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REBANDING THE 800 MHZ PUBLIC SAFETY SPECTRUM

What's happened in the past year?

At the end of April 2006, Stage 2 of Wave 1 was in negotiation and much of Stage 1 in mediation or on appeal. Waves 2, 3 and 4 remained in Stage 1, trying to reach agreements with Nextel on evacuating the so-called Lower 120 channels (806-809 MHz) to prepare for eventual Stage 2 occupancy by NPSPAC channels.

More than a year later, Wave 2 licensees have passed through Stage 2 negotiations and into mediation – unless they reached agreements – and Wave 3 licensees without agreements are entering mediation. The Wave 4 licenses near the Canadian and Mexican borders can't be reconfigured until diplomatic negotiations are completed, although some of the interior portions of Wave 4 states are making slow progress.

On the positive side, the FCC began late last year to decide some appealed cases and to issue more guidance through Public Notices. For its part, the TA released increasingly detailed instructions about how to estimate costs. We discuss these developments in greater detail below.

Background

In August of 2004, the Federal Communications Commission ("FCC") released an ambitious plan to mitigate serious interference from Nextel and other commercial wireless

providers to public safety radio systems operating in the 800 MHz band.

<http://wireless.fcc.gov/publicsafety/800MHz/bandreconfiguration/index2.html> The plan contains two principal elements.

The first is a reconfiguration, or “re-banding,” of spectrum lying between 806 and 824 MHz (mobile and control station frequencies) and 851 and 869 (base station frequencies).¹ Until now, this spectrum has been shared by public safety, business private radio users and commercial service providers -- Nextel notable among the latter. In general, the re-banding aims to consolidate public safety spectrum between 806/851 and 816/861 MHz and to move other users higher up in the band or outside it altogether. The consolidation will also put more distance between “high-site” public safety systems and Nextel and other operators of cellular or cellular-like “low-site” systems. For a discussion of these two basic and often incompatible “architectures,” see

<http://wireless.fcc.gov/publicsafety/800MHz/bandreconfiguration/downloads/FCC-05-174A1.pdf>.

While the re-banding is expected to mitigate significantly the interference from low-site commercial systems to high-site public safety and other private radio systems, it may not eliminate the problem entirely. Accordingly, the Commission adopted an objective technical standard for determining whether an 800 MHz public safety or other non-cellular licensee is entitled to interference protection in a given area. The Commission also established a set of procedures for expeditious resolution of interference. For the first time, public safety licensees

¹ Together, a mobile or control station frequency and a base station frequency make up a “channel.”

meeting certain signal-level thresholds are guaranteed relief from interference rather than having to rely on the good will and voluntary actions of operators causing the problems. See generally, 47 CFR §§90.672-675.

The Process

Re-banding is a complex and expensive undertaking. Nextel originally proposed to put up \$500 million in compensation to those users, such as public safety, forced to change channels. The company later raised the ante to \$850 million. In exchange, Nextel sought spectrum (preferably in the 2000 MHz, or 2 GHz, range) of equivalent value to the channels it would be giving up at 800 MHz and elsewhere. In the end, the FCC decided that Nextel's liability for the expenses of re-banding would not be capped, and ordered the company to create an initial fund of \$2.5 billion in a Letter of Credit against which compensation could be drawn. In return, Nextel was granted 10 MHz in the 1.9 GHz region of the spectrum.

Spectrum reconfiguration is complex and expensive for many reasons. Among these: public safety radio systems cannot afford to be "down" – in whole or part – for any great length of time. Down time in this case refers not just to changing the operating characteristics of antennas and other parts of system infrastructure, but also to "retuning" (changing frequencies) or reprogramming – if not replacing – those "subscriber units" (vehicle mobiles or personal portable radios) in daily use by police, fire, medical and other public safety personnel. Work schedules need to be adjusted, or overtime paid, to make space for these equipment changes. Re-banding of the infrastructure and subscriber units of a given public safety system often needs to be coordinated with the reconfiguration of neighboring systems that "inter-operate" during emergencies large and small.

In its Order of August, 2004, the FCC decided to contract out – with Nextel to pay for – the management of the re-banding process to a Transition Administrator (“TA”), selected at the recommendation of a nominating committee consisting of Nextel, a public safety association (APCO) and representatives of private radio users of the 800 MHz spectrum. The TA proposed by the committee and affirmed by the FCC is a triumvirate consisting of Bearing Point, Baseline Telecom and a law firm, Squire Sanders & Dempsey. General information about the TA and particular details of its operations since January 2005 may be found at www.800ta.org.

