

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

In the Matter of)
Improving Public Safety Communications) WP Docket No. 02-55
in the 800 MHz Band) Miami-Dade County
) Call Signs WPGD547, et al.

ORDER

Adopted: July 2, 2018

Released: July 2, 2018

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

I. INTRODUCTION

1. When the Commission initiated the 800 MHz rebanding program in 2004 to address the growing problem of interference to public safety communications in the 800 MHz band, it set June 26, 2008 as the original deadline for completion of rebanding in non-border regions of the United States. Due to many factors, since then rebanding has taken considerably longer than anticipated, requiring many 800 MHz licensees to obtain waivers of the deadline to allow additional time to complete rebanding of their facilities. In this Order we address Miami-Dade County, Florida's (Miami-Dade) Further Request for Waiver of the June 26, 2008 Deadline for the Completion of 800 MHz Rebanding as it applies to Miami-Dade County. Miami-Dade asks the Commission to extend the June 26, 2008 deadline to allow it additional time to return legacy equipment to Sprint Nextel and to remove pre-banding channels from approximately half of its 15,000 subscriber units. For the reasons discussed below, we deny the request.

II. DISCUSSION

2. 800 MHz rebanding in the non-border areas is now substantially complete: the Transition

1 Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, et al., Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15021-45, 15069 paras. 88-141, 189 (2004) as amended by Erratum, 19 FCC Rcd 19651 (2004), and Erratum, 19 FCC Rcd 21818 (2004) (800 MHz Report and Order). The Commission established a 36-month period for completion of rebanding in non-border regions, which was inaugurated when the Wireless Telecommunications Bureau approved the rebanding schedule proposed for non-border regions by the 800 MHz Transition Administrator. Wireless Telecommunications Bureau Announces That 800 MHz Band Reconfiguration Will Commence June 27, 2005, in the NPSPAC Regions Assigned to Wave 1 and Specifies 800 MHz Reconfiguration Benchmark Compliance Dates, Public Notice, 20 FCC Rcd 9961 (2005). See also, Improving Public Safety Communications in the 800 MHz Band, Supplemental Requests for Waiver of June 26, 2008 Rebanding Deadline, 26 FCC Rcd 14162 (2011).

2 The Commission provided guidance on obtaining waivers of the deadline and the Public Safety and Homeland Security Bureau has periodically granted waivers pursuant to this guidance. Federal Communications Commission Provides Guidance for Submission of Requests for Waiver of June 26, 2008 Deadline for Completion of 800 MHz Rebanding, Public Notice, 23 FCC Rcd 664, n.3 (2008). See also 47 CFR § 90.677.

3 Further Request for Waiver of the June 26, 2008 Deadline for the Completion of 800 MHz Rebanding as it applies to Miami-Dade County filed December 19, 2017 (Waiver Request). Sprint Corporation (Sprint) filed Comments on Petition for Waiver on December 29, 2017 (Sprint Comments). We treat Sprint's comments as an opposition to the Miami-Dade Waiver Request given that the Commission's rules make no provisions for filing comments in a waiver request proceeding.

4 Waiver Request at 2.

Administrator (TA) reports that more than 2100 licensees have retuned their systems and commenced operations on their post-rebanding frequencies.⁵ To the extent that 800 MHz licensees continue to seek waivers of the completion deadline, such requests are subject to “a “high level of scrutiny”⁶ and waiver proponents are required to “have worked diligently and in good faith to complete rebanding expeditiously and to demonstrate that the extension of time requested was no more than reasonably necessary to complete the rebanding process.”⁷

3. In its waiver request, Miami-Dade acknowledges that it completed retuning, commenced operations on its post-rebanding frequencies, and vacated its pre-rebanding frequencies in 2014.⁸ Miami-Dade nevertheless requests an extension until December 2018 for two purposes: (1) “to allow sufficient time to finalize the return of . . . legacy equipment to Sprint Nextel,” and (2) to remove pre-rebanding channels from approximately 15,000 of Miami-Dade’s radios—a process known as giving the radios a “second touch.”⁹

