



Federal Communications Commission  
Washington, D.C. 20554

November 29, 2018

James B. Goldstein  
Sprint Corporation  
900 7<sup>th</sup> Street, NW  
Suite 700  
Washington, DC 20001

DA 18-1213

Re: Sprint Corporation Request to Modify Waiver Permitting 800 MHz Wideband Operations in Portions of Southern California (Region 5) Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region; Call Signs WPOH385 and WPOH388

Dear Mr. Goldstein:

In this letter, we grant a modification request by Sprint Corporation (Sprint) that will allow Sprint to deploy its 800 MHz wideband operations in additional counties in the Southern California National Public Safety Planning Advisory Committee (NPSPAC) Region 5 before 800 MHz Band reconfiguration has been completed in that region.<sup>1</sup> Sprint's existing waiver authority enables 4G LTE deployment in portions of three counties—San Luis Obispo, Santa Barbara, and Kern Counties—north of Los Angeles.<sup>2</sup> Granting the Modification Request will enable LTE deployment in portions of seven additional counties,<sup>3</sup> for a total of ten counties in the region. Sprint's subscribers in the additional counties will have access to valuable broadband wireless services as public safety jurisdictions complete rebanding and portions of these counties become available for deployment, while protecting the remaining public safety entities from harmful interference. We therefore find that modification of the existing waiver is in the public interest.

Section 90.209(b)(7) of the Commission's rules 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

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<sup>1</sup> Sprint Corporation Request to Modify Waiver Permitting 800 MHz Wideband Operations in Portions of Southern California (Region 5) NPSPAC Prior to Completion of 800 MHz Band Reconfiguration, ULS File Nos. 0008297174 and 0008297236 (filed July 26, 2018) (Modification Request). The Modification Request covers Call Signs WPOH385 and WPOH388, and was filed by one of Sprint's subsidiary corporations, Nextel West Corp.

<sup>2</sup> *Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Southern California (Region 5) Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region*, Letter Order, 33 FCC Rcd 2189 (WTB MD 2018) (March 2018 Waiver Order).

<sup>3</sup> Specifically, Sprint seeks to include portions of the following seven counties in the Modification Request: San Bernardino County, Ventura County, Los Angeles County, Riverside County, Imperial County, San Diego County, and Orange County.

NPSPAC regions where 800 MHz band reconfiguration has been completed.<sup>4</sup> On March 9, 2018, Sprint was granted a waiver of Section 90.209(b) that permitted it to deploy 800 MHz LTE operations at 821-824/866-869 MHz in the three counties listed above within the Southern California NPSPAC Region prior to full completion of 800 MHz band reconfiguration in that region, subject to several conditions.<sup>5</sup>

Since then, Sprint has been able to deploy 800 MHz 4G LTE on approximately 100 sites in the three-county area under its conditional waiver, and additional areas in these counties have become available based on further public safety rebanding progress in neighboring counties.<sup>6</sup> On July 26, 2018, Sprint filed the pending request to modify the waiver relief granted in the March 2018 Waiver Order so that Sprint may deploy 800 MHz LTE operations in seven additional counties in Region 5 prior to full completion of 800 MHz band reconfiguration in that region.

In the Modification Request, Sprint states that certain Region 5 public safety licensees have still not completed their retunes, but that the stakeholders continue to work diligently toward ultimate completion, with retuning expected to occur soon on a rolling or continual basis in the region.<sup>7</sup> Because the specific dates, specific sites, and resulting areas of completion are uncertain, Sprint requests to modify its existing waiver so that it can deploy LTE as soon as public safety entities complete retuning work in each area.<sup>8</sup> Sprint argues that this approach would be more sensible as “it would be unwieldy and time consuming” for Sprint and the Wireless Telecommunications Bureau (Bureau) staff were Sprint to request multiple modifications to its existing waiver as specific areas become available and “would unnecessarily delay Sprint’s deployment while it awaits prior approval of additional territory” from the Bureau.<sup>9</sup> Sprint notes that the Bureau and the Public Safety and Homeland Security Bureau will be able to track specific public safety progress in the requested waiver areas, and the areas where Sprint is both deployed and not deployed, as Sprint provides map updates and a description of rebanding progress in the impacted areas as part of its monthly reports filed in WT Docket No. 02-55.<sup>10</sup>

Sprint maintains that it will still be subject to all of its existing co-channel distance separation requirements in order to ensure that there will be no interference from Sprint sites to the public safety sites that have not yet been rebanded.<sup>11</sup> Further, to support its request, Sprint includes concurrence letters from the six NPSPAC licensees in Southern California that were remaining at the time of filing, each

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<sup>4</sup> 47 CFR § 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 Rcd 6489, 6495-96, para. 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 CFR § 90.209(b)(7); *800 MHz Wideband Order*, 27 FCC Rcd at 6490, para. 1 n.1. The NPSPAC Region where Sprint requests relief does not contain any of the listed counties.

<sup>5</sup> March 2018 Waiver Order, 33 FCC Rcd at 2192.

<sup>6</sup> Modification Request at 2-3.

<sup>7</sup> See Modification Request at 1, 5.