The Drivers

Perhaps the most salient feature of management to date is the TA’s view that the FCC places great store on sticking to a reconfiguration schedule that is to be completed in 36 months – with recognized allowances for U.S. regions that border Mexico and Canada and share 800 MHz spectrum with those countries. Any revisions of the present sharing mechanisms will require renegotiation of treaties.

A second important feature is an emphasis on the public nature of the funding for the enterprise. The FCC has ordered Nextel to pay into the U.S. Treasury any difference between the \$4.8 billion at which the new Nextel spectrum at 1.9 GHz is valued and the sum of the value of the spectrum Nextel is giving up at 800 MHz and elsewhere plus the dollar outlays to compensate the re-banding. Thus, Nextel and the TA both rationalize their close scrutiny of public safety and private radio requests for compensation on the ground that profligate spending will short-change the Treasury.

Regional Prioritization Plan

Among the TA's early tasks was the creation of a sequence for the reconfiguration process. This is contained in a Regional Prioritization Plan ("RPP"), as amended, accessible at www.800ta.org/Document Library/RPP Documents. The TA created four "waves" for re-banding. Wave 1 encompasses much of the East and West Coasts and immediately adjacent bands of states, but not those areas bordering Canada and Mexico. Wave 2 essentially is the midsection of the country, excluding the Southeast. Wave 3 is for the Southeastern states of North and South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana. Wave 4 consists of those parts of populous upper and lower tier states closest to Canada and Mexico. www.800ta.org/Document Library/RPP Documents/Prioritization Waves.

As contemplated by the RPP, each wave consists of two "stages." Stage 1 is the process of moving licensees currently occupying the lowest part of the 800 MHz spectrum, 806/809-851/854 MHz. These licensees must be relocated higher in the band, typically between 809/854 and 816/861, in order to make way for the downward moves of "NPSPAC" licenses currently situated at 821/866-824-869 MHz. The NPSPAC downshift is to occur in Stage 2. A chart is available at "Reconfiguration Schedule" under RPP Documents.

Wave 1, Stage 1 negotiations were to have been completed in 2005 and implementation of re-banding for that stage was scheduled to end with the second quarter of 2006. We know as this is written – second quarter, 2007 -- that the Stage 1 schedule still has not been met for every licensee that must move. As for **Stage 2**, although a number of public safety licensees have reached Planning Funding Agreements ("PFAs") with Nextel, most have yet to conclude the implementation contracts known as Frequency Reconfiguration Agreements. ("FRAs") The RPP

calls for the total implementation of both stages of Wave 1 to be achieved by the end of 2007.

This seems highly unlikely.

On paper, **Waves 2 and 3** are supposed to be six months to a year respectively behind Stage 1, but in our experience fair numbers of licensees in those waves are lagging the schedule.

http://www.800ta.org/content/PDF/reconfiguration_materials/NegotiationPeriods_FS.pdf

Acknowledging that bilateral negotiations with Canada and Mexico are not far enough along to set absolute negotiation deadlines in either stage of **Wave 4**, the FCC recently sought to differentiate Wave 4 licensees in terms of their distances from the respective borders and the relative degrees of interdependence among border and interior areas.

http://www.800ta.org/content/PDF/reconfiguration_materials/Wave_4_Fact_Sheet_2_13_07.pdf

Ultimately, the progress of Wave 4 negotiations in either stage will depend on the ability of Nextel and the TA to identify replacement frequencies for the channels now occupied.

Because SouthernLinc is an important Enhanced Specialized Mobile Radio (“ESMR”) competitor of Nextel in eight southeastern states, the FCC chose to extend by 2.5 MHz the spectrum available to these operators in those states and to reduce public safety spectrum correspondingly.

