

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

In the Matter of
County of Genesee, New York
and
Sprint Nextel Corp.
WT Docket No. 02-55
Mediation No. TAM-43102

ORDER

Adopted: October 28, 2011

Released: October 28, 2011

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

1. On October 21, 2011, the County of Genesee, New York (Genesee) filed a motion to stay the effect of the Public Safety and Homeland Security Bureau's (Bureau) Memorandum Opinion and Order that resolved a dispute between Genesee and Sprint Nextel Corporation (Sprint). The dispute, which the Bureau resolved in Sprint's favor, involved whether a rebanding plan offered by Sprint provides Genesee with comparable facilities following band reconfiguration. Following release of the Bureau's decision, Genesee filed a Petition for Reconsideration (Petition). Genesee subsequently filed the instant motion requesting a stay of the Bureau's decision pending disposition of Genesee's Petition. On October 26, 2011 Sprint filed an Opposition to the Motion for Stay. For the reasons discussed below, we deny Genesee's motion for failure to meet established Commission criteria for issuance of a stay.

2. Under Commission precedent, Genesee may only qualify for a stay if it demonstrates: (i) it is likely to prevail on the merits; (ii) it will suffer irreparable harm, absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest favors a grant of the stay.

3. Genesee argues that it is likely to prevail on the merits because the Bureau's decision in the MO&O placed Genesee's operation within 1 MHz of Nextel's ESMR operations on General Category Channels. We disagree. For reasons we will elaborate upon in responding to the Petition for

1 County of Genesee, New York, and Sprint Nextel Corp., WT Docket 02-55, Memorandum Opinion and Order, DA 11-1521 (PSHSB September 9, 2011) (MO&O).

2 Id.

3 Petition for Reconsideration filed by the County of Genesee, New York (received Oct. 11, 2011).

4 Motion for Stay filed by the County of Genesee, New York (received Oct. 21, 2011).

5 Opposition to Motion for Stay filed by Sprint Nextel Corp. (Opposition) (received October 26, 2011).

6 We will address Genesee's Petition in a separate order.

7 See, e.g., Cincinnati Bell Telephone Company, Memorandum Opinion and Order, 8 FCC Rcd 6709 (1993), citing Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F. 2d 921 (D.C. 1958); modified by Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

8 Motion for Stay at 2.

Reconsideration, Genesee is not entitled to 1 MHz separation from Sprint's ESMR operations because it is not a member of the class to which the Commission extended that protection.⁹

4. Genesee further argues it will suffer irreparable harm if forced to comply with the *MO&O* because it would have to conduct a second rebanding of its system once it prevails on its Petition for Reconsideration.¹⁰ We disagree. The *MO&O* is silent on when Genesee must commence rebanding its system. Genesee's only obligation under the *MO&O* is to submit a cost estimate and to negotiate a Frequency Reconfiguration Agreement.¹¹ Genesee has failed to demonstrate how either action causes it irreparable harm.

5. Genesee also argues that grant of the stay will not harm third parties and may actually harm third parties that may reconfigure their systems to the channels the *MO&O* directed Genesee to vacate and, therefore, would have to reconfigure their systems a second time should Genesee prevail on its Petition for Reconsideration.¹² While we agree with Sprint that grant of the stay could have programmatic impact affecting Sprint, we do not find another licensee who would be negatively affected by grant of a waiver.¹³ However, because the stay criteria are conjunctive, and Genesee has not met the first two prongs of the criteria for a stay, we need not decide whether the effects of a stay on Sprint is sufficient to warrant denying Genesee's motion.

6. Finally, Genesee argues that since it warrants a stay based upon meeting the other three factors cited above, it would not be in the public interest to deny the stay.¹⁴ Since we find that Genesee has not met two of those factors, we need not address Genesee's public interest argument.

7. Genesee has failed to meet the requirements for obtaining a stay. Thus, we deny its motion.

8. Accordingly, pursuant to the authority of Sections 0.191, 0.392, 1.43 and 1.298(a) of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, 1.43 and 1.298(a); and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) IT IS ORDERED that the Motion for Stay filed by the County of Genesee IS DENIED.

9. 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

Michael J. Wilhelm
Deputy Chief - Policy and Licensing Division
Public Safety and Homeland Security Bureau

⁹ See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Second Report and Order*, 23 FCC Rcd 7605, 7616 ¶ 25 (2008).

¹⁰ Motion for Stay at 2.

¹¹ *MO&O* ¶¶ 41-43.

¹² Motion for Stay at 2-3.

¹³ Opposition at 4.

¹⁴ Motion for Stay at 3.