

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

In the Matter of )  
 )  
City of Naperville, Illinois ) WT Docket No. 02-55  
and Sprint Nextel )  
 )  
Mediation No. TAM-12225 )

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 2007

Released: June 14, 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 disputes between the City of Naperville (Naperville) and Sprint Nextel Corporation (Sprint). The disputes relate to certain planning-related costs incurred by Naperville and by two consultants retained by Naperville. Based on our *de novo* review of the mediation record, we find that Naperville is entitled to compensation from Sprint for the full amount of its claimed internal costs and the majority of its consultant costs.

II. BACKGROUND

2. The *800 MHz Report and Order* 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> This process is initiated by the submission to the TA of a Request for Planning Funding (RFPF). The TA reviews the RFPF and supporting documentation to ensure conformance with

<sup>1</sup> 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*).

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

<sup>3</sup> See generally [http://www.800ta.org/org/planning\\_neg/submit1.asp](http://www.800ta.org/org/planning_neg/submit1.asp).

certain guidelines.<sup>4</sup> 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, the case is referred to mediation.

4. Naperville is licensed to operate an 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) system under the call sign WNUX421. Naperville is licensed for eight channels with two transmit sites and six receive sites. There are approximately 1000 units on the system (300 mobiles and 700 portables), which is used by twelve city agencies.<sup>5</sup> In 2006, Naperville and Sprint commenced PFA negotiations regarding planning for retuning of the system.<sup>6</sup> The case was referred to mediation as part of Wave 1 Stage 2 on November 2, 2006. During mediation, Naperville and Sprint were unable to reach agreement on planning funding costs. On January 26, 2007, 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.<sup>7</sup> Naperville and Sprint filed their Statements of Position with PSHSB on February 9, 2007.<sup>8</sup>

5. Sprint and Naperville have agreed on \$131,032 in planning costs for reconfiguration of Naperville's system.<sup>9</sup> Most of this amount is for Naperville's internal planning expenses and work to be performed by Motorola, Naperville's equipment vendor. However, Naperville also requests \$35,310 in compensation for planning work by two consulting firms: EMR Consultants (EMR) and Midwest Public Safety Communications (MPSC). Of this amount, Sprint has agreed to pay \$9,304 for 53 hours of work by EMR, but disputes an additional 113 hours for which Naperville seeks \$18,895.<sup>10</sup> Sprint contends that the proposed additional EMR work is duplicative of inventory and project planning work that is being performed by Motorola. Sprint also objects to Naperville's request for \$7,210 to pay for work by MPSC on the original RFPF. Sprint has offered to pay \$1,957 for 14 hours of work by MPSC, leaving \$5,254 in dispute.<sup>11</sup> Finally, Naperville requests compensation for \$544 in internal planning costs that have been disputed by Sprint.<sup>12</sup>

### III. DISCUSSION

#### A. Standard of Review

6. As an initial matter, the Commission's orders in this docket assign to Naperville 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."<sup>13</sup> We note that the Commission has recently clarified this standard for purposes of determining whether licensee relocation costs are the "minimum

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<sup>4</sup> *Id.*

<sup>5</sup> See Sprint Proposed Resolution Memorandum (Sprint PRM) at 3. See also Naperville Statement of Position, filed February 9, 2007 (Naperville SOP) at 12.

<sup>6</sup> TA Recommended Resolution in Mediation No. TAM-12225 (RR) filed January 26, 2007, at 2.

<sup>7</sup> See *id.*

<sup>8</sup> Naperville SOP and Sprint Statement of Position, filed February 9, 2007 (Sprint SOP).

<sup>9</sup> RR at 3.

<sup>10</sup> See Naperville Proposed Resolution Memorandum (Naperville PRM).

<sup>11</sup> Naperville SOP at 14-15, RR at 23-26.

<sup>12</sup> Naperville SOP at 15, RR at 26.