[http://wireless.fcc.gov/publicsafety/800MHz/bandreconfiguration/downloads/FCC-04-](http://wireless.fcc.gov/publicsafety/800MHz/bandreconfiguration/downloads/FCC-04-168A1.pdf)

[168A1.pdf](http://wireless.fcc.gov/publicsafety/800MHz/bandreconfiguration/downloads/FCC-04-168A1.pdf), ¶¶164-169 and App. G. Within this region, the circle up to 70 miles from Atlanta has reduced by half the so-called Expansion Band in which public safety systems have the option to move or stay put.² At the beginning of Wave 3, Stage 1, the TA asked licensees needing to relocate from the ESMR expansion bands to plan for that move in Stage 1 along with the

² Order on Reconsideration, FCC 05-174, released October 5, 2005, ¶¶47-49.

evacuation of the 806/851-809/854 spectrum. The TA later changed its mind and gave certain licensees the option of deferring that planning to Stage 2.³

Funding Negotiations

The goal of reconfiguration is for each public safety licensee to receive a system fully comparable to that which existed prior to re-banding. While “upgrades” generally are disfavored, it may be necessary to improve certain features of a re-banded system in order that it remain comparable to the original. Nextel as payor, and the TA as overseer, are to approve compensation of all expenses that are reasonable, prudent and necessary to achieve “comparability” for re-banded systems.⁴ These general standards are easy enough to declare and to comprehend, but the details of their negotiation and implementation have proven more difficult.

In the kickoff Stage 1 of Wave 1, the late start of many licensees and the unsettled state of play -- each side testing the other’s interpretation of rules and guidelines, with little by way of precedent – meant that in many cases the successive three-month periods set aside for “voluntary” and “mandatory” negotiations between Nextel and a licensee elapsed without agreement on either PFAs or FRAs.

The schedule then provides a period of “mediation” conducted by persons supplied through the TA, and theoretically insulated from the management arm of the TA. Although styled as mediation, the process is more appropriately thought of as “directed settlement.” From its perspective as the driver of a 36-month reconfiguration schedule, the FCC does not want the

³ Wave 3 ESMR Negotiation Deferral Request Form, TA-11.0, which does not appear on the TA web site.

⁴ 47 CFR §90.677(f).

licensee or Nextel to be able to walk away from negotiations without consequence. This would be allowed in conventional mediation where the acceptance of outcomes is purely voluntary. Thus, the agency has left itself free to apply a mediator's "Recommended Resolution" to a later decision on the merits, a form of leverage not permitted in classic mediation. See, 47 C.F.R. §90.677(d).⁵

This schedule-driven pressure on the parties to settle their differences and come to agreement has been reinforced by a questionable FCC interpretation of its own rules. The agency has declared via an informal Public Notice that expense incurred by a licensee in appealing to the FCC a mediator's decision may not be compensated by Nextel. However, the citation of authority for this proposition is flawed.

<http://www.fcc.gov/pshs/spectrum/800mhz/bandreconfiguration/downloads/DA-05-3355A1.pdf>

Recently, the agency reaffirmed its conclusion that appellate expenses are neither to be charged to Nextel by licensees nor recovered by Nextel as part of its own rebanding expense.⁶ The conclusion is hardly surprising. The FCC's aim is to encourage negotiated settlement of contract differences. An entitlement to compensation for appeal works against this. The new order spells this out and places the result on a sounder legal footing.

Despite the licensee's opening advantages in negotiation – (1) that its new facilities must be fully comparable to the old, and (2) Nextel must pay under tests of reasonableness, prudence and necessity – the process remains unbalanced. Nextel and the TA are privy to many negotiations

⁵ An intermediate period of mediation has come into play since the FCC's original orders. The TA found that so much time was being consumed in negotiations over PFAs that little space was left for FRAs. The TA now requires mediation of any PFA negotiation extending beyond 60 days.

⁶ Second Memorandum Opinion and Order, FCC 7-102, released May 30, 2007, ¶¶43-50.

and many outcomes.⁷ Most licensees know only one, their own case. It is all too easy, and neither Nextel nor the TA has hesitated, to advise a licensee that the reconfiguration plan it has in mind is well beyond what other licensees are seeking. When the licensee asks for documentation of this other experience, Nextel will assert that the information is confidential. Both Nextel and the TA have justified non-disclosure on the ground that licensees made aware of outcomes in other negotiations will simply borrow those outcomes and attempt to analogize to them, rather than build their own cases from scratch.

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518191300

“Request that Certain Information . . . Be Withheld from Public Inspection,” at 15.

This imbalance of information in favor of Nextel and the TA may be partly redressed by state public information laws requiring disclosure of public contracts such as those between a licensee and Nextel. The imbalance is also mitigated by the participation of a licensee’s outside technical and legal consultants, who serve multiple re-banding clients and have that broader background to draw upon in their advice.

