

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

In the Matter of
County of Chester, Pennsylvania
and Sprint Nextel
Mediation No. TAM-12019
WT Docket No. 02-55

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2007

Released: July 18, 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 (TA) and involving issues in dispute between the County of Chester, Pennsylvania (Chester) and Sprint Nextel Corporation (Sprint). The issues in dispute are (1) the level of program management necessary for planning; (2) the cost of Chester's coverage test plan development; and (3) the reasonability of Chester's claim for negotiation costs. Based on our de novo review of the mediation record, the recommended resolution submitted by the TA-appointed mediator in this case, and the parties' position statements, we approve a portion of Chester's estimated project management and coverage test planning costs, and we require Sprint to pay Chester's negotiation and mediation costs in full.

II. BACKGROUND

2. Chester is the licensee of a county-wide, 800 MHz NPSPAC trunked radio system that provides emergency radio communications for 57 police companies, 44 fire departments, and 23 ambulance companies that serve over 457,000 residents of Chester County. The simulcast system uses 16 frequencies, and is comprised of 18 transmit/receive sites, 3 receive-only sites, 14 conventional repeaters, 2700 portable radios, and 1200 mobile radios. The Chester system mostly consists of E.F. Johnson (EFJ) equipment. Although Sprint would ordinarily be required to pay for retuning of this system to the new NPSPAC band (806-809/851-854 MHz), Chester does not propose to retune its existing EFJ system. Instead, Chester proposes to replace its mobiles and portables with a new EFJ

1 Proposed Resolution Memorandum of County of Chester, Pennsylvania, TAM 12019 at 5 (filed May 2, 2007) (Chester PRM).

2 Chester PRM at 4. Chester is the licensee of call signs WPFQ224, WPAJ870, WPMJ468, WPHC717, KNNM504, WNWZ775, WPLQ823, WPUE333, WPHC713, WPHC512, WPKX415, WQBN802, WPHC709, WPSN958, WPKK660, WPSN628, WPHC705, WPHY558, WPKI690, WPRU506, WPHC701, WPYG324, WPUE428, WPQB678, WPHC515, WPYE456, WPFQ223, WPJR834, WPHC514, WPXA844, WPFQ222, WPWA449, WPHC513, WPWP859, WPCN957, WPAJ871, WPHK779, WPW1590, WPCN956, WPGV560, WPWE515, and WPBW265. See Recommended Resolution, TAM 12019 at 1 (filed June 8, 2007) (RR).

3 Chester PRM at 5.

product line that will be deployed in the new NPSPAC band at Sprint's expense.⁴

3. 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.⁵ To ensure meaningful FRA negotiations, licensees may seek initial funding for activities associated with planning for the reconfiguration of their communications systems.⁶ This process is initiated by the submission to the TA of a Request for Planning Funding (RFPF), which is reviewed and approved by the TA and then forwarded 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. Wave 1, Stage 2 negotiations regarding planning for retuning of the Chester system commenced February 1, 2006.⁷ The case was referred to early mediation in Wave 1 Stage 2 on September 2, 2006. In mediation, the parties could not reach agreement on project management costs, coverage testing plan development, and negotiation expenses.⁸ On June 8, 2007, the mediator forwarded the mediation record and his Recommended Resolution to PSHSB.⁹ Chester and Sprint filed statements of position on June 22, 2007.¹⁰

5. Chester's seeks a total of \$687,636 in planning costs.¹¹ Sprint's offer to Chester stands at \$391,133.¹² The cost categories in dispute break down as follows:

- Chester has requested project management costs of \$227,013. Sprint has offered \$145,895 for project management. Thus, \$81,118 is in dispute.
- Chester has requested \$37,219 to cover 344 hours to prepare a coverage test plan for its system. Sprint has offered \$10,217.50 to prepare such a plan, leaving \$27,001.50 at issue.

⁴ Chester PRM at 5-6.

⁵ See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *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*).

⁶ See generally http://www.800ta.org/org/planning_neg/submit1.asp.

⁷ RR at 2.

⁸ *Id.* at 3; Chester PRM at 9.

⁹ RR; Proposed Resolution Memorandum of Nextel Communications, TAM 12019 (filed May 8, 2007) (Sprint PRM); County of Chester Reply to Proposed Resolution Memorandum of Nextel Communications, TAM 12019 (dated May 11, 2007) (Chester Reply); Reply of Nextel Communications to Chester County Reply to Proposed Resolution Memorandum of Nextel Communications, TAM 12019 (dated May 15, 2007) (Sprint Reply); County of Chester Supplement to Proposed Resolution Memorandum, TAM 12019 (dated May 29, 2007) (Chester Supplement); Supplemental Proposed Resolution Memorandum of Nextel Communications, TAM 12019 (dated May 29, 2007) (Sprint Supplement).

¹⁰ See Statement of Position of County of Chester, Pennsylvania, TAM 12019 (June 22, 2007) (Chester SOP); Statement of Position of Sprint Nextel Corp., TAM 12019 (June 22, 2007) (Sprint SOP).

