

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

In the Matter of)	
)	
City of Manassas, Virginia)	WT Docket No. 02-55
and Sprint Nextel)	
)	
Mediation No. TAM-12007)	

MEMORANDUM OPINION AND ORDER

Adopted: May 3, 2007

Released: May 4, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address a case referred to us for *de novo* review from Wave 1, Phase 2 mediation by the 800 MHz Transition Administrator, LLC (TA) involving multiple disputes between the City of Manassas (Manassas) and Sprint Nextel Corporation (Sprint). The disputes relate to certain planning-related costs incurred by Manassas and by Manassas' consultant, RCC Consultants (RCC), and to the claim by each party that the other has failed to negotiate in good faith. Based on our *de novo* review of the mediation record, we find that Manassas is entitled to compensation from Sprint for the full amount of its claimed internal project management costs, but we reduce the amount of compensation for its consultant project management costs. We also conclude that neither party has negotiated in bad faith.

II. BACKGROUND

2. The *800 MHz R&O* and subsequent orders in this docket require Sprint to negotiate a Frequency Relocation Agreement (FRA) with each 800 MHz licensee that is subject to rebanding.¹ The FRA must provide for relocation of the licensee's system to its new channel assignment(s) at Sprint's expense, including the expense of retuning or replacing the licensee's equipment as required. Sprint must provide the 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.²

3. To ensure meaningful FRA negotiations, the TA has implemented a process under which licensees may also seek funding for activities associated with planning for the reconfiguration of their communications systems.³ This process is initiated by the submission to the TA of a Request for Planning

¹ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) (*800 MHz Report and Order*); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*); and Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) (*800 MHz MO&O*).

² *800 MHz Report and Order*, 19 FCC Rcd at 15077 ¶ 201.

³ See generally http://www.800ta.org/org/planning_neg/submit1.asp.

Funding (RFPF). The TA reviews the RFPF and supporting documentation to ensure conformance with certain guidelines.⁴ Upon successful completion of this review, the TA forwards the RFPF and supporting documentation to Sprint so that the parties can negotiate a Planning Funding Agreement (PFA). If the parties cannot reach agreement on a PFA, the case is referred to mediation.

4. Manassas' communication system (licensed under call signs WPGX743 and WPGX746) consists of a five-channel single-site base station operating in the NPSPAC band and serving 640 subscriber units.⁵ The system serves both the City of Manassas and the City of Manassas Park, and is used by eight different agencies within these jurisdictions, including police, fire, rescue and public works.⁶ In April 2006, Manassas and Sprint commenced PFA negotiations regarding planning for retuning of the system.⁷ The case was referred to mediation as part of Wave 1 Stage 2 on November 2, 2006. During mediation, Manassas and Sprint agreed on all PFA issues except for internal planning and project management costs and consultant costs.⁸ On December 22, 2006, after mediation proved unsuccessful on these issues, the mediator referred the matter to PSHSB for *de novo* review and resolution, submitting the record in the case as well as a Recommended Resolution. Manassas filed its Statement of Position with PSHSB on January 9, 2007, and Sprint filed its Statement of Position on January 10, 2007.⁹

III. DISCUSSION

A. Standard of Review

5. Manassas is entitled to funding of both "hard costs," which include the price of equipment and the labor necessary to install, tune, and test the equipment, as well as reasonable "transaction costs," which include staff administrative time and, when necessary, attorney and consultant fees required to plan for reconfiguration and negotiate the PFA and FRA.¹⁰ This case involves disputes over project management costs associated with the PFA. The Commission's orders in this proceeding assign to Manassas the burden of proving that the funding it has requested is reasonable, prudent, and the "minimum necessary to provide facilities comparable to those presently in use."¹¹

6. Our review of costs is influenced by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the planning process. In this regard, we have the benefit of data from the TA that can provide us with cost metrics for approved planning funding agreements systems of varying size and complexity.¹² We stress that these metrics are only one guiding factor underlying our analysis of the reasonableness of planning costs. Depending on the facts the licensee has established in the record, we may disapprove costs that fall below the guidelines or, conversely, approve costs that exceed the guidelines.

⁴ *Id.*

⁵ Recommended Resolution, filed December 22, 2006 by the TA (RR) at 37.

⁶ *Id.* at 3.

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ Manassas Statement of Position, filed January 9, 2007 (Manassas SOP); Sprint Nextel Statement of Position, filed January 10, 2007 (Sprint SOP).

¹⁰ Manassas City Public Schools and Sprint Nextel Mediation No. TAM 11109, *Memorandum Opinion and Order*, 21 FCC Rcd 11930 (WTB 2006), 11932 ¶ 5.

¹¹ *800 MHz Report and Order*, 19 FCC Rcd at 15074 ¶ 198; *800 MHz Supplemental Order*, 19 FCC Rcd at 25152 ¶ 71.

