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

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket No. 02-55
	)	

REPORT AND ORDER

Adopted: May 11, 2020 **Released: May 12, 2020**

By the Commission:

I. INTRODUCTION

1. In this *Report and Order*, we accelerate the successful conclusion of the Commission's 800 MHz rebanding program, following up on our recent *Order and Sixth Further Notice of Proposed Rulemaking* in this proceeding.[1] In the *Sixth Further Notice*, we proposed to eliminate certain audit and financial reconciliation requirements that have been part of the program since its inception but are no longer necessary as rebanding nears completion. We implement these proposals today.

II. BACKGROUND

2. In 2004, the Commission initiated the 800 MHz rebanding program to alleviate harmful interference to 800 MHz public safety radio systems (and other high-site, non-cellular systems) by increasing the spectral separation between these systems and 800 MHz cellular-based systems, most notably the system operated by Sprint Corporation (Sprint).[2] The Commission adopted a band plan that required the relocation of the bulk of Sprint's system, as well as other cellular-based systems, to spectrum at the upper end of the band, and the relocation of the public safety and other high-site, non-cellular licensees to spectrum at the lower end of the band. The Commission further required Sprint to pay, in addition to its own relocation costs, all reasonable relocation costs incurred by the other incumbent licensees in the band, and to relinquish a portion of its spectrum holdings (thereby freeing up additional spectrum for public safety) in exchange for which the Commission awarded Sprint a separate block of spectrum in the 1.9 GHz band.

3. The Commission also required Sprint to make an anti-windfall payment to the United States Treasury if the costs Sprint incurred in paying for rebanding did not exceed the value of the 1.9 GHz spectrum that Sprint was assigned.[3] In 2017, the Public Safety and Homeland Security Bureau

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[1] *Improving Public Safety Communications in the 800 MHz Band,* Order and Sixth Further Notice of Proposed Rulemaking, 34 FCC Rcd 10208 (2019) (*Sixth Further Notice*).

[2] *See Improving Public Safety Communications in the 800 MHz Band***,** Report and Order, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*). On April 1, 2020, Sprint and T-Mobile US, Inc. merged to create a new company operating under the name "T-Mobile" with T-Mobile US, Inc as the parent company. *See Applications of T-Mobile US Inc. and Sprint Corp. for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732 para.348 (2019); *T-Mobile Completes Merger with Sprint to Create the New T-Mobile*, (April 1, 2020), https://www.t-mobile.com/news/t-mobile-sprint-one-company.

[3] *See 800 MHz Report and Order*, 19 FCC Rcd at 15123-25.

(Bureau) found that Sprint's rebanding costs significantly exceeded the value of the spectrum Sprint had received, and held that Sprint was no longer liable for an anti-windfall payment.[4]

4. In the *Sixth Further Notice*, the Commission noted that Sprint's anti-windfall obligation had been satisfied and therefore proposed to eliminate certain audit and financial reconciliation tasks previously required to be performed by the 800 MHz Transition Administrator. Specifically, the Commission proposed that the Transition Administrator should no longer be required to (a) furnish the Commission with an annual audit of Sprint's rebanding expenditures and conduct other cost reconciliation tasks; and (b) review and approve amendments to licensee Frequency Reconfiguration Agreements with respect to cost creditability.[5] Sprint filed comments supporting these proposals.[6] No other party filed comments.

III. DISCUSSION

5. After consideration of the record in this proceeding, we adopt the rule changes as proposed in the *Sixth Further Notice*. Accordingly, we will no longer require the Transition Administrator to furnish the Commission with an annual audit or conduct other financial reconciliation of Sprint's rebanding expenditures and eliminate the provision in our rules—section 90.676(b)(4)—containing those requirements. The record is uncontradicted that these requirements are no longer necessary since Sprint has satisfied its anti-windfall obligation.[7]

6. We also eliminate the requirement that the Transition Administrator review and approve amendments to licensee Frequency Reconfiguration Agreements with respect to cost creditability.[8] Sprint agrees with the Commission's observation in the *Sixth Further Notice* that there are likely to be very few if any more Frequency Reconfiguration Agreement amendments now that virtually all incumbent licensees have completed physical rebanding of their systems.[9] Moreover, even if new amendments are occasionally necessary going forward, because Sprint has satisfied the anti-windfall requirement, there is no longer any programmatic need or benefit to having the Transition Administrator review these amendments for cost creditability purposes or approve them.[10]

7. While we eliminate the above requirements, we affirm that the Transition Administrator will continue its tracking, reporting, analytical, and mediation functions as needed to facilitate the rebanding program's goals and assure its successful conclusion. In particular, the Transition Administrator will continue to ascertain the overall cost to Sprint of the payments it has agreed to make under Frequency Reconfiguration Agreement amendments, to the extent that such cost may affect the Transition Administrator's recommendations to the Commission regarding reductions in the amount of the Letter of Credit. The Transition Administrator will continue to be responsible for reviewing the sufficiency of the Letter of Credit that the Commission has required Sprint to maintain throughout the program as financial security for its rebanding performance.[11] This responsibility also extends to review of any subsequent letter of credit that may be proposed as a consequence of Sprint's completed

[4] *Improving Public Safety Communications in the 800 MHz Band*, Declaratory Ruling, 32 FCC Rcd 7528 (PSHSB 2017) (*Declaratory Ruling*).