¹¹ See Chester PRM App. Volume 1 at A-53. The total request includes \$38,736 for PRM and Reply PRM preparation. *Id.* at 17.

¹² Sprint PRM at i.

- Chester has requested \$228,321 in reimbursement for negotiation and mediation expenses. Sprint has offered \$39,938 for these costs. Thus, the disputed costs for this category total \$188,383.

III. DISCUSSION

A. Standard of Review

6. As an initial matter, the Commission's orders in this docket assign to Chester 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."¹³ We note that the Commission has recently clarified this standard for purposes of determining whether licensee relocation costs are the "minimum necessary" to accomplish rebanding, and therefore must be paid by Sprint.¹⁴ 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."¹⁵ 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.¹⁶

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 PFAs for systems of varying size and complexity.¹⁷ 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. Project Management

8. Chester estimates that project management of the planning phase will require 2279 hours of work by Chester personnel and 800 hours of work by Chester's consultant, SSI Services, and requests \$227,013 to cover these costs.¹⁸ We approve \$145,895 in project management costs for the planning phase.

9. *Chester Position.* Chester acknowledges that its project management estimate is high in comparison to project management costs for other rebanding projects, but contends that the higher cost is justified for several reasons.¹⁹ First, Chester claims that it has incurred higher costs because unlike most licensees, it had to deal with the "threshold problem" that its radios could not be reprogrammed and its vendor, E.F. Johnson, initially did not have comparable replacement radios to offer.²⁰ According to Chester, resolving this issue required prolonged discussions with EFJ and extensive testing of new radio

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

¹⁴ *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

¹⁵ *Id.* at 9820 ¶ 6.

¹⁶ *Id.* at ¶ 8.

¹⁷ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf

¹⁸ Chester PRM at 9.

¹⁹ *Id.*

²⁰ *Id.* at 7

product lines.²¹ Second, Chester asserts that the proposed level of project management is consistent with its standard approach for all projects that involve emergency service operations.²² Chester argues that it “should not be required to accept a less thorough project management approach for rebanding” than its standard approach to project management.²³ Third, Chester argues that increased project management is required because its radio system is unusually complex.²⁴ Fourth, Chester characterizes its approach to project management as “project-centric,” meaning that the individuals Chester identifies as providing project management services may be called upon to provide other rebanding-related services depending upon need.²⁵ Chester argues that this is the best way to proceed because of the “difficulty of predicting when each project management resource may need to engage in a particular task.”²⁶ Finally, Chester argues that it must allocate substantial resources to project management in order to keep 124 first responder agencies and 73 local municipalities that rely on the system apprised of the rebanding program at all stages.²⁷

10. *Sprint Position.* Sprint contends that Chester’s proposed costs for project management are “plainly unreasonable.”²⁸ Sprint notes that the amount requested by Chester for project management substantially exceeds the project management costs incurred by most licensees with similarly sized or larger systems, and even exceeds the total planning costs of many such licensees.²⁹ With respect to the unavailability of EFJ replacement radios, Sprint notes that it agreed to fund Chester’s costs for evaluation and testing of potential replacement radios, and argues that this issue has no bearing on project management costs.³⁰ Sprint also rejects Chester’s argument that its project management costs are justified because they are consistent with Chester’s standard practice, arguing that this is inconsistent with the Commission’s standard for assessing rebanding costs. Sprint also argues that Chester’s “project-centric” management approach is vague, inefficient, and results in duplication of costs, because the additional work performed by project managers overlaps with other rebanding task categories.³¹ Finally, Sprint asserts that there are more cost-effective means of communicating with multiple user agencies without incurring the costs that Chester proposes.³² Sprint offers \$145,895 for project management, which it notes is still significantly higher than project management costs for most licensees with similarly sized systems.

11. *Mediator Recommendation.* The mediator recommended that the Commission approve \$145,895 in project management costs, the amount offered by Sprint. The mediator noted that Chester’s estimated project management costs are extremely high in comparison to those of other licensees, and that they represent a substantially higher percentage of total planning costs than is typically the case in other

²¹ *Id.* at 6-7.

²² *Id.* at 9.

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Sprint PRM at 11.

²⁹ *Id.* at 14-16.

³⁰ *Id.* at 9-10.

³¹ *Id.* at 13 and note 27.

³² Sprint PRM at 14.

PFA's.³³ The mediator concluded that Chester had not presented sufficient evidence in the record to justify its unusually high costs.³⁴

12. *Decision.* We conclude that Chester's project management costs should be reduced to \$145,895 as proposed by Sprint. The \$227,013 sought by Chester is extraordinarily high in relation to average planning project management costs: the median total for project management tasks for PFAs with systems with between 2,001 and 4,000 units is \$35,039, and the 75th percentile is \$39,550.³⁵ Indeed, Chester's proposed project management costs are not only five times higher than the 75th percentile for project management costs of similarly sized systems, they are higher than the *total planning costs* for 75 percent of similarly sized systems.³⁶ While we agree with Chester that the TA's cost metrics are not dispositive – in fact, the lesser amount we approve for project management still exceeds the metrics by a substantial margin – we are not persuaded by Chester's arguments in support of its full request.

