(fraud by wire, radio or television) and 1464 (broadcast of obscene, indecent, or profane material) of Title 18 of the United States Code. Under the rule, the Commission may propose forfeitures against broadcast licensees of up to $32,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed $325,000 for any single act or failure to act. The Broadcast Decency Enforcement Act increases those amounts for obscene, indecent, or profane broadcasts. Specifically, the new law raises the maximum forfeiture for the broadcast of obscenity, indecency, or profanity to $325,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed $3,000,000 for any single act or failure to act. Accordingly, section 1.80(b)(1) will be modified to reflect the new maximum penalties specified in the legislation.

This Order is limited to revising section 1.80(b)(1) pursuant to the Broadcast Decency Enforcement Act, which concerns only penalties for obscenity, indecency, and profanity broadcast violations. The existing penalty limits described in section 1.80(b)(1) would remain as the applicable maxima for all other broadcast violations subject to that rule.

The rule change adopted in this Order merely implements a specific statutory command and does not involve discretionary action on the part of the Commission. Accordingly, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. (*See* 5 U.S.C. 553(b)(B)).

Since a notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.,* does not apply. (*See* 5 U.S.C. 603–604).

The actions taken herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record keeping requirements or burdens on the public. In addition, therefore, our actions do not impose any new or modified information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 157, 225, 303(r), and 309.

Subpart A—General Rules of Practice and Procedure

■ 2. Section 1.80 is amended by revising paragraph (b)(1) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed $32,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $325,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed $325,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $3,000,000 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

[FR Doc. E7–11808 Filed 6–19–07; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55—FCC 07–92]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: The Commission clarifies the standard for determining the acceptability of costs that Sprint Nextel Corporation (Sprint) is required to pay in connection with the 800 MHz rebanding process. Specifically, the Commission clarified the provision in the 800 MHz Report and Order that such costs must be the ''minimum necessary'' to accomplish rebanding of 800 MHz licensees in a reasonable, prudent and timely manner

DATES: Effective May 18, 2007.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Public Safety and Homeland Security Bureau, (202) 418–0848, or via the Internet at *John.Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document summarizes the Memorandum Opinion and Order in WT Docket No. 02–55, adopted on May 17, 2007, and released on May 18, 2007. The full text of this document is available for public inspection on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Background

1. In the 800 MHz Report and Order, 69 FR 67823 (November 22, 2004), the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. In that order, the Commission required Sprint Nextel Corporation (Sprint) to

pay for relocation of all affected 800 MHz licensee systems to their new channel assignments, including the expense of retuning or replacing the licensee's equipment as required. Sprint must provide each relocating licensee with ''comparable facilities'' on the new channel(s), and must provide for a seamless transition to enable licensee operations to continue without interruption during the relocation process. In exchange for Sprint's undertaking these obligations and agreeing to relinquish a portion of its 800 MHz spectrum, the Commission modified Sprint's licenses to authorize operations on 10 megahertz of spectrum in the 1.9 GHz band. At the end of the rebanding process, Sprint will receive credit for the expenses it has incurred and the spectrum it has relinquished. If the value of these expenses and spectrum is less than the value the Commission assigned to the 1.9 GHz spectrum, Sprint must make a ''windfall payment'' for the difference to the U.S. Treasury.

2. In an April 20, 2007 *ex parte* filing, Sprint requested, inter alia, that the Commission clarify the standard in this proceeding for determining what rebanding costs are acceptable and therefore entitled to be credited by Sprint against its windfall payment obligation. Specifically, Sprint contends that its ability to negotiate cost provisions in its Planning Funding Agreements (PFAs) and Frequency Relocation Agreements (FRAs) with 800 MHz licensees is constrained by an overly narrow interpretation of language in the 800 MHz Report and Order that requires licensees to certify that the funds they request from Sprint ''are the minimum necessary to provide facilities comparable to those presently in use.'' Sprint asserts that ''this 'minimum necessary' cost standard has been interpreted for 21 months of this process to essentially mean the 'absolute lowest cost.' '' As a result, ''Sprint Nextel is in the position of having to challenge virtually every dollar spent on band reconfiguration to assure compliance with 'minimum cost.' '' If it does not do so, Sprint contends that it risks violating its windfall payment obligation and could face criminal liability for agreeing to compensation of licensees that is later found to exceed the minimum cost standard.

3. To address this concern, Sprint states that it requires ''unambiguous Commission guidance and permission to spend more dollars than it may think is absolutely necessary in order to move retuning forward and achieve the overall goals of 800 MHz reconfiguration.'' Sprint requests that the Commission afford it ''greater flexibility in its review and acceptance of cost proposals that may not be the lowest cost, but that are 'reasonable and prudent' and that are consistent with the Commission's objectives in the overall band reconfiguration initiative.'' However, Sprint stresses that ''[t]his does not mean that all public safety proposed costs should be 'rubber stamped' by Sprint Nextel or the TA.'' Sprint asserts that under its proposed clarification of the ''minimum necessary'' cost standard, ''public safety should still have the burden of demonstrating that requested funds are reasonable, prudent and necessary.''

