

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

In the Matter of

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

ORDER

Adopted: June 27, 2013**Released: June 27, 2013**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this *Order*, pursuant to delegated authority, we (1) provisionally postpone the 800 MHz rebanding financial reconciliation “true-up” date from July 1, 2013 to December 31, 2013, and (2) require the 800 MHz Transition Administrator (TA) to file a report by November 15, 2013, with its recommendation on whether the true-up date should occur on December 31, 2013, or be further postponed.

II. BACKGROUND

2. The Commission established the true-up process in the *800 MHz Report and Order* to assess the total creditable rebanding costs incurred by Sprint Nextel Corporation (Sprint) for both 800 MHz rebanding and relocation of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz band, and to compare these costs to the value of the 1.9 GHz spectrum that the Commission awarded to Sprint.¹ If the true-up shows that the value of the 1.9 GHz spectrum exceeds Sprint’s combined 800 MHz and BAS relocation costs, Sprint must pay the difference in an “anti-windfall” payment to the U.S. Treasury.²

3. The *800 MHz Report and Order* originally required Sprint to complete 800 MHz rebanding in non-border areas within thirty-six months³ and provided that the true-up would occur within six months thereafter.⁴ The thirty-six month rebanding period expired on June 26, 2008, at which time neither 800 MHz rebanding nor BAS relocation was complete.⁵ Accordingly, on June 25, 2008, Sprint requested that the true-up – which was scheduled to occur on December 26, 2008 – be postponed indefinitely until both 800 MHz rebanding and BAS relocation were complete.⁶ Noting that both rebanding projects had been subject to unforeseen complexity and delay, Sprint contended that conducting the true-up as scheduled would be premature and would fail to account for significant rebanding costs that Sprint had yet to incur.⁷

¹ 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, 15124 ¶ 330 (2004) (*800 MHz Report and Order*).

² *Id.*

³ *Id.* at 14977 ¶ 11.

⁴ *Id.* at 15124 ¶ 330.

⁵ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Fourth Memorandum Opinion and Order*, 23 FCC Rcd 18512, 18514 ¶ 9 (2008) (*Fourth Memorandum Opinion and Order*).

⁶ *Id.* at 18512 ¶ 1.

⁷ *Id.* at 18513-14 ¶ 6.

4. In its December 2008 *Fourth Memorandum Opinion and Order*, the Commission granted Sprint's request in part and extended the true-up date from December 26, 2008 until July 1, 2009.⁸ The Commission found that circumstances had changed since the establishment of the initial true-up schedule, and that neither 800 MHz rebanding nor BAS relocation had progressed sufficiently to justify conducting the true-up as originally scheduled. However, the Commission declined to postpone the true-up indefinitely, noting that Sprint could incur sufficient creditable costs before the completion of rebanding to allow the true-up to proceed.⁹ The Commission therefore extended the true-up date until July 1, 2009, and directed the TA to file a report by May 1, 2009, with its recommendation on whether rebanding had progressed sufficiently that the true-up should be conducted on July 1, 2009, or whether it should be further postponed.¹⁰ The Commission also delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to consider and grant further extensions of the true-up deadline.¹¹

5. The Bureau has previously exercised the delegated authority granted by the Commission to extend the true-up deadline, which the Bureau has done in six-month increments, based on periodic reports and recommendations from the TA.¹² The latest such extension expires on July 1, 2013.¹³ On May 15, 2013, the TA filed its most recent true-up report recommending that the true-up date be further extended from July 1, 2013 until December 31, 2013.¹⁴

6. We note that the Commission has pending before it a Petition for Declaratory Ruling filed by Sprint in which Sprint states that the true-up can be conducted now based on cost and payment information already available to the TA and the Commission.¹⁵ The TA, however, "believes that the true-up remains premature at this time and that additional rebanding expenditures are required to provide a meaningful report of Sprint Nextel's total rebanding costs for both the 800 MHz rebanding and for the relocation of BAS licensees."¹⁶

III. DISCUSSION

7. Although BAS relocation is now complete and substantial progress has been made in 800 MHz rebanding, a significant number of 800 MHz licensees have yet to complete the process, and

⁸ *Id.* at 18512 ¶ 1.

