

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

In the Matter of	)	
	)	
City and County of San Francisco	)	File Nos. 0004184946 and 0004184956
Modification Applications 800 MHz Stations	)	
WQKE739 and WQKE988	)	

ORDER

Adopted: July 23, 2010**Released: July 23, 2010**

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Order*, we grant a petition for reconsideration (Petition) filed by the City and County of San Francisco (collectively, San Francisco) on May 14, 2010¹ seeking reconsideration of dismissal of applications for modification of license seeking extended implementation for stations WQKE739 and WQKE988.²

II. BACKGROUND

2. The *800 MHz Report and Order* and subsequent orders in this docket require Sprint to relinquish all of its 800 MHz spectrum holdings below 817/862 MHz as part of band reconfiguration.³ In January 2008, the Bureau opened a filing window to allow public safety entities to apply for some of this vacated spectrum.⁴

3. San Francisco received authorization to operate using Sprint-vacated channels on Stations WQKE739 and WQKE988 in April 2009.⁵ On March 24, 2010, San Francisco filed the applications at issue, which sought extended implementation for these stations.⁶

4. In April 2010, the Bureau dismissed the applications citing San Francisco's lack of activity in building a network. The Bureau stated, "[b]ecause of the limited amount of vacated spectrum it was the intent to license the channels to those who would quickly implement new systems and expand existing

¹ Petition for Reconsideration filed, May 14, 2010 by the City and County of San Francisco (Petition).

² See File No. 0004184956 (filed March 24, 2010) and File No. 0004184946 (filed March 24, 2010) and attached Applications for Extended Implementation.

³ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969, 14977 ¶ 11.

⁴ See Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures For Channels Relinquished By Sprint Nextel Corporation In the 809-809.5/854-854.5 MHz Band, *Public Notice*, 23 FCC Rcd 18343, WT-Docket 02-55 (PSHSB 2008) (Vacated Spectrum Public Notice).

⁵ See Application for Station WQKE988, File No. 0003799924 and Application for Station WQKE739, File No. 0003789143.

⁶ See Applications for Extended Implementation

systems.”⁷ The Bureau found that San Francisco did not warrant extended implementation because “[d]uring the first year of the authorization you failed to procure the radio equipment for these licenses or otherwise take an affirmative step to construct, rather you chose not to construct but to combine this license with another project, instead of putting the channels to use for Public Safety operations.”⁸

5. San Francisco argues that this decision is inconsistent with the Commissions’ policies governing extended implementation and vacated spectrum.⁹ San Francisco contends that the project in which the spectrum will be used is funded, is on schedule to be completed in approximately three years, and is essential for its public transportation system.¹⁰

III. DISCUSSION

6. Section 90.155 of the Commission’s rules requires licensees to place all authorized stations into operation within twelve months of the grant date.¹¹ Section 90.629 of the Commission’s rules, however, provides an exception to the twelve-month construction requirement when licensees can justify extended implementation of their systems:

(a) [t]he justification must describe the proposed system, state the amount of time necessary to construct and place the system in operation, identify the number of base stations to be constructed and placed in operation during each year of the extended construction period and show that:

(1) The proposed system will require longer than twelve months to construct and place in operation because of its purpose, size or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve months to plan, approve, fund, purchase, construct and place in operation; or

(3) The applicant is required by law to follow a multi-year cycle for planning, approval, funding and purchasing the proposed system.¹²

Although extended implementation is not prohibited on Sprint-vacated channels,¹³ the Bureau has cautioned that, due to the limited number of available channels, it would not routinely grant requests for extended implementation and such requests were subject to a high level of scrutiny.¹⁴

⁷ See Letters dated April 16, 2010 from Public Safety and Homeland Security Bureau to Wai C. Tom, City and County of San Francisco.

⁸ *Id.*

⁹ See Petition at 1.

¹⁰ *Id.* at 5.

¹¹ 47 C.F.R. § 90.155.

¹² 47 C.F.R. § 90.629.

¹³ See Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015, 16055 ¶ 89 (2005).

¹⁴ See Vacated Spectrum Public Notice.

7. On review of San Francisco's initial extended implementation showing and its Petition, we conclude that the staff should not have dismissed the applications. The record demonstrates that San Francisco is not attempting to warehouse spectrum. It has shown that its project is fully funded and has provided a detailed schedule for each project milestone, with final system acceptance expected in June 2013.¹⁵ We thus are persuaded that San Francisco has shown that the complexity of its system—and the need to integrate it into an existing wide-area system—will reasonably require more than 12 months.¹⁶ We are therefore granting the Petition and restoring the applications to pending status *nunc pro tunc*.

IV. ORDERING CLAUSES

8. Accordingly, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i); and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by the City and County of San Francisco is GRANTED.

9. IT IS FURTHER ORDERED that File No. 0004184946 and File No. 0004184956 ARE REINSTATED *nunc pro tunc*.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ See Petition at 8.

¹⁶ *Id.* at 9.