

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Sprint Nextel Corporation) WT Docket No. 02-55
Petition for Declaratory Ruling –)
800 MHz Rebanding “Anti-Windfall”)
Payment and Letter of Credit Minimum Amount)

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its comments in response to the Petition for Declaratory Ruling¹ filed by Sprint Nextel Corporation (“Sprint Nextel”) in the 800 MHz rebanding proceeding.² As described in the Public Notice, the Petition seeks a determination that, based on its cumulative creditable rebanding expenditures, Sprint Nextel will not be required to make an “anti-windfall” payment to the U.S. Treasury as contemplated in the Commission’s 800 MHz proceeding.³ Upon such a determination, Sprint Nextel also urges the FCC to streamline the 800 MHz reconciliation process to ease the burden on public safety licensees and, further, asks that it be permitted to reduce the Letter of Credit (“LOC”) required by the FCC to ensure payment of rebanding costs below the current \$850 million minimum.

¹ Petition for Declaratory Ruling filed by Sprint Nextel Corporation (filed Jan. 22, 2013) (“Petition”).

² Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling by Sprint Nextel Corporation Concerning 800 MHz Rebanding “Anti-Windfall” Payment and Letter of Credit Minimum Amount, *Public Notice*, 28 FCC Rcd 371 (PSHSB 2013) (“Public Notice”).

³ See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 at ¶ 297 (2004) (“800 MHz Order”).

EWA is a national trade association representing business enterprises, wireless sales and service providers, hardware and software system vendors, and technology manufacturers. The Alliance also is an FCC-certified frequency advisory committee (“FAC”) that facilitates in excess of 10,000 FCC licensing application preparation, frequency selection, and certification transactions annually. EWA has been actively involved in the 800 MHz rebanding proceeding from the outset⁴ and certain of its members are subject to a rebanding requirement. Thus, the Alliance has a direct interest in the outcome of this proceeding.

As explained in the Petition, a key element of the 800 MHz rebanding decision was an “anti-windfall payment” process designed to ensure that Sprint Nextel was not economically advantaged by the spectrum exchanges and other elements of the FCC’s rebanding rules. Based on the FCC’s calculation of the relative values of the 800 MHz spectrum Sprint Nextel was relinquishing and the 1.9 GHz replacement spectrum it would receive, the Commission determined that Sprint Nextel would be required to pay to the U.S. Treasury the balance, if any, should the documented costs incurred by Sprint Nextel in fulfilling its obligations under the rebanding orders be less than \$2,796,548,000.

The Petition details the rebanding-related costs already paid by Sprint Nextel, as well as those for which it is contractually obligated. It states that Sprint Nextel has “spent or committed to spend more than \$3.4 billion to date in support of 800 MHz reconfiguration and BAS [Broadcast Auxiliary Service] Relocation...”⁵ It explains that all of these 800 MHz rebanding costs have been scrutinized extensively and approved by the TA designated by the Commission to oversee the rebanding process, including validating that the costs incurred are “reasonable,

⁴ For example, EWA’s predecessor organization, the Industrial Telecommunications Association, was designated by the FCC as one of the five entities that served on the search committee to select the 800 MHz Transition Administrator (“TA”). *See* 800 MHz Order at ¶191.

⁵ Petition at 8.

prudent, and necessary” to achieve rebanding.⁶ It notes the FCC’s previous, common sense conclusion that, even without a TA, Sprint Nextel had every incentive to keep to the minimal amount the BAS relocation costs it was required to pay.⁷ On that basis, Sprint Nextel argues that it is not necessary to delay the true-up needed to determine whether an “anti-windfall” payment must be made to the Treasury⁸ until all rebanding work has been completed and contracts closed. It urges the Commission to make that determination now.

EWA is not in a position to confirm Sprint Nextel’s statements regarding its incurred and committed costs and will leave that analysis to the FCC and the TA. Assuming those statements are correct, as the Alliance does, EWA agrees that there is no reason to defer the true-up assessment until rebanding is completed nationwide.⁹ This effort already has taken more than twice as long as originally anticipated. Any steps that promise to bring this very lengthy proceeding closer to completion should be implemented promptly.

