



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES PROCEDURES FOR DE NOVO REVIEW IN THE 800 MHZ PUBLIC SAFETY PROCEEDING

WT Docket No. 02-55

Pursuant to the *800 MHz Report and Order* and subsequent orders in this docket,¹ the mandatory negotiation period for 800 MHz Channel 1-120 licensees in Wave 1 of the band reconfiguration process ended on December 26, 2005.² Licensees in this wave that did not complete negotiation of frequency reconfiguration agreements with Sprint Nextel Corporation (Sprint Nextel) by the December 27 deadline were referred to mandatory mediation of disputed issues under the Alternative Dispute Resolution procedures established by the 800 MHz Transition Administrator (TA).³ Pursuant to those procedures, the mediation process will conclude on February 8, 2006.

If the parties to a mediation fail to reach a mediated agreement during the mediation period, the *800 MHz Report and Order* provides that the TA will prepare its recommendation for disposition of remaining issues and forward the recommendation together with the record of the mediation to the Chief of the Public Safety and Critical Infrastructure Division (PSCID) for *de novo* review.⁴ This Public Notice describes the procedures associated with cases that are referred to PSCID for such review.

- 1) Within ten days of the conclusion of the mediation period, the TA will refer issues that have not been resolved in any mediation to the Chief of PSCID, and will forward the record in the case

¹ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*).

² See "Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration Will Commence June 27, 2005, in the NPSPAC Regions Assigned to Wave 1 and Specifies 800 MHz Reconfiguration Benchmark Compliance Dates," *Public Notice*, DA 05-1546, released May 27, 2005. Under the band reconfiguration plan, each of the fifty-five National Public Safety Planning Advisory Committee (NPSPAC) regions is assigned to one of four basic "prioritization waves" with staggered approximate starting dates. See "Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan," *Public Notice*, DA 05-619, released March 11, 2005. The three-month voluntary negotiation period for Channel 1-120 licensees in Wave 1 began on June 27, 2005 and the three-month mandatory negotiation period for these licensees began on September 28, 2005.

³ *800 MHz Report and Order*, ¶ 201. For the TA's ADR procedures, see <http://800ta.org/content/PDF/policy/ADRPlan.pdf>.

⁴ *800 MHz Report and Order*, ¶ 201.

along with the recommended decision or advice of the TA or mediator.⁵ PSCID will assign a file number to each case.

- 2) The TA may recommend, as part of its referral, that the parties to a particular case be given additional time to allow further negotiations under mediation. The TA may also seek a waiver of the requirement that the record of the case be forwarded to PSCID at the time the TA refers the matter to the Division.
- 3) In cases in which the TA forwards the record to PSCID, the TA may in its discretion designate portions of the record for which confidential treatment is sought pursuant to Section 0.459 of the Commission's rules.⁶ Any such document will not be available for public inspection unless and until it is requested pursuant to the Freedom of Information Act (FOIA)⁷ and the Commission has determined that the requested document does not fall within any of the FOIA exceptions. If a document contained in the record has already been granted confidential treatment in mediation, the TA will so designate and it will be presumed that the party who obtained confidential treatment in mediation also seeks confidential treatment by the Commission.
- 4) In cases in which the TA forwards the record to PSCID, the TA will notify the parties and announce a date, ten business days after such notification,⁸ by which each party may file a Statement of Position with the Chief of PSCID, stating the submitting party's position on disputed issues. The filing of Statements of Position is optional. Statements shall not exceed twenty pages, inclusive of all appendices, attachments, and exhibits, and shall comply with Section 1.49 of the Commission's rules.⁹ Statements must be strictly limited to issues raised in the course of mediation and facts contained in the record. Parties may not introduce facts not contained in the record or introduce arguments on issues that were not presented to the mediator for consideration during mediation. Any material not conforming to the foregoing restrictions will be stricken. Reply filings and filings by third parties are not permitted. Parties may file other documents or pleadings only if specifically requested by the Commission.
- 5) The *de novo* review proceeding is a restricted proceeding within the meaning of Section 1.1208 of the Commission's rules and *ex parte* presentations are prohibited.
- 6) Parties' statements and any other documents associated with the *de novo* review process shall be submitted electronically, in Portable Document Format (PDF), as an attachment to an email sent to the PSCID mailbox pscidreview@fcc.gov, with a copy thereof served electronically on the opposing party. These documents must also comply with Section 1.49 of the Commission's rules. Documents must not be filed using the Commission's Electronic Comment Filing System (ECFS).