<sup>13</sup> *800 MHz Report and Order*, 19 FCC Rcd at 15074 ¶ 198; *800 MHz Supplemental Order*, 19 FCC Rcd at 25152 ¶ 71.

necessary” to accomplish rebanding, and therefore must be paid by Sprint.<sup>14</sup> In the *Rebanding Cost Clarification Order*, the Commission stated that the term “minimum necessary” cost does not mean the absolute lowest cost under any circumstances, but the “minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner.”<sup>15</sup> This standard takes into account not just cost but all of the objectives of the proceeding, including timely and efficient completion of the rebanding process, minimizing the burden rebanding imposes on public safety licensees, and facilitating a seamless transition that preserves public safety’s ability to operate during the transition.<sup>16</sup>

7. Our review of costs is also 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 for systems of varying size and complexity.<sup>17</sup> 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.

#### **B. Consultant Costs – EMR Consultants**

8. *Naperville Position.* Naperville claims a total of \$18,895 for the following five tasks to be performed by EMR that are disputed by Sprint:

- Subscriber inventory – Naperville requests \$990 for ten hours of work by EMR to assist in inventory of the system’s radios.<sup>18</sup>
- Site reconfiguration planning – Naperville requests \$1950 for ten hours of work by EMR to support planning for reconfiguration of each of the system’s eight sites.<sup>19</sup>
- Retune, reprogram, and replace – Naperville requests \$460 for four hours of work by EMR to review Motorola’s determination of which units need to be retuned, reprogrammed, or replaced.<sup>20</sup>
- Planning support and project management -- Naperville requests \$11,800 for 70 hours of work by EMR to provide general planning support and project management in conjunction with the planning and negotiation phase.<sup>21</sup>
- Negotiation support -- Naperville requests \$3,695 for 19 hours of work by EMR to support Naperville’s participation in FRA negotiations.<sup>22</sup>

9. Naperville acknowledges that Motorola will perform most of the inventory work associated with the planning effort.<sup>23</sup> However, Naperville asserts that it has retained EMR to provide

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<sup>14</sup> Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, FCC 07-92, rel. May 18, 2007 (*Rebanding Cost Clarification Order*).

<sup>15</sup> *Id.* at ¶ 6.

<sup>16</sup> *Id.* at ¶ 8.

<sup>17</sup> See [http://800ta.org/content/PDF/other/Planning\\_Funding\\_Cost\\_Metrics.pdf](http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf)

<sup>18</sup> RR at 5.

<sup>19</sup> RR at 6-7.

<sup>20</sup> *Id.* at 7-8.

<sup>21</sup> *Id.* at 8-9.

<sup>22</sup> *Id.* at 9-10.

<sup>23</sup> Naperville PRM at 4.

additional services that will complement rather than duplicate Motorola's work.<sup>24</sup> Naperville also contends that EMR will assure that Motorola's participation is fully coordinated in order to reduce any disruption in the primary activities of the licensee.<sup>25</sup> With respect to planning support, Naperville states that EMR will be the primary author of the licensee's transition plan, and will work with each of the twelve agencies that use the system to develop a plan that allows for a seamless transition.<sup>26</sup> With respect to FRA negotiation support, Naperville states that Motorola will only participate to the extent that negotiations concern its cost estimates for rebanding equipment. Naperville contends that EMR will be called upon to provide any other necessary support regarding FRA negotiations.<sup>27</sup>

10. *Sprint Position.* Sprint contends that the additional work proposed to be performed by EMR under the line items at issue here is duplicative of work that will be performed by Motorola and Naperville's own staff.<sup>28</sup> Sprint also contends that Naperville has failed to provide a detailed statement of work for EMR that would demonstrate that EMR's work is necessary and non-duplicative.<sup>29</sup>

11. *Mediator Recommendation.* The mediator recommends that the Bureau disallow Naperville's request with respect to the disputed compensation for work performed by EMR.<sup>30</sup> The mediator concludes that Naperville has not provided sufficient documentation of EMR's work to demonstrate that it is not duplicative of work performed by Motorola.<sup>31</sup>

12. *Discussion.* We approve Naperville's request for \$18,895 to cover the five tasks to be performed by EMR. The record indicates that most of the inventory and planning work for this system will be performed by Naperville's vendor, Motorola. However, Naperville contends that it is entitled to retain a separate consultant to assist it in planning activity, rather than relying exclusively on its vendor.<sup>32</sup> We agree with this contention, provided that Naperville can demonstrate that the work performed by the consultant is reasonably necessary and not duplicative.