In January of 2007, the FCC finally moved to redress in part this imbalance of information. By means of boilerplate clauses in both PFAs and FRAs, Nextel had attempted to classify the entirety of these documents as confidential, subject only to state freedom of information acts or other legal requirements. The company’s manifest concern has been that licensees would share the contents of their respective agreements with other licensees still in

⁷ As data accumulated on the outcomes of planning funding negotiations, the TA reached agreement with Nextel that requests amounting to no more than \$55 per subscriber unit could be “fast-tracked” with little scrutiny. The pros and cons of that shortcut require more space than we have in this paper.

http://www.800ta.org/content/PDF/reconfiguration_materials/FastTrack_FS.pdf

negotiation, thus allowing the latter to “go to school” on Nextel’s prior concessions. In its own guidance on confidentiality, the TA supported Nextel’s efforts to restrict disclosure. Now the FCC has decided otherwise:

[W]e anticipate increasing both the efficiency and speed of the rebanding process by eliminating the need for each licensee to negotiate every issue without the benefit of information from prior negotiations. These gains should be greatest with regard to negotiations on transactional costs common to many negotiations—such as labor rates, consultants’ fees, and legal fees—where the sharing of information will help establish a reasonable baseline for these costs that forestalls the need for protracted individualized negotiations on the scope and costs of each such service.⁸

From our experience at Miller & Van Eaton, one of the largest of the long-unsettled issues concerned the timing and scheduling of payments by Nextel once PFAs and FRAs had been reached. The FCC’s Supplemental Order of December 2004, 04-294, at ¶¶15, 16 and 71, clearly makes the payments “advances” of reasonable estimates or actual expenses, not “reimbursements” after work is done. However, the templates Nextel has used from the outset -- in the form of a Schedule C to the PFAs and FRAs – differentiate the amount and timing of payments (a) as between a licensee and its vendors, and (b) according to whether the payment is made (i) in a lump sum to a licensee for both its own and its vendors’ estimates or actual costs or (ii) in separate sums to the licensee and its vendors. The TA’s Reconfiguration Handbook (pages 74, 76-77) maintains some of these distinctions which, in our view, are at variance with the FCC’s Supplemental Order.

http://800ta.org/content/PDF/reconfiguration_materials/handbook.pdf.

⁸ Order, FCC 07-27, released January 8, 2007, ¶5.

Until recently, Nextel typically advanced to licensees only 50% of the estimates agreed upon in PFAs or FRAs. The rest of the estimate, if actually spent, was not to be paid until “reconciliation” at the close of the planning or reconfiguration period. This meant that hundreds of public safety licensees have been forced to absorb, over a period of months or years, some portion of the time value (cost) of money for half their anticipated expenses.⁹

Last November, an FCC order,¹⁰ coupled with pressure from licensees, produced some changes in Nextel behavior. In the past six months, Nextel frequently has agreed to advance 80% of cost estimates related to a licensee’s own work, leaving 20% or less for contract reconciliation once the work is completed. The schedule only covers licensees, however, and not their vendors, who accept without apparent objection Nextel’s practice of paying them only upon presentation of invoices for work performed.

Recent Guidance

To accompany the Request for Planning Funding (“RFPF”) form and instructions, now in their sixth edition, the TA has released “Cost Estimate Guidance” for FRAs that includes a Schedule C template. <http://www.800ta.org/content/800mhz/forms.asp>

Also new is a request form for Subscriber Equipment Deployment (“SED”) aimed at allowing (but not requiring) licensees to bifurcate the negotiation of equipment

⁹ The licensee has two basic options under TA guidelines: (1) It may ask Nextel to pay its outside vendors and consultants directly, so that the licensee receives only those funds attributable to its internal (employee) time and expense. (2) The licensee may ask that Nextel pay to the licensee the entirety of internal and vendor and consultant estimates, thus taking on the responsibility of distributing funds to the internal and external sources of assistance. Because most licensees have chosen option (1), it is not clear whether Nextel would advance 100% of total estimates under option (2). Informally, the answer has been negative, but we have no examples of option (2) to rely on.

¹⁰ Memorandum Opinion & Order, Montgomery County, Maryland, DA 06-2268, released November 3, 2006, ¶¶53-55.

replacement/reprogramming/retuning and infrastructure reconfiguration.

http://www.800ta.org/content/documents/subscriber_equipment.asp

As the TA strives to speed up a lagging process, licensees are well advised to visit the main web site at least weekly.

