

Caught In The Dark

Unknown Intellectual Property Problem Plagues Rebanding of EFJ Units

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As rebanding at 800 MHz drags on, the sources of delay in getting the job done seem to increase every month. Broken loaner equipment, limited personnel, shifting priorities, complicated interoperability issues, software availability and many other challenges face public safety licensees that just want the darn thing to be over.

Now, some public safety licensees are finding out that their rebanding is being put on hold while two manufacturers and Sprint Nextel sort out an intellectual property problem that is affecting thousands of EF Johnson radios. The radios affected are those EFJ units that have Motorola software installed in them to allow the EFJ units to work in association with a Motorola network.

When the units were originally sold to end users, the problem did not exist because the licensed software installed in the radios to allow operation with a Motorola network was part of the package. So, as long as those units transmitted and received within certain bands, the permanently licensed software in the units would allow for access to the Motorola hardware.

A Technical Patch

When rebanding began, EFJ recognized that to reband their units would require a revised software licensing agreement with Motorola to allow the EFJ units to be retuned and still operate in association with the Motorola hardware. EFJ and Motorola entered into a licensing agreement that would allow EFJ units to be retuned for future operation on a rebanded Motorola network, however, for reasons that are not clear the license was given an expiration date of approximately five years.

The license purchased by EFJ from Motorola for the revised software to accommodate rebanding was obviously a kind of technical patch to handle rebanding. Why else would EFJ purchase a license that would only last for five years? And why else would EFJ buy a limited quantity of access codes, enough to presumably only cover EFJ units then in the field operating on Motorola networks?

Sprint Nextel's involvement becomes clear when you know that sometime before October, 2010, EFJ transferred over 2000 access codes representing the software license to Sprint Nextel, either by sale or otherwise. According to sources, following October, 2010 the Motorola license for the software was to expire and EF Johnson may have transferred those access codes to Sprint Nextel in hopes that Motorola would not block Sprint Nextel's distribution of access codes to EFJ end users as a part of rebanding.

However, whatever the terms are between Sprint Nextel and Motorola in their master rebanding agreement, Motorola appears to be balking at the idea of Sprint Nextel's distribution of the access codes formerly owned by EFJ. Motorola is likely looking for additional payment to renew the now expired software license. Meanwhile, thousands of EFJ units that are ready to be rebanded and the public safety agencies that own those radios are being held hostage by this licensing problem, because Sprint Nextel is not releasing the access codes in their possession.

Public Safety In The Dark

The contracts between the manufacturers and Sprint Nextel during the rebanding process have always been proprietary and all parties to those agreements have gone to great pains to maintain the confidentiality of those agreements. Equipment pricing has been shielded from public view or agency oversight. Labor costs and rebanding methodology have been negotiated without any input from public safety operators.

But while manufacturers and Sprint Nextel have been able to black box their fraternal dealings, the FCC and Sprint Nextel have insisted on increasing levels of transparency from rebanding licensees. The amount of information demanded in a reconciliation of a Frequency Reconfiguration Agreement would be sufficient to withstand a full blown audit. "Tell us more" is the mantra repeated by Sprint Nextel and the Transition Administrator, even if the telling is a recitation of the obvious.

This one-sided demand for information has vexed many a public safety licensee and has created additional administrative costs for licensees that is often never recovered. This is particularly true given the backdrop of "foreseeability," a weapon of choice for Sprint Nextel in its negotiations. By merely contending that the costs were foreseeable, Sprint Nextel seeks an advantage in attempting to deny reimbursement for those costs if they exceed the original estimates.

But what of the problem of the expiring Motorola license for the EFJ units operating on a Motorola network? The problem did not become known until after the license expired in October 2010 and suddenly thousands of EFJ units are left stranded. Did Motorola or Sprint Nextel or EF Johnson warn anyone? No. Instead, this was only one of many backroom deals cut without public safety's knowledge or involvement.

The FCC recently reiterated the obligation upon Sprint Nextel and licensees to provide all vital information that might materially affect rebanding time and costs. Yet, this information was not provided to licensees by Sprint Nextel. Therefore, licensees were allowed to negotiate their respective FRAs to their own peril and frustration. And since Sprint Nextel accepted the access codes from EFJ, it had to have known that the problem would arise and yet, it remained mum.

Meanwhile, EF Johnson has not renewed the Motorola license, Sprint Nextel is not distributing the access codes, and Motorola isn't budging on its rights to that intellectual property. Instead, it appears that all three are waiting for one of the others to make the first move, and rebanding of affected public safety units has come to a halt.

The Future Resolution Is Unknown

Right now, the ultimate outcome of this matter is unknown. Will end user agencies be, somehow, forced to replace EF Johnson radios with a new model, either EFJ or Motorola? If so, will Sprint Nextel accept the cost of replacement as a portion of its rebanding costs? Will the Motorola license be renewed, allowing Sprint Nextel to distribute the access codes? Or will Motorola simply refuse to renew the license? I cannot say.

But what is abundantly clear is that public safety licensees were kept entirely in the dark about this matter and whatever decisions are made to resolve the problem, that resolution cannot include forcing end user agencies to take a product they don't want. The solution falls on Sprint Nextel to come up with. Maybe this time the negotiations will involve public safety's participation, but don't count on it.

Rebanding deals have consistently involved mushroom management of public safety's

reasonable agenda, to cause a safe, efficient, and cost-neutral outcome. Even the facts contained herein may include some errors given the darkness that surrounds these kinds of dealings. For that, I do not apologize given the nature of things. However, I think that affected public safety agencies are entitled to an apology from Sprint Nextel and EF Johnson. Just don't be surprised if the mea culpas come with a confidentiality clause.