

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

In the Matter of)
CITY OF OAKLAND, CALIFORNIA)
Further Request for Waiver of the June 26, 2008)
Deadline for Completion of 800 MHz Rebanding.)
WT Docket 02-55

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 2015

Released: March 9, 2015

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

I. INTRODUCTION

1. Under consideration is the Further Request for Waiver of the June 26, 2008 Deadline for Completion of 800 MHz Rebanding (Request), filed February 13, 2015 by the City of Oakland, California (Oakland), the Opposition thereto (Opposition), filed February 23, 2015 by Sprint Corporation (Sprint) and the Reply of the City of Oakland, California (Reply) filed March 2, 2015. For the reasons set out below, we deny the Request and order Oakland to return to Sprint certain equipment loaned to Oakland by Sprint, said return to be accomplished not later than 45 days following the release date of this Memorandum Opinion and Order.

II. BACKGROUND

2. Oakland completed the physical rebanding of its 800 MHz communications system in 2011.1 As part of its rebanding obligations, Oakland was to return to Sprint, certain equipment Sprint loaned to Oakland to facilitate the rebanding of Oakland’s system. Today, over 4 years later, Oakland has yet to return the equipment to Sprint. Oakland claims that it has not done so because its staff has been occupied with resolving interference that Oakland has encountered from Sprint and AT&T Wireless (AT&T).2

3. Oakland, in its Request, seeks permission to further delay returning the loaned equipment to Sprint until June 30, 2015. Oakland also seeks extension of the deadline to complete its rebanding until December 31, 2015 so that it may effect a “third touch”3 to “remove the BART pre-rebanding frequencies

1 Opposition at 1.

2 Reply at 1-2. (“Thus, while the concentration of Sprint may be on the implementation of CDMA service to replace its defunked [sic] iDEN system, the focus of Oakland’s limited staff has been investigating dead spots caused by carriers and working with these carriers to correct the debilitating interference. * * * Thus, Oakland’s efforts with its limited staff have been focused on identifying and eliminating interference and return of equipment has been a lesser priority.”)

3 A “touch” is an industry term that comprehends changing the frequency, or other operating parameter, of a land mobile radio portable or mobile unit.

from the Licensee's existing mobile radios,"⁴ and so that it may complete the purchase of 1400 Motorola APX 7000 portable radios, which are said to be more interference resistant than Oakland's current Harris portable radios. In the Request, Oakland represented that it would submit a change notice request for the third touch of its mobile radios by March 1, 2015. However, in its Reply, filed on March 2, 2015, Oakland does not state whether it met the March 1, 2015 schedule for the change notice. In the Request, Oakland recited that it had contracted to procure the Motorola radios "outside of rebanding,"⁵ but seeks to submit a second change notice request to use contingency funds contained in the Frequency Reconfiguration Agreement (FRA)⁶ to help pay for the Motorola APX 7000 radios, as well as to offset Oakland's costs in dealing with interference.⁷

4. Sprint, alleging that it "has a direct interest in the timely completion of the 800 MHz band reconfiguration—one that the Public Safety and Homeland Security Bureau shares" opposes the extension of time requested by Oakland. Sprint contends that Oakland fails to supply any support for the requested extension, much less the support required to meet the "high level of scrutiny" imposed on such requests by the Commission.⁸ Sprint accuses Oakland of failing to take the necessary steps to close its FRA⁹ Responding to Oakland's commitment to return equipment to Sprint by June 30, 2015, Sprint argues that if the Bureau grants the requested extension, it should only grant it only until June 30, 2105.¹⁰

5. As to the change notice requests referenced in the Oakland Request, Sprint notes that a change notice request for giving Oakland's radios a third touch was rejected by Sprint in 2012 when Sprint informed Oakland that contingency funds in the FRA could not be used for the third touch, because Sprint was not obliged to pay for expenses that were foreseeable at the time the FRA was negotiated.¹¹ Moreover, Sprint contends that it is well settled that it is not obligated to pay for removing pre-rebanding frequencies from rebanding licensees' radios.¹² Sprint also rejects Oakland's reasoning for a proposed change order request that would pay Oakland for replacing its Harris radios with Motorola radios. First, Sprint points out that Oakland "reached a separate transaction with Harris outside the rebanding project to obtain the [Harris] P-7200 radios," and, therefore, that Oakland is responsible for deficiencies encountered with the radios it chose.¹³ Second, Sprint points out that since Oakland concedes that the Harris radios meet "the 'minimum FCC protection standard'"¹⁴ Sprint has provided Oakland with comparable facilities.

⁴ Request at 2.

⁵ *Id.*

⁶ The FRA is the contract between Sprint and Oakland governing the rebanding of Oakland's system.

⁷ Request at 3.