13. We find that standard to be met in this case. Although the overall planning costs for this project are somewhat higher than the median for a system of this size (500 to 1000 units), Naperville's system is at the high end of the range in terms of number of mobiles, has eight fixed sites, and has twelve agencies using the system.<sup>33</sup> In addition, most of the proposed planning funding is for Motorola's expenses and Naperville's internal costs, which Sprint has agreed to, while EMR's proposed costs are a relatively small percentage of the overall planning cost. This reflects the fact that EMR's role will be primarily to assist and advise the licensee on tasks not covered by its contract with Motorola. We address each of the disputed tasks in turn.

14. Inventory. The parties have agreed that the inventory of subscriber equipment will

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<sup>24</sup> Naperville Reply to Sprint PRM (Naperville Reply) at 5-6.

<sup>25</sup> Naperville Reply at 8.

<sup>26</sup> Naperville SOP at 12.

<sup>27</sup> *Id.* at 14.

<sup>28</sup> Sprint PRM at 3-4.

<sup>29</sup> *Id.*

<sup>30</sup> RR at 4.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> Naperville PRM at 2-3.

<sup>33</sup> See [http://800ta.org/content/PDF/other/Planning\\_Funding\\_Cost\\_Metrics.pdf](http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf). For example, Naperville's system is larger and more complex than the system at issue in Manassas, Virginia, where we found certain consultant costs to be excessive. See City of Manassas, Virginia and Sprint Nextel, *Memorandum Opinion and Order*, DA 07-1999, rel. May 4, 2007 (*Manassas MO&O*). The Manassas system is a single-site system with 640 mobiles and is used by eight agencies. *Id.* at ¶ 4.

require 112 hours of work by Motorola, which will have principal responsibility for conducting the inventory, and 22 hours for Naperville staff to assist in conducting the inventory.<sup>34</sup> The only issue in dispute is whether Sprint should also pay for 10 hours of work by EMR in connection with the inventory process. We believe that Naperville has met its burden of justifying this cost. Naperville has reasonably demonstrated that EMR's participation in the inventory process is not duplicative of Motorola's work. Motorola is primarily focused on identifying each subscriber unit for purposes of determining its per-unit rebanding costs, whereas Naperville proposes to use EMR to collect other information about the units that may be of relevance to the licensee for planning purposes, such as the disposition of units among departments and worker shifts.<sup>35</sup> We also see no evidence of unnecessary expense in light of the fact that only 10 hours is allocated for EMR's work on this task, compared to 112 hours of work by Motorola. The requested \$990 for this work is within the range of reasonableness and *de minimis* in relation to the overall project cost.<sup>36</sup>

15. Site Reconfiguration Planning. We find that Naperville has met its burden with respect to this expense. As in the case of subscriber inventory, we are persuaded that EMR's work on site reconfiguration planning is intended to complement the work that will be performed by Motorola, which focuses on the technical reconfiguration of the base stations and receive sites. EMR will focus on aspects of site reconfiguration that are beyond the scope of Motorola's contract, such as assisting Naperville in dealing with real world application of site planning (*e.g.*, access issues, utility issues, safety issues, etc.).<sup>37</sup> The requested allocation of 10 hours for this task is reasonable.

16. Retune/Reprogram/Replace Determination. As part of rebanding planning, Motorola will develop initial recommendations as to which of Naperville's mobile and portable radios need to be retuned, reprogrammed, or replaced.<sup>38</sup> Naperville has budgeted and Sprint has agreed to four hours of internal staff time for review of these recommendations. Naperville also requests that Sprint pay \$460 for four hours of EMR's time to assist Naperville in this review.<sup>39</sup> We approve this request. Naperville is reasonably entitled to the assistance of a consultant in reviewing Motorola's recommendations, and the time and expense budgeted for this task is *de minimis*.

17. Planning Support and Project Management. Naperville seeks compensation for 70 hours of EMR's time to assist in planning support and project management. We approve this request. Sprint argues that Naperville's claim should be rejected because Motorola is also performing 160 hours of "project management" tasks, which Sprint has agreed to. However, we agree with Naperville that Motorola's and EMR's project management roles are distinct. Motorola's role relates specifically to the equipment-related work that it will perform, but this does not make it the overall project manager for the licensee. Naperville explains that EMR will be assisting it by working directly with personnel from each of the twelve entities that use the system to facilitate each entity's participation in an efficient rebanding effort.<sup>40</sup> We believe it is reasonable for Naperville to retain EMR's services to help to perform these tasks, rather than relying exclusively on Motorola's project planning and management.