¹² See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf

7. Manassas seeks a total of \$170,303.80 in planning funds,¹³ of which \$82,571.87 in project management fees are in dispute.¹⁴ We note that in the PFAs that have been approved to date, the TA reports that the median planning funding amount requested by licensees for systems of Manassas's size (501-1000 mobile and portable units) is \$57,154 and the 75th percentile amount of these planning funding requests is \$80,026.¹⁵ Thus, Manassas requests almost three times the median amount of funding and over twice as much as the 75th percentile compared to licensees of similarly-sized systems. Such a large deviation warrants careful scrutiny of these disputed costs.

B. Internal Project Management Costs

8. Manassas claims \$9,665.78 in internal costs for three categories of past and future activities related to project management during the planning process. Sprint offers \$6,119.39 for the same categories. We find in favor of Manassas with respect to these costs.

9. *Manassas Position.* The three internal project management cost categories are as follows. First, Manassas seeks compensation for a total of 87 hours for participation by 13 individuals from multiple departments in a rebanding "kick-off" meeting and in past and future bi-weekly planning meetings intended to update the participants on the status of the rebanding project.¹⁶ Manassas indicates that attendance by 13 people at these meetings is necessary because these individuals represent separate departments within the City of Manassas and the City of Manassas Park that use the 800 MHz system, and that their presence is needed "to ensure that any and all concerns regarding rebanding and/or interoperability are promptly addressed and the rebanding is done right the first time."¹⁷

10. Second, Manassas budgets 40 hours for 15 individuals to review RCC's Rebanding Plan, and an additional 20 hours for five individuals to review the accompanying Rebanding Estimate.¹⁸ The Rebanding Plan is to be created by RCC once planning is complete, and will provide a detailed description of the plan for reconfiguring the Manassas system. The Rebanding Estimate is a separate document that contains the proposed costs (internal labor costs, vendor costs and consultant costs) associated with the tasks described in the Rebanding Plan, and that will be used as the basis for final FRA negotiations with Sprint. As in the case of attendance at planning meetings, Manassas asserts that review of these documents by multiple individuals from different departments is necessary to ensure that the planning process takes each department's concerns into account so that rebanding proceeds smoothly with no interruption of police, fire, rescue, and other critical communications.¹⁹

11. Third, Manassas has budgeted a total of 60 hours for participation by three of its

¹³ See Appendix to Supplemental Proposed Resolution Memorandum of Nextel Communications, Inc., dated November 1, 2006 (Sprint Supplemental PRM) at 5.

¹⁴ We derive these numbers on our independent calculations of the number of hours in dispute set out in the Appendix to the Sprint Supplemental PRM at 2 and the hourly rates provided by Manassas in its request for planning funding. See Proposed Resolution Memorandum of Nextel Communications, Inc., dated September 20, 2006 (Sprint PRM), Appendix 3: 800 MHz Reconfiguration – Request for Planning Funding for the City of Manassas, Virginia, at 8-10. We do not discuss the remaining \$92,236.95 in costs in the following categories comprising a PFA: Frequency Analysis, System and Subscriber Unit Inventory, Engineering and Implementation, Legal and Other.

¹⁵ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf.

¹⁶ Revised Proposed Resolution Memorandum of Licensee, dated October 25, 2006 (Manassas Revised PRM) at 7-10.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at Appendix 1.

¹⁹ *Id.* at 11.

personnel in FRA negotiations, which it anticipates will take 20 hours.²⁰ Participation in the negotiations by these three individuals would be in addition to participation by Manassas' legal counsel and RCC.

12. *Sprint Position.* Sprint contends that Manassas' proposed internal project management costs are duplicative and excessive. Sprint contends that Manassas does not need 13 people attending bi-weekly planning meetings, and that meeting participation by four people for a total of 48 hours is adequate for this task.²¹ Sprint also argues that the separate line items in Manassas' budget for bi-weekly meetings, review of the Rebanding Plan, and review of the Rebanding Estimate all deal with the same subject and therefore represent unnecessary duplication of effort.²² Sprint submits that a total of 20 hours is adequate for the review by Manassas' internal staff of both the Rebanding Plan and the Rebanding Estimate.²³ Sprint also argues that Manassas' proposed level of staffing for FRA negotiations is excessive because Manassas will also be represented in the negotiations by legal counsel and its consultants.²⁴

13. *Mediator Recommendation.* The mediator generally supports Sprint's proposed resolution of these issues.²⁵ The mediator concludes that Manassas has not shown the need for 13 individuals to engage in meetings on the reconfiguration process before the planning process is complete, noting that several of the departments propose to send more than one person to these meetings.²⁶ The mediator also believes that Manassas has overstated the number of individuals reasonably necessary for an adequate review of the Rebanding Plan and the Rebanding Estimate.²⁷ Finally, the mediator recommends allowing 40 hours for participation by two staff members in FRA negotiations, but disallowing the 20 hours allocated for a third person to provide administrative support such as note-taking, photo-copying, and scheduling.²⁸

14. *Discussion.* We find in favor of Manassas on these issues. In applying the "reasonable minimum cost standard," we give reasonable deference to a public safety licensee's decisions concerning internal staffing. Public safety licensees—particularly in smaller jurisdictions such as Manassas—typically have limited internal resources to address the multiple demands on their time imposed by the remanding process. Therefore, with respect to internal planning costs, we will not substitute our judgment for the licensee's with respect to specific deployment of internal resources provided that the licensee has demonstrated that its overall internal planning costs are reasonably related to the administrative burdens that are imposed in it by the planning process.

