

**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 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 waiver of the June 26, 2008 deadline for the completion of 800 MHz rebanding.² Our specific action with respect to each request is listed in Appendix A of this order.³

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

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 In this order we only address requests for waivers from entities in non-border areas of NPSAC regions in Wave 4. 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.

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*

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 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 provide certain information in their requests, and encouraged the use of a template form developed by the 800 MHz Transition Administrator (TA) for this purpose.⁸ The Commission also set April 15, 2008 as the deadline for non-border licensees in Wave 4 to submit their requests.⁹

III. DISCUSSION

3. 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 waiver requests in accordance with this standard. More specifically, we have considered the following factors identified by the Commission as pertinent to such requests:

- System size and complexity.
- Interoperability with other systems in the region, and how such interoperability will affect the ultimate rebanding schedule.
- Steps already taken to complete physical reconfiguration, including participation in the Subscriber Equipment Deployment (SED) program.
- Participation (or commitment to participate) in the TA’s regional Implementation Planning Session (IPS) for the licensee’s Public Safety Region.¹¹

4. We first address the waiver requests of Wave 4 licensees that propose to complete their rebanding between June 26, 2008 and July 1, 2009 and have requested waiver dates accordingly.¹² We grant waiver dates requested by these licensees. After review of the requests, we find that each of these licensees has taken substantial steps towards completion of the rebanding process and has demonstrated a level of diligence and good faith warranting the requested extension. Moreover, we find that the amount of time that each of these licensees seeks is no more than is reasonably necessary to complete the rebanding process.

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 To date, no IPS session has been held in Wave 4.

¹² See Appendix A. The licensees are Glenville, New York; Rensselaer County, New York (Region 30); Clermont County, Ohio; Jefferson County, Ohio; Belmont County, Ohio; Allen County, Ohio; Harrison County Sheriff, Ohio (Region 33); Yakima, Washington (Region 43); San Angelo, Texas (Region 50); Lockhart, Texas and Victoria, Texas (Region 53).

5. With respect to the remaining waiver requests filed by Wave 4 licensees, we grant relief as set forth below and in Appendix A:

6. *Flagstaff, Arizona (Region 3)*. Flagstaff requests a rebanding extension without proposing milestone dates or a final extension date. However, Flagstaff indicates that it only requires a waiver for purposes of rebanding the NPSPAC mutual aid channels.¹³ As discussed below, licensees do not need to seek waivers for continued operation and support of operations on the five nationwide mutual aid channels in the old NPSPAC band.¹⁴ We therefore find that Flagstaff does not require a waiver for this purpose, and dismiss its request without prejudice.

7. *Oxford, Ohio (Region 33)*. In a request filed prior to the *Waiver Guidance Notice*, Oxford states that it has contracted with Motorola to construct a new multi-agency, interoperable system that will combine its 800 MHz frequencies and the 800 MHz frequencies licensed to several public safety agencies in the surrounding area.¹⁵ Oxford seeks to deploy the new system on post-rebanding 800 MHz frequencies, with initial deployment occurring in May 2008 and a tentative completion date of December 18, 2008. Oxford therefore requests a waiver to operate its current system on pre-rebanding frequencies until the December 18 completion date for the new system, thereby avoiding the burden and expense of rebanding the current system only a few months prior to its replacement.¹⁶ We conclude that under these circumstances, requiring Oxford to reband its current system would impose unnecessary cost and would frustrate rather than promote rebanding.¹⁷ We find that grant of the waiver is in the public interest and will have very limited effect on the overall rebanding timetable. Therefore, we grant Oxford's request for an extension until December 18, 2008.

8. *Cumberland County, Pennsylvania (Region 36)*. Cumberland County requests an extension for completion of rebanding without proposing either interim milestone dates or a final extension date in accordance with the *Waiver Guidance Notice*. We hold this waiver request in abeyance and direct Cumberland County to supplement its request within 30 days of the release date of this order by submitting a waiver request that includes proposed milestone dates for subscriber unit deployment, system cutover, and post-cutover modifications.

9. *Further Extension Requests/Progress Reports*. We hold open the option of extending the above waivers upon further request and showing of good cause.¹⁸ Any licensee submitting a further waiver request must submit the request prior to the expiration of the waiver granted to such licensee by this order, and will be expected to demonstrate that it has 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. Upon filing of a timely further waiver request, the relief granted by this order will extend until the Bureau acts on the request. We also direct licensees that are subject to this order to provide progress reports to the TA on a quarterly basis unless the TA determines that more frequent reports are required.

10. *NPSPAC Mutual Aid Channels*. As noted above, we clarify that licensees do not need to seek waivers for continued operation and support of operations on the five nationwide mutual aid channels in the old NPSPAC band after they have completed their own rebanding. Licensees may continue to operate and maintain infrastructure that supports the five mutual aid channels until all

¹³ See Letter attached to Flagstaff Waiver Request.

¹⁴ See ¶ 10, *infra*.

¹⁵ Oxford, Ohio Request for Waiver, filed August 20, 2007.

¹⁶ *Id.*

¹⁷ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007).

¹⁸ For example, licensees may seek further extensions if their proposed implementation dates are derived from a subsequent TA-sponsored Implementation Planning Session for the region.

NPSAC licensees in the region have completed rebanding of their own systems, provided that they notify the TA of such continued mutual aid operations.

IV. ORDERING CLAUSE

11. 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 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

APPENDIX A

Region 3 (Arizona)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
Flagstaff, AZ	WPXR681	April 14, 2008	No date	Dismissed without prejudice

Region 30 (Upstate New York)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
Glenville, NY	WPTC845	May 29, 2008	September 26, 2008	September 26, 2008
Rensselaer County, NY	WPJS218 WPYW908	February 22, 2008	December 31, 2008	December 31, 2008

Region 33 (Ohio)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
Allen County, OH	WPUD609	May 15, 2008	August 31, 2008	August 31, 2008
Belmont County, OH	WPIX608	March 17, 2008	September 30, 2008	September 30, 2008
Clermont County, OH	WPGU289 WPGU291 WPRU455 WPRU714	April 23, 2008	October 27, 2008	October 27, 2008
Harrison County, OH	WPMB710	March 25, 2008	October 1, 2008	October 1, 2008
Jefferson County, OH	WPHM479	April 15, 2008	August 15, 2008	August 15, 2008
Oxford, OH	WPPD256	August 20, 2007	December 18, 2008	December 18, 2008

Region 36 (Western Pennsylvania)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
Cumberland County, PA	WPIS654	April 7, 2008	No date	Held in abeyance – Provide milestone dates within 30 days of this Order

Region 43 (Washington)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
Yakima, WA	WNMH779	April 9, 2008	December 31, 2008	December 31, 2008

Region 50 (West/Central Texas)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
San Angelo, TX	WPJG225	April 15, 2008	August 1, 2008	August 1, 2008

Region 53 (Southern Texas)

Licensee	Call Sign/Lead Call Sign	Date Waiver Request Filed	Extension Date Requested	Extension Date Granted
Lockhart, TX ¹⁹	WPLP814	March 17, 2008	March 31, 2009	March 31, 2009
Victoria, TX	WPWX285	April 23, 2008	August 31, 2008	August 31, 2008

¹⁹ The Lockhart request also covers Caldwell County, Texas.