



Federal Communications Commission
Washington, D.C. 20554

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James B. Goldstein, Esq.
Sprint Corporation
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DA 14-1663

Re: Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Texas – San Antonio (Region 53) Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region, WT Docket No. 14-133; FCC File Nos. 0006424431, 0006424458, 0006424526, 0006424548, 0006424553, 0006424562, 0006424565

Dear Mr. Goldstein:

In this letter, we grant a waiver request by Sprint Corporation (Sprint) that will allow Sprint to deploy its 800 MHz wideband operations in certain portions of the Texas – San Antonio National Public Safety Planning Advisory Committee (NPSPAC) Region before 800 MHz Band reconfiguration has been completed in that Region.¹ Granting the Waiver Request will permit LTE deployment in most of the counties within the Texas – San Antonio NPSPAC Region, providing Sprint's subscribers access to these valuable broadband wireless services while protecting the remaining public safety entity from harmful interference. We therefore find that granting the Waiver Request is in the public interest.

Section 90.209(b)(7) of the Commission's rules² permits Economic Area-based 800 MHz Specialized Mobile Radio (SMR) licensees, such as Sprint, to deploy wideband operations in the 817-821/862-866 MHz portion of the SMR spectrum band in NPSPAC regions where 800 MHz band reconfiguration is still continuing, and in the 821-824/866-869 MHz portion of the SMR band only in NPSPAC regions where 800 MHz band reconfiguration has been completed.³

Pursuant to this rule, Sprint is deploying a 1.25 MHz wide CDMA channel at 817-821/862-866 MHz throughout the country while rebanding is still underway.⁴ Sprint also is deploying a 5 x 5 MHz Long-Term Evolution (LTE) channel in the SMR band at 819-824/864-869 MHz, which comprises both the 817-821/862-866 MHz and 821-824/866-869 MHz portions of the SMR Bands, in NPSPAC regions where 800 MHz band

¹ Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Texas – San Antonio (Region 53) Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region, FCC File Nos. 0006424431, 0006424458, 0006424526, 0006424548, 0006424553, 0006424562, 0006424565 (filed Aug. 14, 2014) (collectively, Waiver Request). The Waiver Request covers Call Signs WPOH306, WPOH309, WPOH312, WPOH321, WPOI311, WPOI370, and WPOK476.

² 47 C.F.R. § 90.209(b)(7).

³ 47 C.F.R. § 90.209(b)(7). *See also* Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees, *Report and Order*, WT Docket 12-64, 27 FCC Red 6489, 6495-96 ¶ 12 (2012) (*800 MHz Wideband Order*). SMR licensees are authorized to operate in the 813.5-824/858.5-869 MHz portion of the 800 MHz band only in the Southeastern U.S. counties listed in section 90.614(c). *See* 47 C.F.R. § 90.209(b)(7); *800 MHz Wideband Order* at 6490 ¶ 1 n. 1. The NPSPAC Region where Sprint requests relief does not contain any of the listed counties.

⁴ *See* Waiver Request at 1.

reconfiguration has been completed.⁵ On August 14, 2014, Sprint filed the Waiver Request so that it may deploy 800 MHz wideband operations at 821-824/866-869 MHz in certain portions of the Texas – San Antonio NPSPAC Region prior to full completion of 800 MHz band reconfiguration in that Region. On November 13, 2014, Sprint filed an *Ex Parte* providing additional information related to the Waiver Request.⁶

Sprint notes that while 800 MHz band reconfiguration is well underway in the Texas – San Antonio NPSPAC Region, reconfiguration was not initiated until August 2013 due to delays in securing an international agreement with Mexico,⁷ and the remaining public safety NPSPAC licensees in the Texas – San Antonio Region are all concentrated in the U.S. – Mexico Border area.⁸ Specifically, Sprint states that thirteen public safety licensees required to be retuned from the “old NPSPAC band” (821-824/866-869 MHz) have not yet successfully completed their retunes (collectively, San Antonio NPSPAC Licensees, and each a San Antonio NPSPAC Licensee).⁹

Sprint states that section 90.209(b)(7) prohibits broadband operations at 821-824/866-869 MHz anywhere in the Texas – San Antonio NPSPAC Region until each of the San Antonio NPSPAC Licensees has certified that it has completed its retunes.¹⁰ Thus, Sprint argues, it cannot deploy broadband LTE in the old NPSPAC band in the areas of the Texas – San Antonio NPSPAC Region that are fully cleared of public safety operations, including the populous metropolitan area of San Antonio.¹¹ Sprint maintains that it can integrate the old NPSPAC band spectrum into its broadband network in much of the Texas – San Antonio NPSPAC Region without posing any risk of interference to the operations of the San Antonio NPSPAC Licensees that have not yet retuned.¹²