The FCC's link to 800 MHz rebanding developments is

<http://www.fcc.gov/pshs/spectrum/800mhz/bandreconfiguration/>

There you can find advisory Public Notices as well as decisions in mediation appeals that have value as precedent, at least within the rebanding context.

One of the more significant of the recent Public Notices finds that most public safety channels will be eligible for Nextel-compensated reconfiguration even if they are licensed, for the moment, under Special Temporary Authority. ("STA").¹¹ However, STAs issued after the lifting of the "freeze" on permanent licensing in a given wave must qualify under stricter "waiver" standards before Nextel is required to pay. We believe the Public Notice is misguided in failing to acknowledge that there is no connection between the date the freeze is lifted and the date permanent licensing is available. The two were supposed to coincide, but in fact permanent licensing is not possible until all the licensees in a wave have reached agreements with Nextel to implement their new frequencies. This has yet to occur in any wave.

In a flurry of recent FCC orders resolving appealed mediations, perhaps the most significant is a reconsideration decision called *City of Boston*.¹² Among the issues was when Nextel should pay for the removal of old channels from mobile and portable public safety radios.

¹¹ DA 06-2555, released December 20, 2006, at 3.

¹² DA 07-583, released February 7, 2007.

Most licensees have contended during negotiations that the presence of old frequencies – even if no longer programmed on trunked systems – may still permit manual or inadvertent access or may slow down a system’s scanning functions. The FCC did not find in favor of compensated removal in every case, but declared instead, at ¶12:

[T]he licensee should be able to demonstrate that without removal of the old channels, operation on the new channels is likely to be compromised or degraded in comparison to the licensee’s pre-rebanding operation. The licensee may be able to meet this standard based on the technical configuration of its particular system, or on factors such as the likelihood of operator error.¹³ Ultimately, the determination of recoverable costs will be made based on the facts of each individual case in accordance with the standards established by the Commission’s orders in this proceeding.

Early in May 2007, the FCC demonstrated once again its concern for keeping Nextel and licensees closely on a rebanding schedule, and reprimanded Nextel for its increasing use of “TBD” (“To Be Determined”) open dates in reconfiguration contracts.¹⁴ The agency went so far as to say (¶7) it would constitute “bad faith” for Nextel to persist in keeping open a deadline for which a licensee has proposed a fixed date.

In another order released the same day, the FCC expressed considerable latitude toward a licensee’s decisions on how to use its internal staff for the purposes of rebanding project management.¹⁵ At the same time, the agency disallowed large amounts of the time of a technical consultant that appeared to represent over-staffing. The order charged licensees with careful oversight of their consultants’ use of time:

¹³ We note, however, that if the licensee seeks recovery of expenses for removal of old channels from radios solely to avoid the risk of operator error, it will face a particularly high burden of justification, *i.e.*, it should be able to show that the risk of error cannot be adequately addressed through training or ordinary maintenance of the system.

¹⁴ State of New York, DA 07-2000, released May 4, 2007.

¹⁵ City of Manassas, Virginia, DA 07-1999, released May 4, 2007, ¶14.

To avoid being denied compensation for consultant costs that are found to be excessive, it is important that licensees take steps to monitor consultant activity and expenditures.

DA 07-1999 at ¶19.

On May 18, 2007 the FCC released an order clarifying the meaning the “minimum cost” certification that a licensee is asked to sign for each PFA or FRA:

We agree with Sprint that the term “minimum necessary” cost does not mean the absolute lowest cost in all circumstances. Rather, the term refers to the minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner. We do not expect Sprint to insist on reducing rebanding costs to their lowest possible level if the cost savings it seeks to achieve come at the expense of a reasonable, prudent, and timely approach toward accomplishing the rebanding task in question.¹⁶

Although the Commission chose to respond as if to Nextel, the truth is that many licensees had complained for months that Nextel in fact had been negotiating for “absolute lowest cost” and thus had been responsible for inordinate delays and/or inadequate licensee compensation.

The cost clarification order paid particular attention to the expenses of protracted mediation in relation to potential cost savings in the actual steps of planning and implementing rebanding:

Another situation in which greater expenditure may be justified is when the possibility of identifying cost reductions is outweighed by the cost and time required to pursue the negotiation and mediation process. The Commission established the negotiation and mediation mechanism to facilitate resolution of disputed issues between Sprint and individual licensees.¹⁷ The Commission further determined that Sprint should pay the cost of both sides’ participation in negotiations and mediation and receive credit for the expense.¹⁸ However, we are concerned that Sprint’s assumption that it must adhere to a narrow interpretation of the “minimum necessary” cost standard has caused it to routinely challenge cost claims in virtually every negotiation and mediation. In many cases, the

¹⁶ DA 07-92, ¶6.