4. Sprint requests that we dismiss the request as unnecessary or, in the alternative, direct Miami-Dade to promptly conclude the terms of its contract with Sprint.¹⁰ Sprint speculates that Miami-Dade is seeking an extension because it does not want to compensate Sprint for the value of 1799 radios that Sprint paid Harris Corporation (Harris) to provide to Miami-Dade, but that turned out not to be necessary to reband Miami-Dade’s system. According to Sprint, Miami-Dade neglected to return the surplus radios to Harris on schedule, and Harris consequently declined to accept the radios for return or to refund their cost to Sprint.¹¹ Sprint also alleges that its contract with Miami-Dade does not require Sprint to perform or pay for a second touch to remove pre-rebanding frequencies from Miami-Dade’s radios.¹² Sprint argues that giving the radios a second touch is a post-rebanding task to be undertaken by Miami-Dade independent of the agreement with Sprint and can be accomplished by Miami-Dade after the Sprint/Miami-Dade contract is closed.¹³

5. We need not decide whether Miami-Dade’s seeking an extension is motivated by the reasons Sprint contends. We do, however, find that Miami-Dade has fallen short of justifying its waiver request as required by Section 1.925 of the Commission’s rules.¹⁴ It has neither exhibited the diligence that the Commission requires before a waiver request can be granted nor justified the extent of the delay it requests. Applying the requisite high level of scrutiny to the Waiver Request, we find the pleading lacks the specificity necessary to justify the relief requested. Miami-Dade has not explained, for example, why it did not return the surplus radios earlier, much less why it would require until December 2018 to do so. It also has not explained why it could not have removed pre-rebanding frequencies its radios earlier, given

⁵ 800 MHz Transition Administrator, LLC, Quarterly Progress Report For The Quarter Ended March 31, 2018 (June 6, 2018).

⁶ *FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding*, Public Notice, 22 FCC Rcd 17227, 17232 (2007).

⁷ *Id.*

⁸ Waiver Request at 2.

⁹ *Id.*

¹⁰ Sprint Comments at 2.

¹¹ Sprint Comments at 2.

¹² That agreement, known as a Frequency Reconfiguration Agreement (FRA), is the contract between rebanding licensees and Sprint setting forth the terms and conditions of Sprint’s payment of licensees’ rebanding expenses.

¹³ Sprint Comments at 2.

¹⁴ 47 CFR § 1.925. *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

that it has not used these frequencies since 2014.¹⁵ In short, Miami-Dade has not shown that the extension it requests is no more than reasonably necessary to complete the rebanding process.

6. Accordingly, we deny Miami-Dade's Waiver Request and require Miami-Dade and Sprint to fulfil all of their remaining rebanding obligations and execute all closing documents, including certification of completion, no later than 90 days following the release date of this *Order*.

III. ORDERING CLAUSES

7. Accordingly, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, IT IS ORDERED that the Further Request for Waiver of the June 26, 2008 Deadline for the Completion of 800 MHz Rebanding as it Applies to Miami-Dade County filed December 19, 2017 by Miami-Dade County, Florida, IS DENIED.

8. IT IS FURTHER ORDERED that Miami-Dade County and Sprint Corporation shall, within 90 days of the release date of this *Order*, complete all of the obligations imposed by their Frequency Reconfiguration Agreement, as amended, execute all closing documents, and certify the completion of rebanding of Miami-Dade's 800 MHz communications system.

9. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm, Chief
Policy and Licensing Division
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¹⁵ The parties' Statement of Work provides: "Subscriber Touch 2 entails the reprogramming of all radios with Miami-Dade responsible for approximately 75% of such effort and Harris responsible for approximately 25% of that effort." The four years that have passed since Miami-Dade stopped using its pre-rebanding frequencies have provided ample time for Miami-Dade and its contractor, Harris, to discharge their respective second touch responsibilities