⁹ *Id.* at 18515 ¶ 11.

¹⁰ *Id.* at ¶ 12.

¹¹ *Id.*

¹² See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 24 FCC Rcd 8410 (PSHSB 2009); *Order*, 24 FCC Rcd 14642 (PSHSB 2009); *Order*, 25 FCC Rcd 8217 (PSHSB 2010); *Order*, 25 FCC Rcd 17794 (PSHSB 2010); *Order*, 26 FCC Rcd 8572 (PSHSB 2011); *Order*, 26 FCC Rcd. 16506 (PSHSB 2011); *Order*, 27 FCC Rcd 7308 (PSHSB 2012).

¹³ See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, 27 FCC Rcd 15949 (PSHSB 2012).

¹⁴ See Recommendation to Further Postpone 800 MHz Rebanding Financial True-up, WT Docket 02-55, filed on May 15, 2013 by the 800 MHz Transition Administrator, LLC, at 1-3 (May 15, 2013 Deferral Letter).

¹⁵ Petition for a Declaratory Ruling filed by Sprint Nextel Corporation at iii (Jan. 22, 2013). On January 25, 2013, the Bureau sought comment on Sprint's declaratory ruling petition. See Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling by Sprint Nextel Corporation Concerning 800 MHz Rebanding "Anti-Windfall" Payment and Letter of Credit Minimum Amount, WT Docket 02-55, *Public Notice*, 28 FCC Rcd 371 (PSHSB 2013).

¹⁶ May 15, 2013 Deferral Letter at 2.

rebanding in the US-Mexico border region has only recently begun.¹⁷ The Commission has also made no determination with respect to Sprint's declaratory ruling request to conduct the true-up based on currently available information. In light of these factors and the TA's recommendation, we conclude that conducting a true-up of Sprint's rebanding expenditures as of July 1, 2013 would be premature.

Accordingly, we provisionally extend the true-up date, as recommended by the TA, until December 31, 2013, and direct the TA to file a report by November 15, 2013, with its recommendation on whether the true-up should be conducted as of December 31, 2013, or be further postponed. We grant this extension on a provisional basis because it is subject to any action the Commission may take on Sprint's declaratory ruling petition. Thus, it does not preclude the Commission setting an alternative true-up date based on the record in that proceeding. We also emphasize that as with prior true-up extensions, our action with respect to the true-up date is intended to have no impact on any other aspect of the timetable for 800 MHz rebanding.

IV. ORDERING CLAUSES

8. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.191, 0.392, and 90.677 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392, 90.677, IT IS ORDERED that, unless sooner directed by the Commission, the true-up ordered in the *Fourth Memorandum Opinion and Order* SHALL BE CALCULATED based on rebanding expenditures by Sprint Nextel Corporation as of December 31, 2013.

9. IT IS FURTHER ORDERED that, unless the true-up is further extended, the 800 MHz Transition Administrator SHALL FILE its final true-up report by June 30, 2014.

10. IT IS FURTHER ORDERED that the Transition Administrator SHALL FILE in this docket, by November 15, 2013, its recommendation on any further extension of the true-up date.

FEDERAL COMMUNICATIONS COMMISSION

David S. Turetsky
Chief, Public Safety and Homeland Security Bureau

¹⁷ The TA's most recently filed quarterly report indicates that excluding the US-Mexico border region, 89.8 percent of 800 MHz licensees subject to rebanding have completed physical retuning and 69.3 percent have completed all rebanding-related transactions. See 800 MHz Transition Administrator, LLC Quarterly Progress Report for the Quarter Ended December 31, 2012, filed March 15, 2013, at 1. On April 1, 2013, the Bureau issued a *Report and Order* announcing commencement of a 30-month period for rebanding in the US-Mexico border region. Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for U.S. - Mexico Sharing Zone, *Fifth Report and Order*, WT Docket No. 02-55, 28 FCC Rcd 4085 (PSHSB 2013).