⁸ Opposition at 1, *citing* FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, *Public Notice*, 22 FCC Rcd 17227, 17232 (2007)

⁹ Opposition at 2.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* at 4, *citing* Illinois Public Safety Agency Network and Nextel Communications, Inc., *Memorandum Opinion and Order*, 26 FCC Rcd 4061 (PSHSB 2011), *aff'd*, 27 FCC Rcd 11459 (2012); City of Boston,

¹³ Opposition at 5.

¹⁴ *Id.*

6. Oakland, in reply, focuses on the fact it is encountering interference, the majority of which originates from AT&T, but some of which originates from Sprint or Sprint and AT&T in combination.¹⁵ It alleges that “there is no harm being caused to Sprint from the delay in Oakland’s ability to close.”¹⁶ and that Sprint’s opposition to replacing Oakland’s radios with Motorola units is premature because Oakland has not yet submitted a change notice request to that effect.¹⁷ Oakland contends that the need for a third touch to its radios “was contemplated from the beginning”¹⁸ and was included in the contingency provisions of the FRA.¹⁹ In sum, Oakland states: “it is Sprint’s own interference (as well as AT&T’s) which is preventing Oakland from being able to implement its third touch and finish the ministerial processes to complete the closing process.”²⁰

III. DISCUSSION

7. Oakland has had over four years to return equipment to Sprint and has not done so. It now claims that it needs even more time to inventory the equipment and compare it to an equipment list.²¹ It claims that the return effort is approximately 50% complete and that it intends to begin shipment on March 1, 2015, completing the shipment by June 30, 2015. It offers no explanation of why it would require 4 months to pack and return the remainder of Sprint’s equipment. We are not persuaded that Oakland’s refusal to return the equipment was due to Oakland’s staff all being occupied by identifying interference to its system. Oakland notes that “it has engaged additional resources” to ship the equipment, but does not explain why those additional resources could not have been mustered years ago. We will not indulge further temporizing on Oakland’s part—Oakland shall return all borrowed equipment to Sprint on or before 45 days from the release date of this *Memorandum Opinion and Order*.

8. We decline to afford Oakland until December 31, 2015 to complete its proposed change notice requests for a third touch to its mobile radios and acquisition of Motorola radios at Sprint’s cost. Regardless of whether Oakland’s reports of interference are accurate, and we have no reason to believe they are not, Commission precedent states that post-rebanding interference caused by an ESMR or cellular licensee is outside of the scope of rebanding.²²

9. We find that Oakland does not require until December 31, 2015 to resolve the question of whether it is entitled to a third touch of its radios to remove the pre-rebanding BART channels. Oakland submitted a “cost estimate consistent with the contingency as reflected in the FRA.”²³ We hereby direct Sprint to respond to that cost estimate within 5 business days from the release date of this *Memorandum Opinion and Order*. Thereafter, Oakland shall submit a change notice request to the Transition Administrator, which shall process that request within 10 business days thereafter. Should either party disagree with the TA’s disposition of the change order request, the parties shall submit to mandatory

¹⁵ Reply at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Request at 2.

²² See Ann Arbor Transportation Authority, *Order*, 29 FCC Rcd 11719 (PSHSB 2014).

²³ Reply at 3.

mediation before a TA Mediator for five business days, meeting at least once each business day for a minimum of one hour. If mediation is not successful, the TA Mediator shall then file a recommended resolution of the matter with the Public Safety and Homeland Security Bureau which promptly will issue a decision.

10. We disagree with Oakland's contention that it should be allowed to delay closing of its FRA because no harm arises to Sprint by Oakland's continued refusal to do so.²⁴ Sprint, the Commission and the public in general have an interest in the timely conclusion of the rebanding program. Sprint faces increased costs from rebanding delays, the Commission's resources are burdened by resolving rebanding disputes and the public has an interest in the prompt resolution of the long-standing problem of interference from ESMR and cellular carriers.

11. We note Oakland's recitation of the interference it has encountered, and continues to encounter from Sprint and AT&T.²⁵ While the Commission is concerned with this situation, the proper forum for Oakland to raise its interference complaints is the Commission's Enforcement Bureau.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, that the Further Request for Waiver of the June 26, 2008 Deadline for Completion of 800 MHz Rebanding, filed February 13, 2015 by the City of Oakland, California IS DENIED.

13. IT IS FURTHER ORDERED that the City of Oakland, California, shall return to Sprint Corporation, equipment loaned it by Sprint Corporation, said return to be made no later than 45 days from the release date of this *Memorandum Opinion and Order*.

14. IT IS FURTHER ORDERED that Sprint Corporation and the City of Oakland, California, shall resolve their differences, if any, concerning a "third touch" to the City of Oakland's mobile radios, according to the schedule set forth in paragraph 8 of this *Memorandum Opinion and Order*.

15. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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²⁴ *Id.*

²⁵ Reply at 3.