15. This standard is met here. The Manassas 800 MHz system is a small and relatively simple system from a technical perspective, but planning for rebanding of the system is somewhat more complex from an administrative perspective. In this case, multiple departments within Manassas and Manassas Park use the system, and therefore each department must assess and plan for the impact of rebanding on its particular use. In addition, the Manassas system is part of an interoperable network of systems in the National Capitol Region, so additional interoperability issues may arise in the planning

²⁰ *Id.*

²¹ Sprint Supplemental PRM at 6.

²² *Id.* at 6.

²³ *Id.* at 8.

²⁴ *Id.* at 6.

²⁵ RR at 16.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 18.

process.²⁹ As a result, we find that with respect to meetings and review of planning documents prepared by RCC, each department is entitled to representation and participation in the process.

16. Similarly, we find in favor of Manassas' claim for three people to spend a combined 60 hours on FRA negotiations. We note that the time necessary to conduct FRA negotiations is not entirely within the control of either party, either one of which can affect the duration of the negotiation process. We also note that Manassas and Sprint agree that 40 hours of Manassas staff time is appropriate, but only dispute the additional administrative support that Manassas requests.³⁰ We regard this expense as reasonably related to the administrative burden imposed on Manassas, and therefore give deference to the licensee on the issue. We also remind Manassas that the amount awarded is not a liquidated amount that will automatically be credited, but that Manassas must document that the budgeted time is actually spent in the manner described and contributes to rebanding of the system.

17. We recognize that the mediator in this case has suggested that Manassas could staff the tasks discussed above more efficiently, and has therefore recommended a reduction in compensation for Manassas' internal staffing costs.³¹ However, the difference in the amount sought by Manassas and the amount recommended by the mediator for internal staff activity is approximately \$3500. It is possible that additional scrutiny of the issue in mediation could yield additional cost savings, but these would be relatively small and would almost certainly be outweighed by the additional expense of the mediation process itself, as well as the attendant delay to the rebanding process. Under these circumstances, we believe that it is consistent with the Commission's "minimum reasonable cost" standard for Sprint to pay such disputed costs rather than to spend more substantial resources for prolonged mediation.

C. Consultant Costs

18. Manassas claims a total of 945.5 hours and \$102,176.66 in fees for consultant project management fees for the planning phase of rebanding.³² Sprint offers a total of 145.25 hours and \$23,151 in fees. While we affirm that Manassas is entitled to compensation for reasonable consultant costs, we find some of these costs to be excessive. Under the cost metrics published by the TA, systems of a size similar to Manassas have median consultant project management costs of \$15,321 and a 75th percentile figure of \$29,190.³³ Thus, RCC's proposed project management costs are very high for a system of this magnitude, and moreover, are notably higher than RCC's costs in other cases in which it has provided rebanding consulting services to 800 MHz licensees.³⁴ Indeed, in assisting in the development of RFPFs for three other licensees that operate single site systems with less than 1000 subscriber units, RCC only proposed an average of 40 hours of consultant time for each these systems.³⁵ In fact, the 945.5 hours that RCC proposes in the Manassas RFPF are greater than the hours RCC proposes to assist in planning for public safety systems operating multiple site systems with thousands of subscriber units.³⁶ Given the remarkable disparity between the RFPF in this case and other cases in which RCC itself has been the consultant, and the lack of evidence in the record to explain the disparity, we conclude that some of the costs in this case are the result of contractor inefficiency and duplication rather than the complexity of

²⁹ Revised Proposed Resolution Memorandum of Licensee dated October 25, 2006 (Manassas Revised PRM) at 4.

³⁰ Sprint Supplemental PRM at 9-10.

³¹ RR at 16-18.

³² RCC proposes three classes of employees to work on this project: Senior Consultants charging \$142.53/hour, Project Managers charging \$195.19/hr and Executive Management charging \$242.70/hour. See Appendix to Proposed Resolution Memorandum of Nextel Communications, Appendix 3 at 28.

³³ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf.

³⁴ Sprint Supplemental PRM Appendix 2 at 5.

³⁵ *Id.* These systems requested 91, 24 and 8 hours of consultant time respectively.

³⁶ *Id.* RCC sought 822.5 hours for assisting in planning of an eight site system supporting 3830 units.

planning this project. Therefore, as discussed below, we reduce RCC's allowable project management hours to 217.5 and its allowable fees to \$36,345.

19. In reaching this conclusion, we emphasize that 800 MHz licensees are fully entitled to retain consultants to assist them in the rebanding process, but they cannot avoid responsibility for the reasonability of their consultants' costs. 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. We also disagree with Manassas' contention that because of RCC's rebanding experience; RCC's opinion regarding planning costs should be entitled to greater weight than that of the mediator or Sprint with respect to the reasonability of its costs.³⁷ RCC is entitled to no special deference in this regard.