¹⁷ *800 MHz Report and Order*, 19 FCC Rcd at 15076-77 ¶ 201.

¹⁸ *Id.* at 14989, 15070 ¶¶ 35, 191; *800 MHz Supplemental Order*, 19 FCC Rcd at 25150-51 ¶ 70.

resulting cost of prolonged negotiation and mediation appears to be higher than the savings that resolution of the disputed issues would generate.¹⁹ In addition, prolonged negotiation and mediation of cost issues in multiple cases has impeded timely completion of the rebanding process. Therefore, we clarify that it is appropriate for Sprint to agree to (and the TA to approve) payment of disputed costs where such payment will avoid greater expense to negotiate and/or mediate the dispute and will further the goal of timely and efficient rebanding.²⁰

Another important recent clarification of the standard for measuring licensee system comparability pre- and post-rebanding came in *County of Tazewell, Illinois*, where the FCC ruled that a public safety mobile or portable subscriber unit's capability to access NPSPAC channels was a legitimate measure of comparability even if the pre-rebanding system was not making use of such access.²¹

An emerging issue of comparability whose resolution might depend heavily on the facts of individual licensee radio environments has to do with UHF stations operating on Channel 69 immediately adjacent to new NPSPAC frequencies at 806-809 MHz. Although these stations are bound to relocate to new frequencies, in keeping with their transition to digital television ("DTV") by early 2009, their operation on the old channel until then might interfere with NPSPAC channels, particularly those in the 806 band. Some licensees who fear that prospect have asked the FCC to defer their move to new NPSPAC channels until after the 2009 cessation of TV operation on Channel 69. Other licensees are analyzing the interference prospects in hopes that Nextel will underwrite the cost.

¹⁹ Negotiation expenses typically include time billed by attorneys, consultants, and vendors, as well as the parties' own time and expenses. In mediation, the cost of the TA mediator is an added expense. The TA estimates that typical mediation costs in rebanding cases to date have been approximately \$1500 an hour.

²⁰ DA 07-92, at ¶10. The implication that Nextel had been seeking absolute lowest cost has led one technical consultant, RCC, to question the value of TA data compiled to show high, low and median costs of rebanding. http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519411651

²¹ FCC 07-2058, ¶¶10-11,

At this time (June 2007) Nextel, to our knowledge, thus far has refused to accept responsibility for potential UHF TV interference to public safety operations, even if the new NPSPAC channels at 806-809 MHz could be considered not comparable to the old channels at 821-24 MHz in terms of vulnerability to TV interference. Nextel presumably would argue that rebanding is about interference to 800 MHz public safety radio systems by commercial wireless services, not about interference from TV operations. Since the FCC agreed to make 806-809 MHz the new home for NPSPAC channels, it must not have been all that concerned about transitional UHF TV operations nearby.

Conclusions and Recommendations

If your jurisdiction holds a license for, or takes part in, an 800 MHz public safety radio system, and if you presently use channels in the 806-809 or 821-824 segments of the spectrum, you cannot escape the frequency relocations described above. Even if your channels are outside those directly affected segments, you may have interoperability agreements with neighbors that will produce indirect consequences for your system.

Although rebanding of all four “waves” remains officially scheduled for completion in the year between now and June 2008, the truth is that some licensees in the earliest phase – Stage 1 of Wave 1 – are not yet reconfigured. Increasingly, the paper schedules of the FCC and its agent, the TA, look like figments of bureaucratic imagination.

Licensees who join the process now are entering tardily, but not so late as might have been the case if the schedule were on time. Neither the FCC’s overoptimistic schedule nor the TA’s false starts nor the heavy-handed tactics of Nextel excuse licensees from this well-intentioned effort to reduce commercial interference to public safety radio. The goals are clear:

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Nextel is to pay the reasonable, prudent and necessary expenses of a licensee's relocation to "comparable" facilities. But the devil, as they say, is in the details of these obligations.

Miller and Van Eaton has assisted, is helping, or is under contract to aid more than 40 licensees in this crucial process. The time is now to make sure your 800 MHz public safety radio system is safely relocated in as good or better shape as before the move.

Jim Hobson, June 2007

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