Sprint therefore requests a waiver of section 90.209(b)(7) so that it may launch LTE in the thirty Texas – San Antonio NPSPAC Region counties¹³ in which 800 MHz rebanding is complete.¹⁴ Sprint notes that each county is more than 80 miles away from the nearest operational site of a San Antonio NPSPAC Licensee in the old NPSPAC band,¹⁵ and none of Sprint’s base station sites would be within 110 miles of a San Antonio NPSPAC Licensee base station site.¹⁶ Sprint argues that this 110-mile co-channel separation far exceeds the co-

⁵ See Waiver Request at 1.

⁶ Letter from James B. Goldstein, Senior Counsel, Legal and Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 13, 2014) (*Ex Parte*).

⁷ See Waiver Request at 1-2 (citing Improving Public Safety Communications in the 800 MHz Band, New M800 MHz Band Plan for U.S. – Mexico Sharing Zone, *Fifth Report and Order*, WT Docket 02-55, 28 FCC Rcd 4085 (WTB PSHSB 2013); Public Safety and Homeland Security Bureau Announces That the 30-Month Transition Period for 800 MHz Band Reconfiguration in Regions Along the U.S. – Mexico Border Will Commence on August 23, 2013, *Public Notice*, WT Docket 02-55, DA 13-1770 (WTB PSHSB 2013)); *Ex Parte* at 2.

⁸ See Waiver Request at 2.

⁹ See Waiver Request at 2 n. 3; *Ex Parte* at 1 n. 1. The San Antonio NPSPAC Licensees are listed in Attachment C. Though Sprint provided a list of thirteen licensees, our own database shows that a fourteenth licensee, Jim Hogg County, also must be included.

¹⁰ See Waiver Request at 3.

¹¹ See Waiver Request at 3.

¹² See Waiver Request at 3; *Ex Parte* at 1.

¹³ See Attachment A.

¹⁴ See Waiver Request at 3.

¹⁵ See Waiver Request at 3.

¹⁶ See *Ex Parte* at 1.

channel separation requirements in section 90.621(b) of the Commission's rules.¹⁷ Further, Sprint maintains that the minimum 110-mile co-channel separation will provide an additional protection buffer for the remaining San Antonio NPSPAC Licensee operations in the process of being returned in the Texas – San Antonio NPSPAC Region.¹⁸

In addition, Sprint notes that it will, as required by the Commission's rules, provide the San Antonio NPSPAC Licensees with 30-days advance notice of Sprint's deployment and planned initiation date of operations in the Texas – San Antonio NPSPAC Region.¹⁹ Finally, Sprint states that if it does cause harmful interference to a San Antonio NPSPAC Licensee's operations, Sprint will work with that Licensee to immediately implement mitigation measures.²⁰

On August 14, 2014, the Commission issued a *Public Notice* seeking comment on the Waiver Request.²¹ The County of Hidalgo submitted comments in response to the *Public Notice* stating that it has no objection to the Waiver Request, dependent upon Sprint's written pledge of expedited treatment under the interference complaint process outlined on the 800 MHz Interference Notification Site²² and Sprint's pledge to act immediately to resolve interference issues that may arise.²³ Sprint also submits written confirmation from two other San Antonio NPSPAC Licensees, Cameron County and City of Rio Grande, indicating that neither has any objection to a grant of the Waiver Request in light of the co-channel distance separation proposed by Sprint.²⁴

Pursuant to section 1.925 of the Commission's rules, waiver may be granted if the petitioner establishes that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and the grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁵

Based on the unusual factual circumstances described by Sprint, we find that a waiver is warranted in this case because application of the rule would inhibit LTE deployment in the thirty Texas – San Antonio NPSPAC Region counties where retuning has been completed. As Sprint argues, it would be inequitable and unduly burdensome to prohibit its subscribers' access to these valuable broadband wireless services until each of the San Antonio NPSPAC Licensees completes its retuning from the old NPSPAC band, particularly where Sprint will maintain such a significant geographic separation between its sites and those of the Texas – San

¹⁷ See Waiver Request at 3; *Ex Parte* at 1-2. Section 90.621(b) requires a 70-mile co-channel separation in the 800 MHz SMR band for high sites. 47 C.F.R. § 90.621(b).

¹⁸ See Waiver Request at 3; *Ex Parte* at 1-2.