18. We reject Sprint's contention that Naperville's claim should be disallowed because it did

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<sup>34</sup> RR at 6.

<sup>35</sup> *Id.* at 5-6.

<sup>36</sup> The Commission has stated that costs may be deemed reasonable if the possibility of identifying further cost reductions is outweighed by the cost and time required to pursue further negotiation and mediation. *Rebanding Cost Clarification Order* at ¶ 10. *See also Manassas MO&O* at ¶ 17.

<sup>37</sup> Naperville SOP at 9.

<sup>38</sup> *Id.* at 10.

<sup>39</sup> *Id.*

<sup>40</sup> Naperville SOP at 12.

not provide an itemized statement of this component of EMR's work detailing the specific tasks that EMR would perform under this category.<sup>41</sup> Naperville argues that that a more particularized breakdown of EMR's work in this category is not realistic, because this is a general cost category that covers a wide variety of tasks that do not come under other line-items.<sup>42</sup> We agree. We are prepared to afford the licensee some flexibility with respect to budgeting for this category, provided the hours and costs proposed are limited and reasonable in proportion to the overall amount of planning hours and costs proposed for the project. In this case, Sprint and Naperville have agreed to 80 hours of work by Naperville's internal staff and 160 hours of work by Motorola, and total planning costs of \$131,032.<sup>43</sup> We find the 70-hour figure for EMR's contribution and the proposed cost of \$11,800 to be reasonable in proportion to these amounts. We also remind Naperville that, as with all tasks for which it seeks reimbursement, the time specified is not a liquid amount that will automatically be credited, but that Naperville must document that the budgeted time is actually spent in the manner described and contributes to rebanding of the system.<sup>44</sup>

19. FRA Negotiations. Sprint has agreed to Naperville's request for Motorola to perform 18 hours of FRA negotiation support and for Naperville to devote 20 hours of internal staff time to negotiations. Naperville also requests \$3,695 for EMR to provide 19 hours of support to Naperville in these negotiations. We approve this request. As Naperville points out, Motorola's role in negotiations will be limited to issues that relate to the rebanding work to be performed by Motorola.<sup>45</sup> We conclude that Naperville is entitled to the assistance of its own consultant in negotiations, and the proposed time and expense is reasonable.<sup>46</sup>

### C. Consultant Costs – Midwest Public Safety Communications

20. *Naperville Position.* Naperville originally retained Midwest Public Safety Communications (MPSC) to assist in preparation of Naperville's RFPF. Naperville and MPSC subsequently terminated their relationship, but Naperville seeks compensation for the work that MPSC performed. Naperville states that it originally contracted with MPSC to provide services at a "not to exceed" price. According to Naperville, at the end of its relationship with MPSC, it received a bill for \$12,860 for 92 hours spent in preparation of the original RFPF and repeated modifications.<sup>47</sup> When Naperville asked for a detailed invoice, MPSC included additional charges.<sup>48</sup> Originally, Naperville sought payment from Sprint of the full \$12,860 billed by MPSC, but Naperville states that it has reduced its request for payment by Sprint to \$7,210. Naperville states that it does not have a detailed invoice for the reduced amount at this time, but that it will provide one when Sprint is called on to pay.<sup>49</sup>

21. *Sprint Position.* Sprint contends that Naperville has not provided a sufficiently detailed invoice to document the work on RFPF preparation performed by MPSC. In response to Naperville's request for \$7,210, Sprint has offered to pay \$1,956 for 14 hours of work by MPSC, leaving \$5,254 in dispute.<sup>50</sup> Sprint states that in response to its request and the mediator's order to produce documentation,

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<sup>41</sup> RR at 9.

<sup>42</sup> Naperville Reply at 15.

<sup>43</sup> See paragraph 5 *supra*.

<sup>44</sup> See *Manassas MO&O* at ¶ 16.

<sup>45</sup> Naperville SOP at 14.

