

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket No. 02-55
)	
Requests for Interim Waiver of the June 26, 2008 Rebanding Deadline – Wave 4 Public Safety Regions (Non-Border))	
)	

ORDER

Adopted: June 17, 2008

Released: June 17, 2008

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this order, by delegated authority, we act on multiple requests by 800 MHz public safety licensees in non-border areas of Wave 4¹ for interim waiver of the June 26, 2008 deadline to allow the completion of rebanding planning, negotiation of Frequency Reconfiguration Agreements (FRAs), and the submission of final proposed rebanding schedules to the Commission.² We grant these interim requests to the extent set forth below, conditioned on each licensee, if necessary, filing a supplemental waiver request by the date specified for the licensee in Appendix A of this order that includes a proposed implementation timetable.³

¹ Wave 4 includes the following NPSAC Regions: Region 2 (Alaska), Region 3 (Arizona), Region 5 (Southern California), Region 21 (Michigan), Region 29 (New Mexico), Region 30 (Upstate New York), Region 33 (Ohio), Region 36 (Western Pennsylvania), Region 43 (Washington), Region 50 (West/Central Texas), Region 53 (Southern Texas), and Region 55 (Western New York). A list of all NPSAC regions and their corresponding geographic areas can be found at <http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc98191.txt>.

² Waiver requests by non-border Wave 4 licensees who have completed FRA negotiations and submitted proposed rebanding schedules will be addressed in a separate order. In addition, we do not address border area Wave 4 licensees, who have not received rebanding frequency assignments from the 800 MHz Transition Administrator (TA) due to their proximity to the U.S. - Canada or U.S. - Mexico border. These border area licensees are not subject to the June 26, 2008 deadline. The Bureau has established a separate rebanding timeline for the Canadian border region, Improving Public Safety Communications in the 800 MHz Band, *Second Report and Order*, WT Docket 02-55, 23 FCC Rcd 7605 (PSHSB 2008), and will establish a rebanding timeline for the Mexican border region at a later date.

³ On May 1, 2008, Sprint Nextel Corporation (Sprint) filed a request for waiver to remain temporarily on Channel 1-120 channels that are designated for assignment to NPSAC licensees that receive waivers of the June 26, 2008 deadline. Request for Waiver by Sprint Nextel Corporation, filed May 1, 2008. We will address Sprint's waiver request separately.

II. BACKGROUND

2. In the 800 MHz Report and Order and subsequent orders in this proceeding, the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band.⁴ These orders mandate that 800 MHz licensees in non-border areas must complete their rebanding by June 26, 2008.⁵ However, the Commission has also established a waiver process for licensees that are unable to complete rebanding by the deadline, and has delegated authority to the Public Safety and Homeland Security Bureau (PSHSB) to act on such waiver requests.⁶

3. On January 17, 2008, the Commission released a *Public Notice* that established procedures and provided guidance for submission of requests to waive the deadline.⁷ The Commission recommended that licensees seeking waivers provide the Commission with a proposed timetable for completion of rebanding. However, the Commission also recognized that some licensees might be unable to propose a timetable because they had not yet negotiated their FRAs with Sprint. The Commission stated that such licensees should file interim waiver requests stating “when the licensee anticipates having an FRA and filing a final waiver request that will include a proposed timetable.”⁸ The Commission set April 15, 2008 as the deadline for non-border licensees in Wave 4 to submit either an interim or a final request.⁹

III. DISCUSSION

4. The Commission has stated that requests for waiver of the June 26, 2008 deadline “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.”¹⁰ We have reviewed each of the Wave 4 interim waiver requests in accordance with this standard.

5. We first address those licensees in Wave 4 that seek interim waivers to complete planning, negotiate their FRAs, and provide the Commission with their proposed timetables on or before July 18, 2008.¹¹ After review of these requests, we find that each of these licensees has demonstrated a sufficient level of diligence and good faith warranting grant of the requested interim waiver. Moreover, we find that the limited amount of time that each licensee seeks is no more than is reasonably necessary to complete the planning and negotiation process and submit a comprehensive waiver request with a

⁴ See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*); *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*); *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005); *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007); *Third Memorandum Opinion and Order*, 22 FCC Rcd 17209 (2007) (*800 MHz 3rd MO&O*). The *800 MHz 3rd MO&O* was recently affirmed by the U.S. Court of Appeals. *Sprint Nextel Corporation v. FCC*, 524 F.3d 253 (D.C. Cir. 2008).

⁵ *800 MHz Report and Order*, 19 FCC Rcd at 15130, ¶ 347.

⁶ *800 MHz 3rd MO&O*, 22 FCC Rcd at 17223 ¶ 48.