1. Preparation of RFPF Documentation

20. Manassas seeks \$44,948.66 as compensation for 238.75 hours spent by RCC to develop the RFPF, which was submitted to the TA on March 31, 2006.³⁸ We reduce this amount to \$12,297 for 63 hours.

21. *Manassas Position.* The time claimed by RCC for RFPF preparation breaks down as follows:

- 25 hours of travel time for two RCC personnel to Manassas, Virginia.
- 19.5 hours for presentation to the City and gathering site and subscriber information by two RCC personnel.
- 45 hours for multiple revisions to the TA's RFPF form.
- 146.25 hours for review of tasks proposed by the City, RCC, and Motorola to avoid redundant tasks and/or duplicated effort.³⁹

22. Manassas acknowledges that the amount of time claimed by RCC for RFPF preparation is high in proportion to the size of the system, but contends that the correlation between system size and planning costs does not apply to small systems.⁴⁰ Manassas emphasizes that certain planning tasks such as frequency planning and testing for interference are necessary regardless of a system's size, and therefore will cost proportionally more in small systems on a "per-radio" basis.⁴¹ Manassas also cites RCC's claim that the amount of time needed to prepare the RFPF was particularly long in this case because when it began to prepare the RFPF, the process was new and "few if any public safety RFPFs were completed and submitted to use as a guide in the process."⁴²

23. *Sprint Position.* Sprint offers to pay for 21.25 hours of consultant time, arguing that most of the time that RCC claims to have spent in this category reflects duplication and inefficiency in RCC's work and should not be credited.⁴³ Sprint questions the need for two staff persons from RCC to travel and attend a kick-off meeting, and claims that developing the RFPF duplicates the task of developing the Rebanding Estimate.⁴⁴ Sprint also questions the 45 hours claimed by RCC for revising the RFPF after the

³⁷ Manassas SOP at 14.

³⁸ Sprint Supplemental PRM at 11.

³⁹ Manassas Revised PRM, Appendix 2 at 2.

⁴⁰ Manassas SOP at 8-9.

⁴¹ *Id.* at 9.

⁴² Manassas Revised PRM, Appendix 2 at 2.

⁴³ Sprint Supplemental PRM at 10.

⁴⁴ *Id.*

TA provided a template, and contends that the RCC time slips submitted by Manassas show that only seven hours were devoted to reviewing the revised RFPF.⁴⁵ Sprint also contests the 146.25 hours that RCC claims to have spent reviewing planning tasks proposed by Manassas, RCC, and Motorola.⁴⁶ Sprint submits that it should not have to pay for contractor inefficiencies, especially given RCC's claim to have many years of experience dealing with 800 MHz public safety systems.⁴⁷

24. Sprint also provides documentation showing that in comparison to this case, RCC has charged substantially less for preparing RFPFs for other 800 MHz public safety licensees that have retained its consulting services.⁴⁸ Sprint cites three cases of public safety licensees with single-site systems and fewer than 600 units in which RCC did not charge at all for RFPF development.⁴⁹ In five other cases involving multi-site communications systems more complex than Manassas' system, RCC charged for 24 to 48 hours work to develop RFPFs.⁵⁰

25. *Mediator Recommendation.* The mediator recommends that Sprint pay for 63 hours spent by RCC preparing the RFPF documentation.⁵¹ The mediator agrees with Sprint that one RCC consultant rather than two is sufficient to participate in planning activities. The mediator also recommends that the Commission disallow the majority of the costs associated with the development of the RFPF. Despite RCC's argument that the large number of hours were justified because the RFPF process was new at the time, the mediator believes that RCC, which is nationally recognized as a leading reconfiguration consultant, could have prepared the Licensee's RFPF in a more efficient and less time-consuming manner. The mediator found that the drafting an RFPF for a small system is less complex than for a complicated system that requires more elaborate planning and preparation.⁵²

26. *Discussion.* We agree with Manassas that consultant costs associated with retuning small systems may be disproportionately high as compared to consultant costs associated with larger systems.⁵³ Nevertheless, this principle does not justify the exceedingly high consultant costs claimed for planning in this case. The Manassas system is a small single-site system with 640 radios, which does not require extensive planning to retune. Manassas emphasizes the fact that the system is used by multiple departments, which does add some complexity to the planning process.⁵⁴ However, many of RCC's charges for RFPF preparation appear duplicative and unnecessary. We agree with Sprint and the TA that RCC has not justified charging for two consultants' time and travel in this case, as opposed to one.⁵⁵ Similarly, we are not willing to credit RCC for 146.5 hours—over three weeks' work—that it claims to

⁴⁵ *Id.* at 11-12.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.*

⁴⁸ *Id.*, Appendix 2 at 5.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ RR at 18.

⁵² *Id.* at 19.

⁵³ For example, we agree with Manassas that the TA's "per-radio" guidelines for calculating planning funding amounts may not always be suitable for smaller systems. However, neither Sprint nor the mediator proposes to use a per-radio formula to calculate Manassas' entitlement to planning funding.

⁵⁴ Manassas SOP at 8-9.

