

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

In the Matter of
Arizona Public Service Company
and
Nextel Communications, Inc.
Docket No. WT 02-55
Mediation No. TAM-45019

ORDER

Adopted: June 24, 2014

Released: June 24, 2014

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

I. INTRODUCTION

1. Under consideration is a request (Request) from the 800 MHz Transition Administrator (TA) to extend the mediation between the Arizona Public Service Company (APSC) and Nextel Communications, Inc. (Sprint) until July 17, 2014. APSC, the licensee of 800 MHz public safety stations, call signs WPF525, WPGU351, WPMC216, WPMC219, WPMC221, WPMC264, WPUH285, WPXD322, and WPYG845, is subject to the Commission's 800 MHz rebanding initiative which requires APSC to relocate its 800 MHz facilities to replacement frequencies in the 800 MHz band.

2. Under the 800 MHz rebanding procedures, APSC submitted a cost estimate for rebanding of its facilities to Sprint and the negotiation period began on April 25, 2014. The parties were unable to agree on the details of rebanding during the negotiation period which ended on May 25, 2014. Accordingly, the parties began mediation under the auspices of a TA Mediator. Sprint did not submit a cost counterproposal to APSC until June 17, 2014, near the conclusion of the mediation period. The counterproposal reduced APSC's proposed rebanding costs by nearly half. APSC lacked sufficient time to respond to the Sprint counterproposal and the mediation period expired June 23, 2014 with the parties still in disagreement. The TA Mediator represents that allowing the parties to mediate for an additional

1 For purposes of uniformity in 800 MHz rebanding decisions, we refer to Sprint subsidiaries such as Nextel Communications, Inc. as their parent company, Sprint Corporation.

2 Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, et al., Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004) (800 MHz Report and Order); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004) (800 MHz Supplemental Order), review denied sub nom. Mobile Relay Associates v. FCC, 457 F.3d 1 (D.C. Cir. 2006); Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005); Second Memorandum Opinion and Order, 22 FCC Rcd 10467 (2007). See also Kay v. FCC, No. 06-1076 (D.C. Cir. filed Feb. 24, 2006) (holding additional appeals in abeyance)

3 Request at 1.

4 Id.

20 working days⁵ may yield an agreement.⁶

II. DISCUSSION

3. Section 1.46(a) of the Commission's rules states that "[i]t is the policy of the Commission that extensions of time shall not be routinely granted."⁷ The Bureau has emphasized that the "import of that rule is especially relevant to 800 MHz rebanding where delay in rebanding by one licensee can cause a 'domino effect' delay in the rebanding efforts of other licensees that have met the Commission's 800 MHz band reconfiguration deadlines with a consequent delay of the overall program. We therefore afford a high degree of scrutiny to the reasons licensees advance for extensions of time."⁸

4. Here, declining the Request would require the parties to prepare proposed resolution memorandums and for the TA Mediator to prepare a recommended resolution which, if not accepted would trigger *de novo* review of the disputed matters by the Public Safety and Homeland Security Bureau. The resultant delay, measured against the 20 working day requested extension of the mediation period would be substantial. Accordingly, we are disposed to grant the Request with the understanding that we do not contemplate further extensions and expect the parties to negotiate their differences diligently and in good faith. To that end, the parties must actively negotiate, at a minimum, every other business day according to a schedule set by the TA Mediator until they reach agreement in principle. All negotiations must include a licensee principal and a Sprint representative with authority to bind the company.⁹ If, during the extended mediation period, the TA Mediator finds that the parties are at an impasse or are failing to negotiate in good faith, the TA Mediator shall terminate the mediation and call for the submission of proposed resolution memorandums within 10 business days. Similarly, if agreement in principle is not reached at the end of the extended mediation period, proposed resolution memorandums shall be submitted to the TA Mediator within 10 business days.

III. ORDERING CLAUSES

5. Accordingly IT IS ORDERED that the Request filed June 23, 2014 by the 800 MHz Transition Administrator Mediator IS GRANTED.

6. IT IS FURTHER ORDERED that the mediation period in Mediation No. TAM-45010 is extended, hereby, until July 17, 2014.

7. IT IS FURTHER ORDERED that a principal of the Arizona Public Service Company and a Sprint Corporation representative with authority to bind the company shall both participate in negotiation sessions to be held every other business day until agreement in principle is reached or July 17, 2014, whichever first occurs.

⁵ Measured from the day after the day Sprint submitted its counterproposal, *i.e.* June 18, 2014. *Id.*

⁶ *Id.*

⁷ 47 C.F.R. § 1.46(a).

⁸ Regents of the University of California, *Order*, 28 FCC Rcd 15920, 15921 (PSHSB 2013).

⁹ Failure to adhere to the mediation schedule, without good cause, may be taken as failure to proceed in "utmost good faith." 47 C.F.R. § 90.677(c).

8. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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