



PUBLIC NOTICE

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**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU PROVIDES GUIDANCE FOR
PUBLIC SAFETY LICENSEES WITH REGARD TO LICENSE APPLICATION AND SPECIAL
TEMPORARY AUTHORIZATION PROCEDURES AND PAYMENT OF FREQUENCY
RELOCATION COSTS FOR PUBLIC SAFETY FACILITIES ADDED DURING 800 MHZ
BAND RECONFIGURATION¹**

WT Docket No. 02-55

By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB) provides guidance regarding license application and Special Temporary Authorization (STA) procedures and payment of costs for rebanding of new or expanded public safety facilities authorized during the transition period.

In the *800 MHz R&O*, the Commission limited licensees' ability to add new facilities during the negotiation period that would add to the cost and burden of rebanding. To preserve the spectrum landscape, it provided for a freeze on 800 MHz applications during negotiations in each wave.² It also provided for tolling of certain construction requirements so that licensees who had not yet constructed facilities on their pre-rebanding frequencies could defer construction until their new frequency assignments became available.³ However, the Commission also recognized that situations might arise in which licensees would need to add or expand essential facilities before the conclusion of rebanding. In the *800 MHz R&O*, the Commission noted the availability of STAs and waivers to handle such situations during the band reconfiguration process.⁴

As rebanding has progressed, some licensees have informally sought clarification as to what procedures should apply to STA requests or applications for new or modified facilities that are filed before the conclusion of the transition period. In addition, questions have arisen regarding whether, and under what circumstances, the *800 MHz R&O* requires Sprint to pay for the frequency relocation (*i.e.*, retuning or replacement) of facilities that are authorized and activated on a licensee's old frequency band

¹ Delegated authority for handling 800 MHz band reconfiguration issues has been transferred from the Wireless Telecommunications Bureau to the new Public Safety and Homeland Security Bureau (PSHSB). See Establishment of the Public Safety and Homeland Security Bureau and Other Organizational Changes, *Order*, 21 FCC Rcd 10867 (2006).

² See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 15078 ¶ 204 (*800 MHz R&O*). The freeze period lasts until thirty working days after the completion of mandatory negotiations in the affected region.

³ *Id.* at 15079 ¶ 205.

⁴ *Id.* at 15078 ¶ 204.

during the transition period. In particular, a number of NPSPAC licensees have obtained STAs during the application freeze in their NPSPAC regions to enable them to expand or add essential facilities to improve the coverage or capacity of their systems. Many of these licensees have expressed concern that they lack the resources necessary to first implement the new facilities and then pay the cost to relocate them to their new frequency assignments at the conclusion of band reconfiguration in their NPSPAC regions. We offer the following guidance to address these issues.

Application and STA Procedures. First, we clarify that as a general matter, once the negotiation period in a region has begun, permanent licensing on the pre-rebanding frequencies should cease and subsequent licensing should be in accordance with the new, post-rebanding band plan.⁵ Thus, license applications are not accepted during the freeze period, and once the freeze in a given region ends, new applicants (including existing licensees seeking authorizations for new facilities) will be expected to file for available frequencies based on their eligibility under the new band plan. For example, public safety eligibles will be unable to apply for spectrum in the old NPSPAC band, and applicants for frequencies in the interleaved band will have to meet post-rebanding eligibility requirements for the particular interleaved band segment.⁶

We also note that some spectrum will not become immediately available for licensing after the freeze. In particular, spectrum in the interleaved band that has been vacated by Sprint or other ESMR licensees and that is not used for rebanding of former Channel 1-120 licensees will be held in reserve until the conclusion of rebanding, at which point it will be made available for exclusive licensing to public safety for a period of three years and to public safety and critical infrastructure for an additional two years.⁷ Similarly, spectrum in the “new” NPSPAC band at 806-809 MHz/851-854 MHz band will not become available until Sprint has cleared the band and relocation of existing NPSPAC licensees has been completed.