⁵⁵ Manassas contends that two consultants were needed to ensure "better coverage" of meetings and negotiations and avoid duplication of effort. Manassas SOP at 10. However, Manassas does not provide evidence that their roles differed or that one consultant could not have performed the required work.

have spent reviewing planning proposals to avoid duplication and redundancy.⁵⁶

27. We also find no merit to the claim that more time was required to prepare Manassas' RFPF than in other cases because the RFPF procedure was new. RCC represents itself as highly skilled in the design and project management of public safety radio systems, and thus could reasonably be expected to prepare the RFPF in a considerably shorter time than is claimed here. The record indicates that in eight other cases in which RCC was hired to provide rebanding services to 800 MHz public safety licensees with non-complex systems, RCC developed RFPFs for an average of 25 hours per licensee, in contrast to more than ten times that amount claimed in this case.⁵⁷ Such a discrepancy indicates significant inefficiency and duplication by RCC in this case. Even if RCC was able to increase its efficiency in other cases as its procedures became more standardized, Sprint is not required to pay for the consultant's "on the job training."

28. Based on the above factors, we agree with Sprint and the mediator that RCC's claim for Manassas' RFPF preparation should be reduced. Because the participation of multiple agencies adds some complexity to the planning process, we do not adopt the full reduction proposed by Sprint, but concur with the mediator's recommended finding that Manassas may claim 63 hours time for RCC's preparation of the RFPF. We will allow RCC to use the higher project manager rate as opposed to the senior consultant rate to allow for greater expertise.

2. Development of RCC's Cost Proposal

29. Manassas seeks credit for 8 hours of time charged by RCC to develop and submit a cost proposal to Manassas for the consulting work it proposed to do. We decline to award any credit for this claim.

30. *Manassas Position.* Manassas again refers to RCC's claim that because the RFPF process was new at that time, RCC spent a significant amount of time putting its cost proposal together.⁵⁸ RCC also argues that it went through "several iterations to assure accuracy in the estimate and avoid any unnecessary and/or duplicated effort with the City and/or Motorola."⁵⁹

31. *Sprint Position.* Sprint opposes any compensation for this activity. Sprint cites the TA's Reconfiguration Handbook in support of its claim that vendor charges associated with providing bids and quotes are not reimbursable costs.⁶⁰

32. *Mediator Recommendation.* The mediator concurs with Sprint that licensees are not entitled to credit for vendors' expenses associated with making cost proposals to the licensee.⁶¹

33. *Discussion.* We reject the claim that RCC's internal expenses to develop its proposal to do work for Manassas are reasonable rebanding-related costs. A consultant's costs in developing proposals to perform work for clients are a normal cost of doing business. The TA's Reconfiguration Handbook also makes clear that vendor charges associated with providing bids and quotes are not reimbursable costs.⁶² We accordingly disallow this claim.

⁵⁶ Manassas Revised PRM Appx. 2 at 3.

⁵⁷ *Id.* Two of these RFPFs were filed at approximately the same time as Manassas filed its RFPF, when RCC claims more time was required because of the newness of the process.

⁵⁸ Manassas Revised PRM App.2 at 3.

⁵⁹ *Id.*, App.2 at 2.

⁶⁰ Sprint Supplemental PRM at 13.

⁶¹ RR at 20.

⁶² Reconfiguration Handbook v. 2.3 at 64.

3. PFA Negotiations

34. Manassas seeks credit for 78.5 hours for the services of two RCC consultant engineers that participated in the PFA negotiations and subsequent mediation. We award credit for 30.5 hours participation in PFA negotiations by a single senior consultant as well as additional documented time for participation by a single senior consultant in future negotiations.

35. *Manassas Position.* RCC originally assigned two consultant engineers to assist in PFA negotiations with Sprint, and estimated each would spend 20 hours on the effort. Manassas claims that RCC assigned two consultants to provide better coverage in negotiations. Manassas later sought credit for 78.5 hours, claiming that was the actual time spent by the two consultants through October 16, 2006.⁶³ Manassas attributes the increase to the extended length of the PFA negotiations with Sprint and the additional time spent in mediation.⁶⁴

36. *Sprint Position.* Sprint contends that Manassas should receive credit for 20 hours of work by RCC. It claims that one RCC consultant rather than two would have been sufficient for the task.⁶⁵ Sprint further argues that Manassas' own personnel devoted only 20 hours to the same PFA negotiations.⁶⁶

37. *Mediator's Position.* The mediator agrees with Sprint that it was unnecessary to have two RCC consultants participate in the negotiations and mediation, and therefore recommends that Manassas be credited for half of its claim, *i.e.*, 39 hours.⁶⁷

38. *Discussion.* We find that Manassas has not justified two RCC consultants' participation in PFA negotiations. Participation by a single consultant representative is sufficient, given the nature of the system and that negotiations were also attended by legal counsel and multiple personnel from Manassas and Manassas Park. Manassas claims, however, that the two RCC consultants did not spend equal time in negotiations—RCC charged 24 hours time for one and 54.5 hours for the other.⁶⁸ We credit Manassas for the consultant that spent the greater amount of time, provided that the time is properly documented. The RCC time records submitted with the Manassas Revised PRM indicate that the consultant whose time was charged as 54.25 hours reported only 36.5 hours, of which 5.5 hours is attributed to developing a PRM, not PFA negotiations.⁶⁹ Accordingly, Manassas may claim 30.5 hours credit for a senior consultant participation in past PFA negotiations and mediation, as well as additional documented time for participation by a single RCC senior consultant in future negotiations.

