRA wherever feasible. For licensees in areas with few, if any, other NPSPAC licensees; or licensees without significant interoperability dependencies, this should be a specific goal of the FRA negotiation. This will help reduce the amount of additional planning and planning resources required from all parties for subsequent efforts.[11]

As part of implementation preparation in certain (but not all) areas, the TA is conducting a series of NPSPAC rebanding implementation planning sessions for NPSPAC licensees on a regional or state-wide basis. NPSPAC licensees in such areas are expected to participate in these sessions, regardless of whether they have executed an FRA with Sprint. The purpose of the sessions is to develop a comprehensive implementation schedule, including proper identification of issues, risks, dependencies and next steps. We provide the following guidance to NPSPAC licensees attending planning sessions:

- Licensees should be prepared to discuss their overall timelines and implementation plans for reconfiguration, as well as interoperability, vendor commitments, and other dependencies, key assumptions, and open issues.

[10] Under the TA's Subscriber Early Deployment (SED) program, licensees may begin retuning/replacement of equipment prior to finalization of the FRA. Alternatively, licensees should initiate retuning/replacement as early as possible after the FRA is finalized.

[11] Licensees in Stage 2 reconfiguring only Expansion Band channels are expected to have implementation timelines included in their FRAs and will only be affected by Regional Implementation Planning if they participate extensively in an interoperability network.

- Licensees are encouraged to proceed with all possible reconfiguration implementation activities for their own systems while the regional planning process is under way.
- Licensees that have executed an FRA without an implementation schedule that can reconfigure their infrastructure in advance of the regional planning process and independently of other systems (such as a statewide mutual aid network) should notify both Sprint and the TA concurrently of the date by which channels in the new NPSPAC band need to be made available. *Sprint shall respond to all such requests with a schedule for making new NPSPAC channels available to the licensee within 15 working days.*
- Multiple licensees that propose to reconfigure as a coordinated group may present a single timeline and plan (even if they have separate FRAs).
- For licensees in mediation with Sprint, discussions at regional planning sessions will not be treated as part of the official mediation record.

Wave 4 Border Area Planning

As addressed in prior public notices, the negotiation periods for border area licensees in Wave 4 have been extended pending resolution of ongoing international discussions on US-Canada and US-Mexico border issues.[12]

- During this extended period, Wave 4 border area licensees are not required to engage in planning or negotiation prior to receipt of frequency designations from the TA.
- However, we encourage licensees to engage in such activities to the extent that they are not frequency-dependent and would not result in unnecessary duplication of costs. For example, border area licensees may conduct system inventories and develop plans for replacement and retuning of equipment.
- If licensees choose to engage in such activities, Sprint shall pay licensees' reasonable costs in accordance with the requirements of the Commission's orders in this proceeding.[13]

Public Safety Licensee Requests for Extension of 36-Month Deadline

Some public safety licensees have expressed concern that they will be unable to complete their system rebanding by the June 26, 2008 deadline established by the Commission. We offer the following guidance for public safety licensees who anticipate that they may need to file requests to extend the deadline:

- In general, we discourage public safety licensees from filing extension requests at this time. Requests that are filed may be held in abeyance pending further review of progress in rebanding implementation.

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[12] *See* Public Safety and Homeland Security Bureau Announces Extension of Negotiation Period between Sprint Nextel and Border Area NPSPAC Licensees in Wave 4, Stage 2 of 800 MHz Band Reconfiguration, WT Docket No. 02-55, DA 07-3468 (PSHSB July 31, 2007); Public Safety and Homeland Security Bureau Extends Negotiation Period between Sprint Nextel and Border Area Non-NPSPAC Licensees in Wave 4, Stage 1 of 800 MHz Band Reconfiguration, WT Docket No. 02-55, *Public Notice*, 22 FCC Rcd 11658 (PSHSB 2007).

[13] We clarify that this requires Sprint to pay all costs incurred by licensees in reasonable anticipation of rebanding. There is a remote possibility that the Commission's final rebanding plan for the border areas could result in some border licensees not needing to reband. However, given the likelihood that most if not all licensees will reband, allowing all licensees to proceed with rebanding planning prior to this contingency being resolved is likely to speed the transition, and therefore is a reasonable cost under the Commission's *Rebanding Cost Clarification Order*. *See Rebanding Cost Clarification Order*, 22 FCC Rcd at 9822 ¶ 9 (rebanding may proceed more efficiently "if rebanding tasks are initiated early in the process and carried on in stages throughout the process, even though this may be more costly than performing all of the rebanding work at once at a later date").