⁵ See 47 C.F.R. § 90.677(d). While the rule does not specify the time period for referral of issues by the TA, it is within the discretion of PSCID to set this deadline.

⁶ See 47 C.F.R. § 0.459 (governing requests that materials or information submitted to the Commission be withheld from public inspection.)

⁷ See 5 U.S.C. § 552.

⁸ See 47 C.F.R. § 1.4(e)(2). Business days do not include Saturday, Sunday and days designated as Federal government holidays by the Office of Personnel Management. See <http://www.opm.gov/fedhol/index.asp>.

⁹ See 47 C.F.R. § 1.49 (specifying the typographical parameters of pleadings filed with the Commission.)

- 7) The first page of any statement or other document filed by a party shall be captioned with the name and address of the parties, the call signs of the relevant licenses and the file number assigned by PSCID.
- 8) A party may request confidential treatment of any document, or portion thereof, submitted in the *de novo* review process, pursuant to Section 0.459 of the Commission's rules.¹⁰ The document will not be available for public inspection unless and until it is requested pursuant to FOIA and the Commission has determined that the requested document does not fall within any of the FOIA exceptions.
- 9) Burden of proof:
 - Sprint Nextel shall bear the burden of demonstrating that proposed facilities are "comparable" within the meaning of the *800 MHz Report and Order*.
 - The licensee shall bear the burden of demonstrating that the cost of relocation is "the minimum necessary to provide facilities comparable to those presently in use" within the meaning of the *800 MHz Report and Order*.
 - Any party alleging bad faith on the part of another party shall bear the burden of proceeding and the burden of proof.
 - The burden of proceeding and proof on any other issues shall be specified by order of the Chief, PSCID.
- 10) Following completion of *de novo* review, the Chief, PSCID will issue a binding order disposing of all remaining issues and, if indicated, establishing schedules for compliance with the order.¹¹
- 11) If a party disputes all or part of the PSCID order, it may, within ten days of the effective date of the order, file a notice with the Commission to that effect specifying with particularity the issues it disputes. The Commission will issue a Hearing Designation Order setting the disputed issues for resolution in an evidentiary hearing before an Administrative Law Judge.¹² Parties also retain the right to file an Application for Review pursuant to Rule 1.115.
- 12) The Initial Decision of the ALJ is subject to further review as provided for in Section 1.276 of the Commission's rules.¹³

Parties are cautioned that breach of the good faith requirements imposed on all parties by the *800 MHz Report & Order* may subject them to involuntary modification of their license, relegation to secondary status, monetary forfeiture and other enforcement action including, but not limited to, loss of license.¹⁴

Information on the 800 MHz band reconfiguration process may be obtained by accessing the TA web site at www.800ta.org. For additional information, visit the WTB web site at www.800mhz.gov. If

¹⁰ See 47 C.F.R. § 0.459 (governing requests that materials or information submitted to the Commission be withheld from public inspection.)

¹¹ In lieu of deciding the case on the mediation record, the Chief may issue a Hearing Designation Order for commencement of an evidentiary hearing and a decision by a Commission Administrative Law Judge (ALJ). *800 MHz Report and Order*, ¶ 194.

¹² *Id.* Any such hearing would be governed by Sections 1.201-1.364 of the Commission's Rules, 47 C.F.R. §§ 1.201-1.364.

¹³ See 47 C.F.R. § 1.276.

¹⁴ *800 MHz Report and Order*, ¶ 201.

you have questions after consulting these resources, call WTB at 1-877-480-3201 and select option 2, or use the WTB web site esupport.fcc.gov to e-mail questions.

Action by the Acting Chief, Wireless Telecommunications Bureau.

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