4. Kick-off and Bi-weekly Meetings

39. Manassas seeks credit for 20 hours of participation by RCC at a kick-off and subsequent bi-weekly planning meetings. We approve this claim.

40. *Manassas Position.* Manassas estimated 20 hours of consultant time devoted to participation in bi-weekly status meetings and in coordination efforts with Manassas and Motorola.⁷⁰ It claims that RCC devoted 11.5 hours to this task from January through March, 2006 when Manassas

⁶³ Manassas Revised PRM App.2 at 2-3.

⁶⁴ *Id.*

⁶⁵ Sprint Supplemental PRM at 14.

⁶⁶ *Id.*

⁶⁷ RR at 20.

⁶⁸ Manassas SOP at 11 *citing* Manassas Revised PRM Appx. 2 at 6.

⁶⁹ Manassas Revised PRM App. 2 at 3.

⁷⁰ *Id.*

submitted the RFPF to the TA. It asserts that the remaining 8.5 hours of RCC time are necessary so that RCC can participate in future bi-weekly meetings during the planning phase.⁷¹

41. *Sprint Position.* Sprint contends that eight hours of a single RCC consultant's time is sufficient for RCC's participation in the kick-off meeting and subsequent bi-weekly meetings.⁷² It asserts that using multiple RCC representatives during the meetings is neither reasonable nor prudent.⁷³ Further, Sprint argues that some of the time spent by RCC personnel at the meetings was devoted to matters other than planning.⁷⁴

42. *Mediator Recommendation.* The mediator finds that Manassas has justified its claim for twenty hours of RCC participation in the bi-weekly meetings, because RCC participation in these meetings is necessary to keep Manassas abreast of the planning activities.⁷⁵

43. *Discussion.* We approve the requested 20 hours of RCC time for participation in past and future meetings. Participation in these meetings by the consultant is reasonably related to rebanding planning and implementation, and the amount of time claimed is reasonable.

5. Project Management

44. Manassas seeks credit for 65 hours of RCC time devoted to project management time during the planning phase of rebanding, *i.e.*, through the successful negotiation of a PFA. We award credit for 21.5 hours.

45. *Manassas Position.* Manassas estimates that 65 hours of RCC's time will be required for project management during the planning phase of rebanding, which Manassas defines as RCC working with the City and Motorola to determine the impact of rebanding on Manassas' operations and setting requirements for appropriate implementation, cut-over, validation, and acceptance testing.⁷⁶ Manassas states that this task includes RCC providing technical assistance to the City and providing oversight of contractors.⁷⁷ Manassas also contends that RCC must spend approximately two hours per week on coordination activities with the National Capital Region Coalition, of which Manassas is a part.⁷⁸

46. *Sprint Position.* Sprint claims that given Manassas' simple radio system, allotting 65 hours to RCC for project management in the planning phase is excessive.⁷⁹ Sprint also argues that this proposed line item duplicates a separate RCC line item for work on the Rebanding Plan.⁸⁰ Sprint proposes that Manassas receive credit for 21.5 hours for RCC project management. Sprint notes that this is half the time that Manassas has budgeted for its own project manager, arguing that "if the City's project management time is devoted to managing both RCC and Motorola, half that amount of time should be

⁷¹ *Id.*, App. 2 at 4.

⁷² Sprint Supplemental PRM at 14.

⁷³ *Id.* at 15.

⁷⁴ *Id.* at 12 n. 64-65, *citing* Sprint Supplemental PRM at 15 and Reply of Licensee to Sprint Nextel Proposed Resolution Memorandum dated September 27, 2006 at Appx. 1.

⁷⁵ RR at 20.

⁷⁶ Manassas Revised PRM App. 2 at 3.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Sprint Supplemental PRM at 16.

⁸⁰ Sprint quotes RCC as stating in connection with the Rebanding Plan that it will "establish how to proceed with the reconfiguration of the system," and similarly stating with respect to Project Management that it will "determine the impacts of rebanding . . . and set requirements for appropriate implementation." Sprint Supplemental PRM at 16.

more than sufficient for RCC to manage its own employees.”⁸¹

47. *Mediator Recommendation.* The TA Mediator supports Sprint’s position and recommends crediting Manassas for 21.5 hours of RCC project management time.⁸² The mediator notes that Manassas’ own project manager will be involved in all facets of rebanding planning, including schedule adherence, facility access, coordination, and communication with vendors and consultants.⁸³ The mediator concludes that RCC’s role is therefore advisory and that there is no need for RCC personnel to duplicate the work of the Manassas project manager.⁸⁴

48. *Discussion.* We conclude that 21.5 hours of project manager time is an appropriate amount to credit for RCC’s project management work during the planning stage. The record indicates that Manassas is devoting its own internal resources to project management, and that RCC’s role in this regard is advisory.

