

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

In the Matter of	)	
	)	
Improving Public Safety Communications in the	)	WT Docket No. 02-55
800 MHz Band	)	

**ORDER**

**Adopted: June 27, 2011**

**Released: June 27, 2011**

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

**I. INTRODUCTION AND BACKGROUND**

1. In this *Order*, we dismiss a petition for partial reconsideration (Petition) filed by Lukas, Nace, Gutierrez & Sachs, LLP and Shulman, Rogers, Gandal, Pordy & Ecker, P.A. (collectively, Petitioners) on April 22, 2010.<sup>1</sup> Petitioners seek reconsideration of an *Order* released by the Public Safety and Homeland Security Bureau (Bureau) on March 31, 2010.<sup>2</sup> Specifically, Petitioners seek reconsideration of the Bureau's decisions governing (a) costs associated with the preparation of reports regarding the status of licensees' 800 MHz rebanding progress and (b) licensees' eligibility to apply for vacated 800 MHz spectrum.

2. In the August 2004, *800 MHz Report and Order*, the Commission ordered Sprint Nextel Corp. (Sprint) and certain 800 MHz licensees, to reconfigure their systems to new frequencies within thirty-six months<sup>3</sup> A substantial number of licensees failed to meet that rebanding deadline and were granted multiple extension waivers by the Bureau. The March 2010 *Waiver Order* granted these licensees a further extension of time in which to complete rebanding. In the *Waiver Order* – as an incentive for licensees to timely complete rebanding – the Bureau stated that: (a) until a licensee executes a Frequency Reconfiguration Agreement (FRA)<sup>4</sup> with Sprint, it is not eligible to apply for channels vacated by Sprint as part of rebanding (Sprint-vacated channels), and (b) that Sprint is presumptively not responsible for payment of costs incurred by a licensee in filing rebanding progress reports<sup>5</sup>

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<sup>1</sup> Petition for Partial Reconsideration filed, April 22, 2010 by Lukas, Nace, Gutierrez & Sachs, LLP and Shulman, Rogers, Gandal, Pordy & Ecker, P.A. (Petition).

<sup>2</sup> Improving Public Safety Communications in the 800 MHz Band Supplemental Requests for Waiver of June 26, 2008 Rebanding Deadline, WT Docket No. 02-55, *Order*, 25 FCC Rcd 3246 (PSHSB 2010) (*Waiver Order*).

<sup>3</sup> Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 14975 (2004).

<sup>4</sup> The Frequency Reconfiguration Agreement is a contract between the licensee and Sprint for the reconfiguration of the licensee's system at Sprint's expense.

<sup>5</sup> The *Waiver Order* required licensees to file progress reports with the TA every 30 days, or until the TA directed otherwise. *Waiver Order*, 25 FCC Rcd at 3747-3248.

3. Petitioners argue (a) that restricting licensees from applying for Sprint-vacated channels penalizes licensees for matters outside their control, and will not advance rebanding,<sup>6</sup> and (b) that the presumption that progress report costs are non-reimbursable is not supported by Commission rule or policy.<sup>7</sup>

## II. DISCUSSION

4. We dismiss the Petition for lack of standing. When evaluating standing, the Commission applies “the same test that courts employ in determining whether a person has standing under Article III to appeal a court order: the person must show (a) a personal injury ‘in fact’; (b) that the injury is fairly traceable to the challenged action; and (c) that it is likely, not merely speculative, that the requested relief will redress the injury.”<sup>8</sup> Moreover, Courts have consistently held that “the mere precedential effect of an adjudicatory order within an agency is not enough to confer standing.”<sup>9</sup>

5. As an initial matter we note that Petitioners are not licensees in their own right, do not claim to be representing specific Commission licensees, and are filing on their own behalf. They are, therefore, not parties to the proceeding. Pursuant to Section 1.106 of the Commission’s rules, if a petition for reconsideration is filed by a person who is not a party to a proceeding, “it shall state with particularity the manner in which the person’s interest is adversely affected by the action taken.”<sup>10</sup> Here, however, Petitioners allege no specific injury in fact to their law firms.<sup>11</sup> Rather, they attempt to show that the interests of third parties – unnamed licensees – could be adversely affected by the actions taken in the *Waiver Order*. Moreover, even as to the third parties, Petitioners fail to meet the “injury in fact” test, *i.e.*, they posit injuries to third party licensees that may wish to apply for Sprint-vacated spectrum, or who may seek compensation from Sprint if they are required to file progress reports. These “injuries” are too conditional, remote and speculative to establish that the third party licensees would undergo a direct “injury in fact.”<sup>12</sup>

6. We are therefore dismissing the Petition for Petitioners’ lack of standing. In so doing, we adhere to procedural rules that conserve Commission resources by limiting reconsideration petitions to parties, and matters, that properly are before the Commission.

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<sup>6</sup> Petition at 7. The Petition does not note that the waiver provisions of 47 C.F.R. § 1.925 are available to licensees that desire to acquire replacement spectrum but have been delayed in rebanding by factors beyond their control.

<sup>7</sup> *Id.* at 2. Petitioners fail to note that the condition respecting Sprint’s payment of status report costs is only presumptive. Licensees can overcome the presumption by demonstrating that rebanding delays have occurred due to factors beyond their control.

<sup>8</sup> *AT&T Corp. v. Business Telecom, Inc., Order on Reconsideration*, 16 FCC Rcd 21750, 21751-52 ¶ 5 (2001).

<sup>9</sup> *Id.* citing, *inter alia*, *Airtouch Paging v. FCC*, 234 F.3d 815, 818 (2d Cir. 2000); *Sea-Land Service, Inc. v. Department of Transportation*, 137 F.3d 640, 648 (D.C. Cir. 1998); *Shell Oil Co. v. FERC*, 47 F.3d 1186, 1202 (D.C. Cir. 1995); *Crowley Caribbean Transport, Inc. v. Pena*, 37 F.3d 671, 674 (D.C. Cir. 1994); *Telecommunications Research and Action Center v. FCC*, 917 F.2d 585, 588 (D.C. Cir. 1990).

<sup>10</sup> 47 C.F.R. § 1.106(b)(1) (emphasis supplied).

<sup>11</sup> Had Petitioners alleged harm to their financial interests in representing rebanding clients, we would have found that injury not cognizable inasmuch as it related to Petitioners’ private interests, not the public interest.

<sup>12</sup> See *Martin-Trigona v. FCC*, 432 F.2d 682 (D.C. Cir.1970) (claims amounting to a remote or speculative injury are insufficient to confer standing).

**III. ORDERING CLAUSE**

7. Accordingly, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i); and Sections 1.2 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.2, 1.106, the Petition for Partial Reconsideration filed by Lukas, Nace, Gutierrez & Sachs, LLP and Shulman, Rogers, Gandal, Pordy & Ecker, P.A. is DISMISSED.

8. 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

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