⁷ Federal Communications Commission Provides Guidance for Submission of Requests for Waiver of June 26, 2008 Deadline for Completion of 800 MHz Rebanding, *Public Notice*, 23 FCC Rcd 664 (2008) (*Waiver Guidance Notice*).

⁸ *Id.* at 666.

⁹ *Id.* at 665.

¹⁰ FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, *Public Notice*, 22 FCC Rcd 17227, 17232 (2007).

¹¹ See Appendix A.

proposed timetable. We therefore grant these interim requests, conditioned on each licensee filing a supplemental waiver request by the interim date specified in Appendix A that includes a proposed implementation timetable as set out in the *Waiver Guidance Notice*.¹² The timetable should include proposed milestone dates for completion of (1) retuning, reflashing, and/or replacement of subscriber equipment (subscriber equipment deployment); (2) retuning of base stations to the licensee's new channel assignments and commencement of system operations on the new channels (system "cutover"); and (3) additional post-cutover system modifications (e.g., disposal or return of temporary or legacy equipment, removal of pre-rebanding channels from subscriber units).¹³ Upon filing of a timely waiver request that meets these criteria, the interim relief granted by this order will extend until the Bureau acts on the request.

6. Some Wave 4 licensees have requested interim waiver dates that are now past, but have not subsequently filed a proposed timetable or any other supplemental filings.¹⁴ As specified in Appendix A, we require each of these licensees to file a supplemental waiver request to the Bureau with a proposed timetable meeting the *Waiver Guidance Notice* criteria within 30 days of the release of this order.

7. We apply a higher level of scrutiny to those licensees in Wave 4 that failed to specify interim dates or requested dates beyond July 18, 2008 to complete their planning, FRA negotiations, and submit a waiver request to the Commission with a proposed timetable.¹⁵ We recognize that there are a variety of factors that may justify longer planning and negotiation periods for these licensees, including system size and complexity, coordination of planning issues with other licensees, and prior delays in the rebanding process outside the licensee's control. However, while we understand that the planning and FRA negotiation process can be complex and time-consuming, it is also important to the continued progress of rebanding in Wave 4 that these licensees expedite their efforts to develop proposed timetables for rebanding their systems. We also believe that by July 18, 2008, all of these licensees should be sufficiently far along with their planning to be able to provide projected milestone dates for completion of the major steps in the rebanding process.

8. We therefore grant interim relief to each of these licensees, conditioned on the licensee submitting a supplemental waiver request by July 18, 2008 that includes a proposed rebanding timetable as set out in the *Waiver Guidance Notice*.¹⁶ As discussed above, the timetable should include proposed milestone dates for completion of subscriber equipment deployment, system cutover, and post-cutover

¹² See *Waiver Guidance Notice*, 23 FCC Rcd at 665-666. We recommend that licensees use the template form developed by the TA to submit their supplemental waiver requests and supporting timetable information. The template is available at www.800ta.org/content/documents/rebanding_deadline_extension_process.asp.

¹³ In some cases, NPSPAC licensees will continue to operate and support operations on the five nationwide mutual aid channels in the old NPSPAC band after they have completed their own system cutovers to the new NPSPAC band, and will maintain the old mutual aid channels until rebanding by all NPSPAC licensees in a region is complete. In such cases, we clarify that a licensee submitting a proposed timetable should specify dates relating to the rebanding of the licensee's own system (e.g., the licensee's own system cutover date), but is not required to specify a date for the rebanding of the five mutual aid channels.

¹⁴ The licensees are Santa Fe, New Mexico, Hobbs/Lea County, New Mexico; Albuquerque, New Mexico (Region 29); and Midland, Texas (Region 50).

¹⁵ See Appendix A. The licensees are Signal Hill, California; State of California (Region 5); State of New Mexico (Region 29); Cincinnati, Ohio; Hamilton County, Ohio; Dayton County, Ohio; Clinton County, Ohio; Warren County, Ohio (Region 33); Pennsylvania State University (Region 36); VIA Metro Transit, Texas; Corpus Christi, Texas; and San Antonio/Bexar County, Texas (Region 53).

¹⁶ See *Waiver Guidance Notice*, 23 FCC Rcd at 665-666. Licensees may amend their waiver requests after July 18, 2008 to revise their proposed milestone dates should such revision be warranted based on subsequent developments (e.g., scheduling information resulting from a subsequently negotiated FRA or a subsequent TA-sponsored Implementation Planning Session).

system modifications.¹⁷ The timetable should also include the amount of additional time that the licensee estimates is reasonably required to complete planning and negotiate its FRA. Upon filing of a timely supplemental waiver request that meets these criteria, the interim relief granted by this order will extend until the Bureau acts on the request.