6. Rebanding Plan/Rebanding Cost Estimate

49. Manassas seeks credit for a total of 104 hours to be spent by RCC developing the Rebanding Plan and Rebanding Estimate. We credit Manassas for 40 hours of work by RCC in this regard.

50. *Manassas Position.* Manassas states that RCC needs 64 hours to develop the Rebanding Plan, which will establish how to proceed with the implementation of the reconfiguration. Manassas states that RCC requires an additional 40 hours to develop the Rebanding Cost Estimate, which itemizes the costs in the Rebanding Plan and will be used as the basis for FRA negotiation.⁸⁵ Manassas states that RCC has staffed these elements of the project with two RCC engineers “so one person will be available for each task at all times.”⁸⁶ RCC contends that developing the Rebanding Plan requires this amount of time and resources because Manassas’ system operates without backup or overlapping sites, and because of the degree of coordination planning required among the agencies that use the system as well as with other agencies that interoperate with Manassas and Manassas Park.⁸⁷

51. *Sprint Position.* Sprint does not contest the 40 hours of RCC time Manassas has budgeted for the Rebanding Estimate, but disputes that 64 hours of RCC time is required for RCC to develop the Rebanding Plan.⁸⁸ Sprint contends that many of the tasks that RCC has described as part of the Rebanding Plan are duplicative of tasks that RCC has identified elsewhere in its budget under project management.⁸⁹

52. *Mediator Recommendation.* The mediator discounts Manassas’ claim that the nature of Manassas system—a single site without backup or overlapping coverage—justifies RCC spending 64 hours to develop a Rebanding Plan. The mediator agrees with Sprint that much of the effort described for RCC’s preparation of the cost estimate involves tasks already accounted for in RCC’s project management proposal and also notes that efforts associated with interoperability duplicate efforts

⁸¹ *Id.* at 15.

⁸² RR at 21.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Manassas Revised PRM App. 5.

⁸⁶ *Id.*, App. 2 at 3.

⁸⁷ *Id.*

⁸⁸ Sprint Supplemental PRM, App. 1, at 1.

⁸⁹ *Id.* at 17.

underway by the Washington Council of Governments. On that basis, the mediator concludes that 40 hours should be adequate for preparation of both the Rebanding Plan and the Cost Estimate for a system as small and uncomplicated as Manassas' system.⁹⁰

53. *Discussion.* We conclude that 40 hours (8 project manager, 32 senior consultant) is sufficient for the combined development of the Rebanding Plan and Rebanding Estimate. First, as we have discussed in the context of several other elements of the RCC planning budget, we believe this project can be adequately staffed by one RCC consultant rather than two. Second, this task appears to overlap with the Project Management task described in Section 5 above. We are also not persuaded that the use of the system by multiple agencies or the need to factor in coordination with other jurisdictions increase the complexity of these planning documents to the degree claimed by RCC and Manassas. It is not unusual that public safety systems serve multiple departments and interoperate with nearby systems. To the extent that these are significant factors in the planning for rebanding of Manassas' system, they are accounted for in other elements of the planning process discussed above that will lead to the preparation of Rebanding Plan. Moreover, the record does not support Manassas' assertion that once the Rebanding Plan is completed, RCC will require an additional 40 hours solely to develop the associated cost estimate. This task essentially consists of putting a proposed "price tag" on the services described in the planning document, so that FRA negotiations with Sprint can proceed. We believe this task can be accomplished within the 40 hour timeframe adopted here.

7. Develop Initial Project Schedule

54. Manassas seeks credit for a total of 10 hours to be spent by RCC developing the initial project schedule. We question why this is a separate line item from the development of the Rebanding Plan, but approve the request.

55. *Manassas Position.* Manassas claims that RCC requires 10 hours to develop the initial project schedule because RCC must coordinate its work with Manassas and Motorola and because of "the complex nature of this work and the changes that will inevitably occur during the project."⁹¹

56. *Sprint Position.* Sprint argues against crediting any time for the development of the project schedule because that task should be contained in RCC's budget for planning project management proposal and for developing the Rebanding Plan/Rebanding Estimate.⁹²

57. *Mediator Recommendation.* The mediator recommends that RCC be credited for four hours toward developing an initial project schedule.⁹³

58. *Discussion.* It is not clear why RCC's development of the initial project schedule is listed as a separate line item from development of the Rebanding Plan, which presumably will include the project schedule as a component. Nevertheless, we believe that Manassas is entitled to credit for work by RCC to develop the schedule. The requested 10 hour amount is within the range of reasonableness and *de minimis* in relation to the overall project cost.

8. FRA Negotiations

59. Manassas estimates that FRA negotiations will require 40 hours of participation by two RCC consulting engineers. We will credit Manassas for up to 20 hours participation in FRA negotiations by a single RCC engineer.

60. *Manassas Position.* Manassas states that RCC estimated 40 hours for two RCC engineers

⁹⁰ RR at 21-22.

⁹¹ Manassas Revised PRM, App.2 at 3.

⁹² Sprint Supplemental PRM at 17.