¹⁹ See Waiver Request at 3 n. 7. The 30-day notification is required by 47 C.F.R. § 90.209(b)(7). See also *800 MHz Wideband Order* at 6495 ¶ 14.

²⁰ *Ex Parte* at 2.

²¹ Wireless Telecommunications Bureau Seeks Comment on Sprint Waiver Request to Permit Wideband Operations in Portions of New Mexico and Texas NPSPAC Regions, *Public Notice*, WT Docket 14-133, 29 FCC Rcd 10147 (WTB MD 2014) (*Public Notice*).

²² This industry-developed website is found at <http://www.publicsafety800mhzinterference.com>.

²³ Letter from Oscar Montoya, Hidalgo County Sheriff's Office, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Oct. 29, 2014).

²⁴ Correspondence from Charles Hoskins, Cameron County Deputy EMC, to James Goldstein, Senior Counsel, Sprint Corporation, dated Sept. 3, 2014; Correspondence from Ricardo Reyes, Fire Chief, City of Rio Grande City, to James Goldstein, Senior Counsel, Sprint Corporation, dated Sept. 3, 2014.

²⁵ 47 C.F.R. § 1.925.

Antonio NPSPAC Region public safety entities. Such a constraint on broadband deployment and consumer choice is contrary to the public interest in light of measures (*i.e.* co-channel separation and advance notification) that will protect public safety entities from harmful interference.²⁶ We therefore waive section 90.209(b)(7) to permit Sprint to accelerate its broadband deployment in the thirty Texas – San Antonio NPSPAC Region counties listed in Attachment A. This waiver is specifically conditioned on the following:

- (1) In the thirty (30) counties in the Texas – San Antonio NPSPAC Region listed in Attachment A, Sprint must maintain a minimum 110-mile co-channel separation between Sprint's proposed operations at 821-824/866-869 MHz and the closest public safety site still operational in the old NPSPAC band.
- (2) Sprint must provide each public safety entity listed in Attachment C with 30-days advance notice of Sprint's deployment and planned initiation date of operations in the Texas – San Antonio NPSPAC Region.
- (3) Sprint may not deploy LTE at 821-824/866-869 MHz in the seventeen (17) counties listed in Attachment B until 800 MHz band reconfiguration has been completed in the entire Texas – San Antonio NPSPAC Region.
- (4) If Sprint receives a report that station(s) operating in the areas covered by this waiver are causing harmful interference to a public safety licensee, it shall immediately suspend operation under this waiver of such station(s) except for test transmissions to identify and eliminate the interference. Sprint may resume operation under this waiver of such station(s) after the interference has been successfully mitigated.

Further, Sprint's operations remain subject to the Commission's rules regarding abatement of unacceptable interference as set forth in sections 90.672, 90.673, 90.674, and 90.675.²⁷

As conditioned, our grant will facilitate more rapid broadband availability in the San Antonio Region of Texas, while protecting ongoing public safety operations in the old NPSPAC band until they are fully returned. The conditions of this waiver will terminate when 800 MHz band reconfiguration has been completed in the entire Texas – San Antonio NPSPAC Region 53.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Waiver Request is GRANTED to the extent described above.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission

²⁶ See *800 MHz Wideband Order* at 6495 ¶ 14.

²⁷ See 47 C.F.R. §§ 90.672, 90.673, 90.674 and 90.675.

Attachment A – List of Counties Subject to Waiver Request

Atascosa	Jackson
Bandera	Karnes
Bee	Kendall
Bexar	Kerr
Caldwell	Kinney
Calhoun	Lavaca
Comal	Maverick
DeWitt	Medina
Dimmit	Real
Edwards	Refugio
Frio	Uvalde
Gillespie	Val Verde
Goliad	Victoria
Gonzales	Wilson
Guadalupe	Zavala

Attachment B – List of Counties Excluded from Waiver Request

Brooks	Live Oak
Cameron	McMullen
Duval	Nueces
Hidalgo	San Patricio
Jim Hogg	Starr
Jim Wells	Webb
Kenedy	Willacy
Kleberg	Zapata
La Salle	

Attachment C – List of Remaining Licensees in the Texas – San Antonio NPSPAC Region

The City of Brownsville
Cameron County
Edinburg Police Department
The City of Edinburg
The City of Harlingen
The City of Hidalgo
Hidalgo County
Jim Hogg County
The Lower Rio Grande Valley Development Council
The City of Mission
The City of Pharr
The City of Rio Grande
The San Benito Police Department
Willacy County