Sprint Nextel urges that two further actions be taken upon a Commission determination that no anti-windfall payment will be required. First, the Petition suggests that such a true-up would enable the FCC to “streamline rebanding and ease unnecessary burdens on public safety licensees and on Sprint.”¹⁰ More specifically, it asserts that a declaratory ruling directing the TA to complete the true-up assessment will “...significantly reduce the need for Sprint and public safety licensees to continue to comply with burdensome post-retuning documentation and

⁶ *Id.* at 9.

⁷ *Id.* at 12-13.

⁸ As pointed out in the Petition, the FCC had anticipated that such a true-up might appropriately be undertaken before all rebanding work was completed. *Id.* at 14.

⁹ The Alliance agrees that very substantial progress has been made toward completing this undertaking. However, the Commission has not yet adopted rules governing rebanding in the Mexican Border Region, so much work remains to be done in that area, a region with a substantial number of 800 MHz licensees, including very large public safety systems.

¹⁰ *Id.* at 15.

auditing procedures related to the true-up.”¹¹ Second, Sprint Nextel asks the FCC to eliminate the current \$850 million floor for the LOC required by the Commission as “insurance” that sufficient funds would be available to cover all rebanding costs.¹² Noting that the LOC has been reduced over time from \$2.6 billion to \$859 million in recognition of the rebanding payments made without recourse to it, Sprint Nextel recommends that the \$850 million floor be replaced by a TA estimate of the amount needed to complete all rebanding activities.¹³

EWA fully supports efforts to streamline and simplify the rebanding process, a process that has proven highly demanding and complex for all incumbents including, but not limited to, public safety entities. The Alliance assumes that the reference in the Petition to easing rebanding burdens on public safety licensees was intended to include all incumbents, including the Industrial/Business and commercial SMR licensees that are Alliance members and whose systems are expected to be rebanded under the yet-to-be-adopted rules governing rebanding in the Mexican Border Region.¹⁴ All incumbents would benefit from a more streamlined process both during the post-retuning and documentation period and in all other stages of rebanding.

While the Alliance supports this Sprint Nextel concept generally, the Petition provides no details as to how Sprint Nextel believes the process should or could be simplified. EWA appreciates that reducing TA oversight of reconciliation and post-closing audits – as well as any other rebanding-related activities – would be a cost-savings for Sprint Nextel since it funds all TA activities. It is less clear how the process would change for incumbents. EWA agrees that the current reconciliation process requires incumbents to provide highly detailed documentation about costs incurred. But while the Petition seems to suggest that something less should be

¹¹ *Id.*

¹² 800 MHz Order at ¶¶ 182-3.

¹³ Petition at 16-18.

¹⁴ There also are non-public safety entities outside the Mexican Border Region that have not yet completed the reconciliation process.

required, it also cautions that “nothing in this request is intended to modify any of the requirements and obligations of either Sprint or an incumbent licensee contained in individual PFAs or FRAs, as amended, and the schedules thereto.”¹⁵ Thus, while the Alliance encourages the FCC to explore modifications to the process, EWA cannot state whether it would support changes until it has sufficient details regarding them to assess their impact on an incumbent’s rebanding rights and responsibilities.

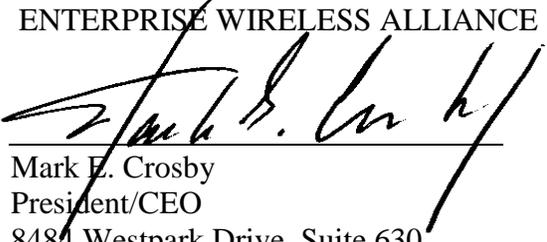
Finally, EWA has no objection to Sprint Nextel’s proposal that the Commission reduce the LOC to an amount estimated by the TA to cover all remaining rebanding costs once the TA is capable of making that calculation. The Alliance would have assumed that any such analysis would need to be conducted after the FCC adopts rules governing rebanding in the Mexican Border Region, since those rules will determine which 800 MHz systems need to be rebanded – a critical element in any cost analysis. It also would have thought that some incumbent planning would need to be completed before costs could be estimated accurately, but the Alliance will rely on the TA and the FCC to determine when there is sufficient information to perform that calculation with the necessary degree of certainty.

EWA, along with Sprint Nextel, is pleased that the rebanding progress to date justifies consideration of the issues raised in the Petition. It looks forward to working with the Commission in crafting rules that will simplify and streamline the rebanding process for all incumbents, without compromising the rights granted to them under the FCC’s rebanding decisions.

¹⁵ *Id.* at n. 43.

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