⁹³ RR at 22.

to participate in the FRA negotiations. Manassas contends that the estimate is reasonable because RCC has already spent that amount of time in connection with PFA negotiations.⁹⁴

61. *Sprint Position.* Sprint argues that only 10 hours of a single RCC engineer's assistance is necessary to support FRA negotiations because half of those negotiations will revolve around topics that do not require technical assistance from an RCC representative.⁹⁵

62. *Mediator Recommendation.* The mediator recommends that Manassas be credited for 15 hours of RCC's participation in FRA negotiations. The mediator finds no need for two consultants to participate in the negotiations. Further, the mediator agrees with Sprint that a technical consultant will not be necessary for discussion of some issues in the FRA negotiations.⁹⁶

63. *Discussion.* We will allow Manassas credit for up to 20 hours of RCC consultant time devoted to the FRA negotiations. As in the case of PFA negotiations, we conclude that participation by a single consultant representative in FRA negotiations is sufficient, given the nature of the system and that the licensee will already be well-represented in the negotiations. In Section B above, we have approved Manassas' claim for three licensee personnel to spend 20 hours each on FRA negotiations. We approve the equivalent amount for a single RCC senior consultant to participate.

D. Duty to Negotiate in Good Faith

64. Each party contends that the other has acted in bad faith in this negotiation and mediation. We conclude that neither party has acted in bad faith.

65. *Manassas Position.* Manassas argues that Sprint failed to respond to Manassas' repeated requests for information about other licensees so that Manassas could verify Sprint's claims that those licensees were comparable to Manassas and claimed more reasonable costs for the rebanding of their systems.⁹⁷ Manassas also claims that Sprint (a) failed to revise its boilerplate terms and conditions to comply with the Virginia Freedom of Information Act and (b) misquoted the Reconfiguration Handbook in support of its argument that Manassas' planning costs were excessive.⁹⁸ Manassas contends that these actions constitute bad faith on Sprint's part. Sprint denies acting in bad faith, noting that it did provide information about other licensees as requested by Manassas. Sprint notes the parties have agreed on all terms and conditions of the PFA, which included compliance with Virginia's Freedom of Information Act. Sprint also denies misquoting the Reconfiguration Handbook.⁹⁹

66. *Sprint Position.* Sprint claims that RCC "punitively" increased its cost estimate for project management during the negotiation period.¹⁰⁰ Sprint cites an estimate submitted by RCC for 479.5 hours for project planning, which was reduced to 429.5 hours on August 15, 2006, at the time the parties submitted their PRMs. Subsequently, Sprint contends, RCC increased its time estimate to 588.5 hours without explanation.¹⁰¹ The increased hours were attributed to developing the RFPF, a task which had already been completed. Sprint argues that RCC's conduct added "unnecessary and unreasonable

⁹⁴ Manassas Revised PRM, App.2 at 3.

⁹⁵ Sprint Supplemental PRM at 17.

⁹⁶ RR at 22.

⁹⁷ RR at 13-14. *Id.* n.75.

⁹⁸ Manassas Revised PRM at 2-3.

⁹⁹ Sprint Supplemental PRM at 20.

¹⁰⁰ *Id.* at 18.

¹⁰¹ *Id.* at 18-19.

expense to the mediation process” and submits that these “tactics by RCC constitute bad faith.”¹⁰² Manassas counters that RCC’s lower estimate was part of a settlement offer in which Manassas offered to write off certain costs to forestall mediation, but that these costs were added back when the offer was rejected.¹⁰³

67. *Mediator Recommendation.* The mediator found no evidence of bad faith by either party. With respect to the charge that Sprint failed to respond to Manassas’ information request, the mediator found that Sprint eventually supplied the information and that any delay on Sprint’s part did not impede negotiations.¹⁰⁴ The mediator also found that Manassas’ other contentions against Sprint did not support a bad faith claim.¹⁰⁵ Similarly, the mediator found no evidence of bad faith by Manassas and RCC. The mediator found that the changes in RCC’s estimates reflected the give and take of settlement negotiations.¹⁰⁶

68. *Discussion.* Based on our review the record, we concur with the mediator’s recommendation and find that there is no evidence of bad faith by either party in this case. To ensure that the reconfiguration of the Manassas system is not further delayed, we direct the TA to convene a meeting of the parties and the TA mediator within fifteen days of the release of this Order directed towards concluding a PFA consistent with this Order.

IV. ORDERING CLAUSES

69. Accordingly, pursuant to the authority of Sections 0.191 and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 90.677, of the Commission’s Rules, 47 C.F.R. § 90.677, **IT IS ORDERED** that the issues submitted by the Transition Administrator are resolved as discussed above.

70. **IT IS FURTHER ORDERED** that, within fifteen days of the release of this Order, the 800 MHz Transition Administrator shall convene a meeting, as required herein, which meeting shall be held to conclude a Planning Funding Agreement between the parties consistent with this *Memorandum Opinion and Order*.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Associate Bureau Chief
Public Safety and Homeland Security Bureau

¹⁰² *Id.*

¹⁰³ RR at 15.

¹⁰⁴ RR at 22.

¹⁰⁵ *Id.* at 23.

¹⁰⁶ *Id.*