[5] *See Sixth Further Notice* at 10213-10215 paras. 17-23.

[6] Comments of Sprint Corp., Dec. 16, 2019 (Sprint Comments).

[7] *See Declaratory Ruling; see also* Sprint Comments at 1.

[8] *See Sixth Further Notice* at 10215 para. 22.

[9] *Id.*; *see also* Sprint Comments at 3.

[10] *Sixth Further Notice* at 10215 para. 22; Sprint Comments at 3.

[11] *See Sixth Further Notice* at 10215 para. 22; *see also Improving Public Safety Communications in the 800 MHz Band*, Order of Modification, 29 FCC Rcd 11689 (PSHSB 2014).

acquisition by T-Mobile. Similarly, our elimination of the Frequency Reconfiguration Agreement amendment review and approval requirements neither alters the Transition Administrator's responsibility to review such amendments on an *ad hoc* basis to the extent appropriate in performing its duties regarding mediation,[12] nor affects the Transition Administrator's obligation to review any non-payment-related Frequency Reconfiguration Agreement amendments (such as changes in the replacement frequencies assigned to a licensee).[13]

IV. PROCEDURAL MATTERS

8. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),[14] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." A Final Regulatory Flexibility Certification on the economic impact of the rule changes contained in this *Report and Order* is set forth in Appendix B.

9. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in sections 4(i), 4(j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303, and 403 that the amendments to the Commission's rules as set forth in Appendix A hereof, and the provision herein that the 800 MHz Transition Administrator no longer need review licensees' amendments to Frequency Reconfiguration Agreements **ARE ADOPTED**, effective thirty days from the date of publication of this *Report and Order* in the Federal Register.

11. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

12. **IT IS FURTHER ORDERED** that the Commission SHALL SEND a copy of this *Report and Order* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[12] *See Sixth Further Notice* at 10215 para. 22 (noting that under the proposal, the elimination of the Frequency Reconfiguration Agreement amendment review/approval requirement would not affect the possibility that the Transition Administrator may incidentally review an amendment while assisting the parties in mediation).

[13] *See id*. at 10215 n.44 (addressing scope of proposed elimination of Frequency Reconfiguration Agreement amendment review/approval requirement).

[14] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public L. No. 104-121, Title II, 110 Stat. 857 (1996).

APPENDIX A

Amended Rule

The Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90 — PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473.

2. Amend Section 90.676(b)(4) by removing paragraph (b)(4) and reserving it.

APPENDIX B

Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA),[15] requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[16] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[17] In addition, the term "small business" has the same meaning as the term "small business concerns" under the Small Business Act.[18] A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[19]

2. An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Sixth Further Notice of Proposed Rulemaking* (*Sixth FNPRM*) released in October 2019. The Commission sought written public comment on the proposals in the *Sixth FNPRM*, including comment on the IRFA. No comments were received addressing the IRFA.

3. In the instant *Report and Order* we delete a rule provision requiring the 800 MHz Transition Administrator to commission an annual audit of Sprint Corporation's rebanding expenses and delete a requirement in the *800 MHz Report and Order* that the 800 MHz Transition Administrator must review and approve amendments to 800 MHz Rebanding Licensees' Frequency Reconfiguration Agreements. In so doing we reduce burdens for licensees who otherwise would have to provide financial information to Sprint Corporation and who otherwise would have to present their amendments to Frequency Reconfiguration Agreements to the 800 MHz Transition Administrator for review and approval.

4. We have determined that the impact on the entities affected by the rule change will be not be significant. The effect is to allow those entities, to sooner complete rebanding, to their benefit and to the benefit of 800 MHz licensees affected by interference.

5. We therefore certify that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[20] In addition, the *Report and Order* will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.[21]

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[15] The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[16] 5 U.S.C. § 605(b).

[17] 5 U.S.C. § 601(6).

[18] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[19] 15 U.S.C. § 632.

[20] *See* 5 U.S.C. § 801(a)(1)(A).

[21] *See* 5 U.S.C. § 605(b).