- Requests for extension will be subject to a high level of scrutiny. Licensees will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.
- Factors that will be considered in evaluating requests will include system size and complexity, degree of interoperability with other systems, and level of effort required to complete rebanding implementation.
- We clarify that public safety licensees do not need to file extension requests in order to be assured of continued funding by Sprint in the event that their rebanding activities extend past the 36-month deadline. Sprint is required to pay all licensee rebanding expenses that are reasonable, prudent, and necessary regardless of when such costs are incurred.[14] We direct the TA to approve FRAs that provide for recovery of rebanding costs incurred after June 26, 2008, provided such costs are otherwise recoverable under the TA's standards.

Contact Information

For further information, contact: Roberto Mussenden, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418-1428 or Roberto.Mussenden@fcc.gov; John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418-0848 or John Evanoff@fcc.gov.

Action by the Commission on September 11, 2007: By Commissioners Adelstein and McDowell; Chairman Martin and Commissioners Copps and Tate issuing separate statements.

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[14] This does not preclude the Bureau or Commission from requiring a licensee to pay its own rebanding costs based on a determination that the licensee has caused unjustified delay or has otherwise failed to meet its obligation to implement rebanding in good faith.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, Pennsylvania; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, Georgia, WT Docket No. 02-55, Third Memorandum Opinion and Order.*

FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket No. 02-55, Public Notice.

My goal for 800 MHz rebanding has been for it to proceed as quickly and effectively as possible. In light of that goal, the Commission has devoted significant resources to 800 MHz rebanding by working closely with all 800 MHz stakeholders – public safety, Sprint Nextel, equipment vendors, and the Transition Administrator – to resolve contested issues and expedite the pace of rebanding activity. To date, the Public Safety and Homeland Security Bureau has issued over 25 orders and public notices resolving disputes and provides guidance to negotiating licensees that we expect to help speed ongoing negotiations.

While the Commission has hoped to be further along, we are committed to ensuring that 800 MHz rebanding is completed in a timely manner while, at the same time, protecting full continuity of public safety operations during the transition. Today's actions demonstrate that commitment. Among other things, the Order finds that Sprint has not met its 18-month benchmark for clearing Channel 1-120 incumbents as required by the 800 MHz rebanding process, and imposes new benchmarks on Sprint, including monthly reports on its channel-clearing efforts, to bring the process back on track. The order also reaffirms Sprint's obligation to vacate its remaining spectrum in Channels 1-120, as well as other portions of the 800 MHz band that are to be made available to public safety, in accordance with prior Commission orders.

As the companion Public Notice makes clear, the obligation to complete the rebanding process does not fall on Sprint alone, but requires all stakeholders to redouble their efforts. The Commission will continue to do its part to ensure that the 800 MHz rebanding process is completed in a timely and efficient manner, minimizing the burden on public safety, and preserving public safety's ability to operate during the transition. To do otherwise would abdicate our responsibility at a time when it is more important than ever to ensure that first responders have the communications capabilities they need to provide for the safety of our nation and its citizens.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, Pennsylvania; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, Georgia, WT Docket No. 02-55, Third Memorandum Opinion and Order.*

FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket No. 02-55, Public Notice.

The two items we release today make clear that the Commission remains committed to bringing the 800 MHz rebanding process to a successful close and is more than willing to wade into the gritty details to encourage this result. Our goal has always been, and remains, to resolve the dangerous interference between commercial and public safety users as quickly as possible while still protecting ongoing operations in this band.

The two items we release today make clear that both sides of the table in the ongoing negotiations—industry and public safety—bear equal measures of responsibility to move forward expeditiously. We will not tolerate commercial users remaining in their existing section of the band too long, nor will we grant requests for extension from public safety users that have not acted diligently and expeditiously to move this process along.

I thank Chief Poarch and the Bureau for their hard work on these items.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: *Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, Pennsylvania; Petitions for Waiver of Rockdale County,* Newton County, City of Covington, Walton County, and Spalding County, Georgia, WT Docket *No. 02-55, Third Memorandum Opinion and Order.*

FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket No. 02-55, Public Notice.

As with our decision today on Enhanced 911 services, these two items on rebanding the 800 MHz band are both timely and important. The goal of this rebanding is to minimize interference between public safety and commercial users in this band. The public safety community uses this spectrum to fulfill its critical mission of protecting the lives, health, and property of all Americans, and to help ensure homeland security. Once rebanding is complete, public safety will be able to use this spectrum more effectively to support its mission, while commercial providers will be able to serve customers more effectively.

It is, therefore, of utmost importance that the transition continues on schedule. I believe the guidelines established in these items will help in that regard, and I urge all the parties involved in this effort to continue to work to complete this rebanding.

I thank the staff of the Public Safety and Homeland Security Bureau for their work on this important item.