<sup>8</sup> *Id.* at 5-7.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 7, n. 1. Sprint is required to submit monthly reports regarding 800 MHz Band reconfiguration. See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Third Memorandum Opinion and Order, 22 FCC Rcd 17209, 17219, paras. 29-30 (2007).

<sup>11</sup> *Id.* at 7.

showing its support for the modification of Sprint's existing waiver to add the seven additional counties listed above.<sup>12</sup> Subsequent to the filing of the Modification Request, Sprint has reported that Orange County and San Bernardino County both have completed retuning in August 2018, leaving the following NPSPAC Region 5 licensees as remaining to complete their retunes: State of California, Coachella Valley Water District, City of San Diego, and County of San Diego.<sup>13</sup>

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.<sup>14</sup>

Based on the unusual factual circumstances described by Sprint, we find that modification of the waiver granted in the March 2018 Waiver Order is warranted because application of the rule would unnecessarily delay LTE deployment in the portions of seven Southern California NPSPAC Region counties, not included in the original waiver, where retuning is complete. We conclude that it would be inequitable and unduly burdensome to prohibit access to valuable broadband wireless services in these additional areas until reconfiguration is completed for the entire Region 5 given that Sprint will maintain a significant geographic separation between its sites and those of 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.<sup>15</sup> We note that we have previously granted similar waivers where Sprint maintained a separation distance of at least 70 miles from the closest public safety site,<sup>16</sup> and we are not aware of occurrences of harmful interference that were found to have resulted from those waivers. More specifically, we are not aware that harmful interference has occurred as a result of the March 2018 waiver. Our review of Sprint's Modification Request leads us to conclude that the requested relief is warranted. We therefore modify the March 2018 waiver to permit Sprint to accelerate its broadband deployment in those portions of the ten Southern California NPSPAC Region counties listed in the Attachment hereto where retuning has occurred. This modification of the waiver granted in the March 2018 Waiver Order is specifically conditioned on the following:

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<sup>12</sup> *Id.*; see Attachment 1 to the Modification Request. The six consent letters, already on file in connection with the original waiver, are from Orange County, San Bernardino County, the State of California, San Diego County, the City of San Diego, and the Coachella Valley Water District. Each consent letter states that the entity "does not object to these subsequent counties being made available to Sprint when they are clear," referring to the additional counties in the region beyond the initial three counties covered by the initial waiver.

<sup>13</sup> See Letter from James B. Goldstein, Senior Counsel – Spectrum, Sprint Corporation, to David Furth, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, FCC, Sprint's Status Report on 800 MHz Band Reconfiguration, WT Docket No. 02-55, filed Sept. 4, 2018.

<sup>14</sup> 47 CFR § 1.925.

<sup>15</sup> See *800 MHz Wideband Order*, 27 FCC Rcd at 6495, para. 14.

<sup>16</sup> See, e.g., *Sprint Corporation Request for Waiver to Permit 800 MHz Wideband Operations in Portions of Arizona Prior to Completion of 800 MHz Band Reconfiguration in the Entire NPSPAC Region*, Letter Order, 32 FCC Rcd 1365 (WTB MD 2017).

- (1) In the ten counties in the Southern California NPSPAC Region listed in the Attachment, Sprint must maintain a minimum 70-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 applicable public safety entities with 30-days advance notice of Sprint's deployment and planned initiation date of operations in the Southern California NPSPAC Region, or if Sprint's operation of a base station site is subject to Section 90.621(b)(4)(ii)'s separation distance requirements, technical information and sufficient time to permit advance review and clearance of Sprint's deployment at that site.
- (3) 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) only 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.<sup>17</sup> We also remind Sprint that its operations must afford additional co-channel distance separation pursuant to Section 90.621(b)(4)(ii) if its sites or those of any public safety entity still operating in the old NPSPAC band meet the protection criteria provided in that rule.<sup>18</sup>

As conditioned, our grant will continue to facilitate more rapid broadband availability in the Southern California region, 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 Southern California NPSPAC Region 5.

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<sup>17</sup> See 47 CFR §§ 90.672, 90.673, 90.674, and 90.675.

<sup>18</sup> See 47 CFR § 90.621(b)(4)(ii). As noted in the March 2018 Waiver, Sprint is required to maintain a separation distance of at least 105 miles of certain "high sites." Section 90.621(b)(4)(ii) provides an additional separation distance of 35 miles in addition to the co-channel distance separation distance prescribed by this rule (a maximum of 70 miles) when the location of certain sites has a directional height of the antenna above average terrain (DHAAT) of 1,500 feet or above. See 47 CFR § 90.621(b)(4), Short-Spacing Separation Table at n.1.

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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 CFR §§ 0.331, 1.925, the Sprint Corporation Request to Modify Waiver Permitting 800 MHz Wideband Operations in Portions of Southern California (Region 5) NPSPAC Prior to Completion of 800 MHz Band Reconfiguration, filed July 26, 2018, is GRANTED to the extent described above.

Sincerely,

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

**Attachment – List of Counties Subject to Modification Request**

\*denotes county not originally included in 2018 Waiver Order

Imperial*
Kern
Los Angeles*
Orange*
Riverside*
San Bernardino*
San Diego*
San Luis Obispo
Santa Barbara
Ventura*