9. *Chandler, Arizona (Region 3)*. Chandler, Arizona filed a request for interim waiver in which it seeks to have its rebanding deadline governed by the Wave 4 timetable for licensees in the Mexican border region, which has yet to be established.¹⁸ Although Chandler is outside the border region and has received replacement channel assignments from the TA, Chandler notes that it is close to the edge of the border region and that its system interoperates extensively with the Phoenix, Arizona system. Because rebanding of the Phoenix system will be governed by the border area timetable, Chandler contends that it should also be treated as a border area licensee so that rebanding of the two systems can be coordinated.¹⁹ We agree that under the circumstances, Chandler should be allowed to coordinate its rebanding timetable with Phoenix. Therefore, we grant a waiver to Chandler pending establishment of a rebanding timetable for Mexican border region licensees, which will apply to Chandler.

IV. ORDERING CLAUSE

10. Accordingly, pursuant to the authority of Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the requests for interim waiver of the June 26, 2008 deadline submitted by the licensees listed in Appendix A of this order are GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Associate Bureau Chief
Public Safety and Homeland Security Bureau

¹⁷ See ¶ 5, *supra*.

¹⁸ See Chandler Waiver Request at 1.

¹⁹ *Id.*

APPENDIX A

Region 5 (Southern California)

Licensee	Call Sign/Lead Call Sign	Date Interim Waiver Request Filed	Interim Extension Date Requested	Interim Extension Date Granted
Signal Hill, CA	WNVG202	April 15, 2008 (amended request filed June 13, 2008)	September 15, 2008	July 18, 2008
State of California	KNCM771	April 15, 2008	July 7, 2008	July 7, 2008

Region 29 (New Mexico)

Licensee	Call Sign/Lead Call Sign	Date Interim Waiver Request Filed	Interim Extension Date Requested	Interim Extension Date Granted
Santa Fe, NM	WQHN231	March 17, 2008	May 5, 2008	30 days from release of this Order
City of Hobbs/Lea County, NM	WPK1557	April 15, 2008	May 15, 2008	30 days from release of this Order
State of New Mexico	WPHY364	April 15, 2008 (amended request filed May 15, 2008)	October 24, 2008	July 18, 2008
Albuquerque, NM	KNNP951 WNSS410 WPMU757 WPMX854	April 15, 2008	June 15, 2008	30 days from release of this Order

Region 33 (Ohio)

Licensee	Call Sign/Lead Call Sign	Date Interim Waiver Request Filed	Interim Extension Date Requested	Interim Extension Date Granted
Cincinnati, OH	WQGU619 WQGU623	April 10, 2008	July 31, 2008	July 18, 2008
Hamilton County, OH	WQAF265 WQAF267 WPMB254 WPFS987	April 14, 2008	July 31, 2008	July 18, 2008
Dayton, OH	WNCA303	April 15, 2008	December 15, 2008	July 18, 2008
Clinton County,	WPPQ890	April 15, 2008	July 5, 2008	July 5, 2008

OH	WPF217			
Warren County, OH	WNR449	April 15, 2008	No date	July 18, 2008

Region 36 (Western Pennsylvania)

Licensee	Call Sign/Lead Call Sign	Date Interim Waiver Request Filed	Interim Extension Date Requested	Interim Extension Date Granted
Penn State Univ., PA	WPAL490 WPF219	April 15, 2008	November 17, 2008	July 18, 2008

Region 50 (West/Central Texas)

Licensee	Call Sign/Lead Call Sign	Date Interim Waiver Request Filed	Interim Extension Date Requested	Interim Extension Date Granted
Midland, TX	WPEH502	April 15, 2008	May 30, 2008	30 days from release of this Order

Region 53 (Southern Texas)

Licensee	Call Sign/Lead Call Sign	Date Interim Waiver Request Filed	Interim Extension Date Requested	Interim Extension Date Granted
VIA Metro Transit	WPMP597 WPMP592	April 15, 2008	August 31, 2008	July 18, 2008
Corpus Christi, TX ²⁰	WPWX340	April 15, 2008 (amended request filed May 30, 2008)	September 30, 2008	July 18, 2008
San Antonio/Bexar County, TX	WNGU984 WPMD614	April 15, 2008 (amended request filed May 30, 2008)	September 30, 2008	July 18, 2008
Live Oak, TX	WPWD493	April 15, 2008 (amended requests filed May 30, 2008 and June 16, 2008)	July 8, 2008	July 8, 2008

²⁰ The Corpus Christi filing covers Kingsville, Nueces County, and San Patricio County, Texas.