We recognize that some licensees may have a compelling need to expand their facilities on pre-rebanding frequencies before channels become available under the new band plan. As noted above, this has already occurred in the case of NPSPAC licensees that have obtained STAs for modified or expanded facilities during the application freeze. Therefore, during the freeze and post-freeze period, we will accept requests for STAs on pre-rebanding frequencies, pursuant to Section 1.931 of our rules. Under those rules, STA applications “must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA.”⁸ We expect public safety licensees filing such requests to demonstrate a compelling public interest need to improve the coverage or capacity of their systems, and we anticipate that a successful application would clearly articulate why the facilities requested must be implemented before the end of band reconfiguration.⁹ We also anticipate that such showings of need will receive heightened scrutiny as the date for completion of band reconfiguration in a

⁵ See *Improving Public Safety Communications in the 800 MHz Band, Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120, 25159-60 ¶ 89 n. 226 (2004) (*800 MHz Supplemental Order*).

⁶ Applications in the interleaved segment of the band—that portion between the NPSPAC band and the Expansion Band, containing a mixture of public safety, B/ILT and SMR channels—will be subject to frequency coordination requirements.

⁷ See *800 MHz R&O*, 19 FCC Rcd at 15050-52 ¶ 151; *800 MHz Supplemental Order*, 19 FCC Rcd at 25145 ¶¶ 58-59. These channels will become available for public safety use when band reconfiguration is complete in a region and PSHSB issues a public notice announcing the date that it will accept applications for those channels.

⁸ 47 C.F.R § 1.931.

⁹ Non-public safety licensees may also seek STAs to operate on pre-rebanding channels. However, we anticipate that STA requests failing to show a public safety need to initiate operations during rebanding will not be routinely granted.

region approaches. Furthermore, in the case of requests to use old NPSPAC frequencies, it is recommended that the STA request be accompanied by evidence that the Regional Planning Committee has concurred that the frequency or frequencies requested may be used consistent with the Regional Plan.

Licensees seeking STAs on pre-rebanding frequencies will not be required to submit a permanent license application for those facilities when they request the STA, but must file a permanent application to operate on the new frequencies when they become available for licensing. In addition, if the STA request proposes to expand the coverage or capacity of a currently operating system, the request must be filed on FCC Form 601, and must comply with the frequency coordination requirements of Section 1.931 both on the channel or channels requested and on the channel or channels to which the licensee must relocate pursuant to the TA's channel plan for the region.

Payment for Frequency Relocation of Facilities Authorized During the Transition Period.

Second, we offer guidance on the issue of when Sprint will be required to pay for the frequency relocation of facilities that are authorized and activated on a licensee's old frequency band during the transition period. First, as a general rule, Sprint must pay the cost of relocating facilities that are authorized on a licensee's old frequency band before the end of the freeze in the applicable region, including facilities authorized by STAs or waivers granted during the freeze. As noted above, we emphasize that any licensee seeking an STA or waiver during the freeze must demonstrate that the requested facilities are essential to meet immediate needs and that operation in the old frequency band is necessary because it is too early in the transition to commence operation in the new frequency band.

Second, with respect to the payment of frequency relocation costs of facilities authorized by STA on pre-rebanding frequencies after the freeze has ended, we clarify that Sprint is not required to pay to relocate these facilities¹⁰ We note, however, that under the Commission's rules governing waivers,¹¹ and in exceptional cases, a public safety licensee may request that Sprint be responsible for payment of the frequency relocation costs of these facilities and that it be allowed to reopen negotiations with Sprint to include such added costs. In support of any such waiver request, we expect that licensees will demonstrate that: (a) the need for the facility could not reasonably have been anticipated before the end of the mandatory negotiation period; and (b) safety considerations dictate that the modified facilities must be activated before band reconfiguration is completed in the relevant NPSPAC region. Reopened negotiations with Sprint should not commence until a waiver has been granted.

Action by the Associate Chief, Public Safety and Homeland Security Bureau.

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¹⁰ This policy applies both to new or modified base station facilities and to mobile and portable radios that may be added to a system in the post-freeze environment.

¹¹ 47 C.F.R § 1.925.