4. On May 9, 2007, representatives of several public safety organizations submitted an *ex parte* letter supporting Commission clarification of this issue. The letter states that Sprint's ''narrow interpretation'' of the ''minimum necessary'' cost language has led to many protracted negotiations between Sprint and public safety licensees regarding rebanding costs, and has required public safety licensees to justify costs in ''excruciating detail.'' Public safety's letter urges the Commission ''to take appropriate steps to permit rapid resolution of rebanding disputes, without parties having to battle over every dollar of estimated cost.''

Discussion

5. 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.

6. As Sprint notes, the Commission in the 800 MHz Report and Order provided that licensees seeking compensation from Sprint for rebanding costs must certify that ''the funds requested are the minimum necessary to provide facilities comparable to those presently in use.'' However, the Commission never intended this articulation of the standard for assessing costs to be viewed in isolation. In the 800 MHz Supplemental Order, 70 FR 6758 (February 8, 2005), the Commission further elaborated on the issue of acceptable costs, stating that ''the Transition Administrator may authorize the disbursement of funds for any reasonable and prudent expense directly related to the retuning of a specific 800 MHz system.'' Thus, the standard for determining acceptable costs takes into consideration both the cost amount and the degree to which the expenditure reasonably furthers the Commission's objectives in this proceeding. We therefore provide the following clarification of the standard to provide guidance to rebanding stakeholders and to reduce the likelihood of disputes over costs that could impede the rebanding process.

7. We clarify that the assessment in any individual PFA or FRA negotiation of whether a cost is ''reasonable and prudent'' may— and indeed should— take into account the overall goals of this proceeding, not just the issue of minimum cost. As the Commission has stated previously, one of the most critical of these goals is timely and efficient completion of the rebanding process, to ensure that the interference problem that threatens 800 MHz public safety systems is resolved as quickly and as comprehensively as possible. Another key goal is to minimize the burden rebanding imposes on public safety licensees, and to provide a seamless transition that preserves public safety's ability to operate during the transition.

8. In some instances, achieving these goals may justify greater expenditure than the minimum cost required to accomplish a task if these goals were not considered. For example, if identifying the most inexpensive equipment component required to provide ''comparable facilities'' would take months, thereby impeding timely completion of the task, Sprint would be justified in purchasing a slightly more expensive component that could be identified and procured within a few days. Similarly, in some systems, additional rebanding may proceed more efficiently and with less burden on first responders if rebanding tasks are initiated early in the process and carried on in stages throughout the process, even though this may be more costly than performing all of the rebanding work at once at a later date. In such cases, the Commission's orders allow the additional expense because performing all of the rebanding work at a later stage of the process could increase the transition burden on public safety and jeopardize timely completion of rebanding.

9. 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. The Commission further determined that Sprint should pay the cost of both sides' participation in negotiations and mediation and receive credit for the expense. 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 resulting cost of prolonged negotiation and mediation appears to be higher than the savings that resolution of the disputed issues would generate. 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.

10. In providing the flexibility discussed above, we agree with Sprint that this standard does not allow ''goldplating'' by licensees or ''rubber stamping'' of proposed costs by Sprint and the TA. Licensees remain responsible for demonstrating that their funding requests do not exceed the minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner. Furthermore, Sprint should not propose to pay and the TA should not approve payment of higher costs when a lower-cost alternative is clearly available that would provide the licensee with comparable facilities as defined by the Commission's orders in this proceeding and would effectuate a smooth and timely transition.

11. We further clarify that in determining whether particular costs are acceptable, Sprint and other 800 MHz licensees may take into account costs that have been negotiated in other PFAs and FRAs for rebanding of similar systems, and that have been approved by the TA. Similarly, Sprint and other licensee may consider cost metrics that have been derived by the TA from aggregated PFA and FRA data. At this point in the rebanding process, Sprint has entered into numerous PFAs and FRAs with 800 MHz licensees. These agreements have been reached through vigorous arms-length negotiations and (in many cases) mediation, and have been approved by the TA as meeting the Commission's cost standards. As a result, the cost data from these agreements provides an important set of benchmarks for assessing the reasonability of costs in ongoing and future negotiations. In cases where Sprint and a licensee reach a PFA or FRA with costs that the TA can verify are consistent with these benchmarks, we will presume that the costs comply with the Commission's cost standard as articulated in this and prior orders in this proceeding.

Ordering Clauses

12. Accordingly, it is ordered that, pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337 and 405, this Memorandum Opinion and Order is hereby adopted.

13. It is further ordered that the request of Sprint Nextel Corporation is RESOLVED to the extent indicated herein.

14. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

15. The Commission will send a copy of this Memorandum Opinion and Order in a report to be sent to Congress and 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.

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