

**FHH Telecom Law**  
**April 2006**

**The Wheels of Rebanding**  
**Grind Slow**

*By Robert Gurs*  
*gurss@fhhlaw.com*  
*703-812-0468*

Many public safety, business, industrial and transportation licensees in the 800 MHz band are in the midst of a daunting task of mandatory frequency changes known as “rebanding.” Unfortunately, the rebanding process is proceeding slower than expected, though there are a few positive signs.

The FCC mandated 800 MHz rebanding to address serious interference problems caused by Nextel, which also operates in the band. The process requires most licensees in the band to swap frequencies with Nextel, with all of the direct and indirect costs paid for by Nextel, pursuant to FCC rules and guidelines established by an independent 800 MHz Transition Administrator (TA).

Rebanding requires agreements to be reached between incumbent licensees and Nextel, covering the cost of retuning equipment, or in some cases providing new radios, to work on the replacement frequencies. All such agreements are subject to approval by the TA. Disputes are resolved through mediation and, if necessary, FCC decision.

While the rebanding process is straight-forward for some, it becomes a very complex and costly undertaking for large interoperable radio systems used by public safety agencies and others with extensive coverage requirements. A significant preliminary problem has been securing advance funding to cover planning and negotiation expenses. While perhaps unnecessary for commercial entities, public safety licensees often require advance funding to avoid difficult procurement and appropriation issues. The TA procedures allow licensees to negotiate preliminary agreements with Nextel to cover these estimated expenses, with a “true-up” process afterwards to reflect actual costs.

These early negotiations, however, have proved to be far more contentious and difficult than many anticipated. While a few agreements have been reached, many others are still in early stages, and some have gone into a mediation process established by the TA.

There have also been other delays, including a large number of final frequency reconfiguration agreement negotiations that were forced into mediation, and some that went to the FCC for final resolution. All of these factors are likely to lead to some adjustment in the rebanding schedule.

The TA developed a rebanding schedule that divides the nation into four “waves” with staggered negotiation periods. Within each wave there are two “stages,” one for channels

1-120 (806-809/851-854 MHz, which must be rebanded first) and one for “NPSPAC” licenses (821-824/866-869 MHz). The whole process is to be completed by 2008. While there is no current plan to extend the “end date,” there could be some adjustments to the negotiation periods, especially for the “Wave 1” NPSPAC stage which will certainly take more time than currently is allotted.

The TA has also altered its procedures, as it now screens requests for planning funding prior to the negotiations beginning with Nextel. The TA may also become more involved in the process, at least by providing more rapid resolution of disputes as they arise in the negotiations. As early issues are resolved through mediation or FCC intervention, the process should speed up for transitions which are further upstream. The end result of this enormous, multi-billion-dollar undertaking should be a band which is simplified and more conducive to the communication needs of public safety and commercial interests alike.