<sup>46</sup> See *Manassas MO&O* at ¶ 19.

<sup>47</sup> Naperville SOP at 15.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Naperville SOP at 14-15, RR at 23-26.

Naperville has produced only a general invoice that contained no itemized information.<sup>51</sup> Sprint argues that this is insufficient for it to verify whether MPSC's work meets the "minimum necessary" cost standard. Sprint also notes that it has agreed to pay Naperville for work on the RFPF by Naperville's staff and EMR.<sup>52</sup>

22. *Mediator's Position.* The mediator recommends that Sprint pay \$1,956 of the MPSC costs. The mediator contends that Naperville has failed to provide adequate support for MPSC's additional costs despite several orders requiring it to do so.<sup>53</sup>

23. *Discussion.* We find insufficient documentation in the record to support Naperville's request that Sprint pay more than the \$1,956 it has offered for this claim. Naperville states that it retained MPSC to work on the RFPF, but then terminated the relationship.<sup>54</sup> Naperville then received an invoice from MPSC, but apparently objects to some of MPSC's proposed charges. The final RFPF reflected work performed by Naperville and EMR, which Sprint has agreed to pay for.<sup>55</sup> From the MPSC invoice presented by Naperville in the record, we cannot determine the degree to which MPSC's work contributed to the final RFPF, and Naperville has provided no additional documentation to support its claim. We will consider Naperville's claim for the \$5,254 in dispute if it can provide specific documentation in support of its claim to the Bureau within seven days of this Order. However, in the absence of sufficient documentation, we must limit Sprint's payment to \$1,956.

#### **D. Internal Costs for Site Reconfiguration Planning**

24. *Naperville Position.* Naperville has sought and Sprint has agreed to pay Naperville \$14,350 for 82 hours of work by Motorola to perform site reconfiguration planning. Sprint has also agreed to pay \$544 for eight hours of Naperville staff time on this task. Naperville contends that an additional eight hours of internal staff time is needed for this task, and requests an additional \$544 to cover this expense. Naperville argues that a total of 16 hours of site reconfiguration planning time is needed. According to Naperville, its staff will spend the additional time assisting Motorola in gaining access to infrastructure sites, assisting Motorola personnel in the evaluation of the infrastructure, and coordinating review of planning materials prepared by Motorola.<sup>56</sup>

25. *Sprint Position.* Sprint contends that Naperville has conceded in its PRM that eight hours of internal staff time for site reconfiguration planning is sufficient. Sprint argues that Naperville has failed to meet its burden of proving that the additional time is needed.<sup>57</sup>

26. *Mediator Position.* The mediator recommends disallowing Naperville's request for an additional eight hours' compensation. The mediator notes that the request in Naperville's initial PRM was for eight hours of internal staff time, and that Naperville only increased its request in the Reply PRM.<sup>58</sup> The mediator states that Naperville did not provide documentation to support the new list of tasks.<sup>59</sup>

27. *Discussion.* We approve Naperville's request for \$544 for the additional eight hours of staff time to handle site reconfiguration planning issues. In applying the "reasonable minimum cost

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<sup>51</sup> Sprint SOP at 10-11.

<sup>52</sup> *Id.* at 10.

<sup>53</sup> RR at 23-25.

<sup>54</sup> Naperville SOP at 15.

<sup>55</sup> RR at 24.

<sup>56</sup> Naperville SOP at 15.

<sup>57</sup> Sprint SOP at 11.

<sup>58</sup> RR at 26-27.

<sup>59</sup> *Id.* at 27.

standard” to internal agency costs, we give reasonable deference to a public safety licensee’s decisions concerning internal staffing.<sup>60</sup> 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.<sup>61</sup> We do not think that 16 total hours of associated licensee staff time is unreasonable. Naperville staff would need to work with Motorola to gain access to the reconfiguration sites or negotiate with site owners. In addition, the amount in dispute between Naperville and Sprint on this issue is *de minimis*.

#### IV. ORDERING CLAUSES

28. 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.

29. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties within seven days of the date of this Order for the purpose of negotiating a Planning Funding Agreement consistent with the resolution of issues set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>60</sup> *Manassas MO&O* at ¶ 14.

<sup>61</sup> *Id.*