



Federal Communications Commission
Washington, D.C. 20554

April 10, 2009

By Facsimile and First-Class Mail

Alan S. Tilles, ESQ.
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
11921 Rockville Pike, 3rd Floor
Rockville, MD 20852

DA 09 – 788

Re: Request for Waiver and Extension of 800 MHz Construction Requirements, File No. 0003507658.

Dear Mr. Tilles:

This letter addresses the above-captioned Request for Waiver and Extension of 800 MHz Construction Requirements (Waiver Request), filed on behalf of Northwest Airlines, Inc. (Northwest) on July 17, 2008, seeking a waiver of the construction requirements¹ for a period of one year for two 800 MHz frequencies associated with call sign WPYD855.² As discussed below, we grant-in-part Northwest's Waiver Request by extending its construction deadline until (a) six months after the Transition Administrator (TA) has specified a channel or channels, if that channel or those channels can be used, in advance of band reconfiguration in the region, without causing interference; or, (b) if the (newly-assigned) channel(s) cannot be activated without interference to other systems, then six months measured from the date band reconfiguration is completed in the relevant NPSPAC Region(s) associated with a given license.

In March 2002, the Commission initiated a rule making proceeding to respond to growing concern that cellular-architecture 800 MHz land mobile, and 800 MHz cellular systems were causing interference to public safety and other 800 MHz licensees using "high-site" architecture.³ To resolve the problem, cellular architecture and high-site architecture systems are being spectrally segregated in the 800 MHz band.⁴ This "rebanding" requires some 800 MHz incumbents to modify their systems to operate on "replacement channels" specified by the TA. The Commission, in the *Rebanding Report and Order*, envisioned a situation where a licensee would face both a pending construction deadline and pending relocation. Specifically, the Commission stated that, because the 800 MHz rebanding will occur incrementally in fifty-one geographic "NPSPAC" regions,

"[s]ome incumbent 800 MHz licensees may face construction deadlines prior to their being scheduled for relocation. To resolve this issue we will allow licensees which are ready to construct and waiting only for assignment of their new channel to submit a waiver request

¹ Northwest indicates that it requests a waiver of section 90.629 of the Commission's rules. However, section 90.629 pertains to extended implementation. We note that Northwest was not granted extended implementation and therefore conclude its request for waiver pertains to section 90.631, which involves the construction requirements for 800 MHz licenses such as the one held by Northwest. *See* 47 C.F.R. §§ 90.629 and 90.631.

² *See* File No. 0003507658. The frequencies are 861.1125 and 862.1125 MHz.

³ *See* Improving Public Safety Communications in the 800 MHz Band, *et al.*, WT Docket 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 7169 (2002).

⁴ Improving Public Safety Communications in the 800 MHz Band, *et al.*, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, *et al.*, 19 FCC Rcd 14969 (2004) (*Rebanding Report and Order*).

demonstrating that they have commenced construction, e.g., have on hand, or have placed a firm order for, non-frequency sensitive equipment, have erected a tower, obtained a commitment for tower space, etc.”⁵

In addition, the Commission stated that an incumbent licensee may seek extension “of the construction period until (a) six months after the TA has specified a channel or channels if that channel or those channels can be used in advance of band reconfiguration in the region, without causing interference; or (b) if its (newly-assigned) channel(s) cannot be activated without interference to other systems, then, six months measured from the date band reconfiguration is completed in the relevant NPSPAC region(s).” The Commission also stated that its waiver rules will apply and that any waiver request will be evaluated particularly on how well the licensee establishes “good cause” for granting such a waiver.⁶ More recently, the Public Safety and Homeland Security Bureau (PSHSB) established a reconfigured 800 MHz band plan in the U.S. – Canada border regions.⁷ The *U.S. – Canada Border Regions Order* establishes a 30-month transition period for rebanding to be completed.⁸

Northwest’s construction deadline for the two frequencies was July 23, 2008. Northwest states that both frequencies are needed at the Detroit, Michigan airport to increase its communications capabilities.⁹ In seeking a waiver and extension of time of the construction deadline, Northwest states that since the *U.S. – Canada Border Regions Order* was adopted it is now entering into negotiations with Sprint/Nextel to reband its frequencies and is also waiting for assignment of replacement channels to be assigned by the TA.¹⁰ Furthermore, Northwest indicates that it will be in a position to meet its construction requirements within one year of its current construction deadline.¹¹ Finally, Northwest requests that its construction period be tolled while its Waiver Request is pending.¹²

Instead of granting the one year extension outlined in Northwest’s Waiver Request, we grant the relief specified by the Commission in the *Rebanding Report and Order*.¹³ Specifically, because we find that Northwest faces the situation that the Commission envisioned and provided for in the *Rebanding Report and Order*, we grant a waiver until (a) six months after the Transition Administrator has specified a channel or channels, if that channel or those channels can be used, in advance of band reconfiguration in the region, without causing interference; or, (b) if the (newly-assigned) channel(s) cannot be activated without interference to other systems, then six months measured from the date band reconfiguration is completed in the relevant NPSPAC Region(s) associated with a given license. Consistent with the guidance in the *Rebanding Report and Order*, we find that Northwest has taken steps to be ready to

⁵ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 205 (footnote omitted).

⁶ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 206 (citing 47 C.F.R. § 1.925). Pursuant to Section 1.3, the Commission may waive its rules if there is “good cause” to do so and if certain other criteria are satisfied. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990). In the context of 800 MHz Rebanding, the Commission defines “good cause basis” as a showing that the licensee would have constructed but for the fact that the band reconfiguration would affect its proposed facilities. *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 206.

⁷ Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for U.S. – Canada Border Regions, *Second Report and Order*, WT Docket 02-55, DA 08-1094 (*U.S. – Canada Border Regions Order*), released May 9, 2008.

⁸ *Id.* at ¶ 42.

⁹ Waiver Request at 2. The locations for both frequencies are included in the U.S. – Canada border regions.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 206.

construct its frequencies and is waiting for assignment of its new channels.¹⁴ Furthermore, we find that requiring Northwest to construct its frequencies prior to reconfiguration would not be in the public interest because it may result in the type of interference the Commission sought to resolve in the *Rebanding Report and Order* and could be unreasonably burdensome. As a final matter, we find no basis to toll Northwest's construction period because Northwest has not demonstrated why such a tolling period is necessary. Consistent with the Commission's *Rebanding Report and Order*, we believe the relief granted provides an appropriate amount of time for Northwest to meet its construction deadlines.

For the reasons stated above, the Request for Waiver and Extension of the 800 MHz Construction Requirements filed by Northwest Airlines, Inc. is granted to the extent outlined above for the two frequencies (861.1125 MHz and 862.1125 MHz) associated with call sign WPYD855. This action is taken under delegated authority pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331, 1.925, and 90.631 of the Commission's rules.¹⁵

Sincerely,

Thomas P. Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁴ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 205 (footnote omitted).

¹⁵ 47 C.F.R. §§ 0.331, 1.925, and 90.631