



Federal Communications Commission
Washington, D.C. 20554

May 15, 2014

DA 14-659

Small Entity Compliance Guide

Improving Public Safety Communications in the 800 MHz Band New 800 MHz Band Plan for U.S. – Mexico Border Regions

WT Docket No. 02-55

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
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Background.

In 2002, the Federal Communications Commission (FCC or Commission) initiated a rulemaking proceeding (WT Docket No. 02-55) to address an ongoing problem of interference to public safety and other land mobile communication systems operating in the 800 MHz band. The problem stemmed from the close spectral proximity throughout the band of systems using inherently incompatible types of technology – commercial mobile radio services (CMRS) that had developed a cellular-based network architecture, on the one hand, and public safety and certain other private services that employed high-site, high power transmitters (in a non-cellular array), on the other. The Commission generally resolved this problem by reconfiguring the 800 MHz band to separate, to the extent possible, public safety and other non-cellular licensees from licensees that employ cellular technology. With respect to the U.S.-Mexico and U.S.-Canada border areas, however, the Commission deferred adopting band reconfiguration plans until the applicable international agreements for use of the 800 MHz Band in these areas could be modified. To this end, the Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to propose and adopt border area band plans once the United States reached the required agreements with Mexico and Canada.

The United States and Mexico revised the relevant agreement – a 1994 Protocol – by signing an amended Protocol on June 8, 2012. On April 1, 2013, after obtaining public comment, the Bureau released a *Fifth Report and Order* in WT Docket No. 02-55, which established a reconfigured 800 MHz band plan for the National Public Safety Planning Advisory Committee Regions bordering Mexico, thereby ensuring an orderly and efficient transition to the new 800 MHz band plan along the Mexico border.

Compliance Requirements.

The *Fifth Report and Order* establishes a 30-month period for licensees along the Mexico border to complete the transition to the reconfigured 800 MHz band plan. The *Fifth Report and Order* provides that the 30-month period would begin 60 days after the effective date of the order. The order became effective on June 24, 2013, establishing August 23, 2013 as the start date for the transition period.

The *Fifth Report and Order* creates no significant economic impact on most small entities because Sprint Nextel Corporation must pay all reasonable costs associated with retuning incumbent licensees to the post-reconfiguration channel plan adopted by the Bureau. However, relocating licensees must engage in the following processes: (a) plan for reconfiguration, (b) prepare and submit a rebanding cost estimate to Sprint, (c) negotiate a Frequency Reconfiguration Agreement (FRA) with Sprint, and (d) physically retune their 800 MHz systems. In the event that Sprint and the licensee cannot agree on the cost of reconfiguring the licensee's system, Sprint and the licensee must engage in mediation for a period of 20 days. If mediation proves unsuccessful, either party may seek *de novo* review of the mediation record by the Bureau. A licensee must bear its own expenses associated with the *de novo* review and any appeals therefrom. Furthermore, licensees must retain cost support documentation and records for 24 months after the closing of a Planning

Funding Agreement (PFA) or 18 months after the closing of an FRA, or for such longer period as may be required by the licensee's established record retention policy or applicable laws.¹

Internet Link.

A copy of the *Fifth Report and Order* is available at
http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0401/DA-13-586A1.doc

¹ While licensees made subject to the new band plan for the border areas with Mexico will now have to comply with the above-described requirements for relocating to different frequencies and obtaining reimbursement from Sprint, the reporting, recordkeeping, and/or third-party consultation or other compliance requirements that the *Fifth Report and Order* applied to them had been approved earlier in this proceeding for purposes of agency compliance with the applicable federal paperwork reduction and regulatory flexibility statutes. See OMB Control No. 3060-1080 for Improving Public Safety Communications in the 800 MHz Band (expires September 30, 2014).