13. Chester contends that the unusually lengthy history of planning in this case, and particularly the difficulty in identifying suitable replacement radios from EFJ, has driven up its project management costs.³⁷ However, to the extent that these issues have increased Chester's costs in past negotiations, such costs are accounted for elsewhere in this Order,³⁸ and should not affect Chester's future project management costs. In addition, Chester concedes that the cost of identifying and testing potential replacement radios is not at issue here,³⁹ and Sprint has in fact agreed to pay these costs.⁴⁰ Further, Chester states that EFJ has started a production line for replacement portables while a new line of replacement mobiles will become available later this year.⁴¹ Thus, any uncertainty that this issue may have caused in the past should not affect project management from this point forward.

14. Chester also cites its "project-centric" management approach as justification for its high cost estimate, noting that we have stated in prior orders that the Commission will generally defer to licensee staffing choices.⁴² It is not our intent to second-guess Chester's choice as to how to staff this project. However, Chester describes its project-centric staffing approach as enabling its project management team to provide other rebanding-related services depending upon need. To the extent that this occurs, we would expect other rebanding-related services to be accounted for in cost categories other than project management and that costs for project management would be correspondingly lower. Alternatively, including such costs in project management should yield corresponding cost reductions in other categories. Yet Chester has not identified any potential cost savings resulting from its proposed approach. In fact, its most recent estimate for overall planning costs included a substantial increase over prior estimates.⁴³ We conclude that this increased estimate lacks record support.

³³ RR at 11.

³⁴ *Id.*

³⁵ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf at 2.

³⁶ *Id.* at 1.

³⁷ Chester Reply at 7; Chester Supplement at 4; Chester SOP at 8.

³⁸ See ¶ 25-28 *supra*.

³⁹ Chester PRM at 7.

⁴⁰ Sprint PRM at 10.

⁴¹ Chester PRM at 6.

⁴² Chester SOP 7.

⁴³ As late as September 22, 2006, Chester sought \$548,890.67 in planning costs, but in its April 13, 2007 filing, Chester asked for \$648,900.32. Chester PRM, App. Volume I at A-2; Volume III at A-150. Thus, Chester's current

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15. Finally, we conclude that the full amount requested by Chester is not required to keep all system users apprised of the rebanding project. We recognize that the Chester system must communicate with a large number of county and local agencies that use the system. However, this is not a unique circumstance, and Chester has not identified to what extent this requirement increases its project management costs. Given Chester's experience and emphasis on project management, we believe that Sprint's counter-offer provides sufficient funding to cover this contingency. Therefore, we approve funding of \$145,895 for project management. Even this reduced amount remains sizable compared to funding of other rebanding projects of this scale and degree of complexity. Moreover, Chester may seek compensation for actual expenses that exceed this amount, so long as those costs are documented and are reasonable, prudent, and necessary to timely completion of rebanding.

C. Coverage Test Plan Development

16. Chester requests \$37,219 for 344 hours of work to develop a coverage test plan. The parties agree that a coverage test plan is needed, but disagree regarding the proposed cost of plan development.⁴⁴ We partially approve Chester's request.

17. *Chester Position.* Chester states that to develop the coverage test plan, it must establish coverage benchmarks for three separate systems that are impacted by rebanding – a simulcast voice system, a mobile data system, and a conventional repeater system (which serves as a back-up for the simulcast system).⁴⁵ Chester states that different testing guidelines will be required for each type of system.⁴⁶ In addition, Chester states that it cannot rely on previous coverage tests because the systems have changed configuration over the years.⁴⁷

18. *Sprint Position.* Sprint contends that 94 hours at a total cost of \$10,217 is more than adequate for Chester to develop a coverage test plan.⁴⁸ Sprint contends that it is unreasonable for Chester to spend more time developing a test methodology (344 hours) than it will actually take to conduct the test (approximately 300 hours).⁴⁹ Sprint asserts that a trained professional could develop a testing protocol for Chester in 24 hours or less, but states that it is willing to give Chester the benefit of the doubt by offering 94 hours.⁵⁰

19. *Mediator Recommendation.* The mediator recommended finding that Sprint's offer is sufficient.⁵¹ The mediator found the Chester's proposed cost figure to be disproportionately high, noting that for licensees with similarly sized systems, the 75th percentile for total engineering and implementation planning costs, not just coverage test planning alone, is \$48,565.⁵²

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request is \$100,009.64 more than its previous estimate. Because Chester also seeks an additional \$38,736 for mediation-related costs, Chester's proposal has increased by approximately \$140,000 in less than seven months.

⁴⁴ Chester PRM at 13.

⁴⁵ *Id.* at 13-14.

⁴⁶ Chester Reply at 9.

⁴⁷ *Id.* at 8.

⁴⁸ Sprint PRM at 20.

⁴⁹ Sprint Reply at 10. *See also* Sprint PRM at 20.

⁵⁰ Sprint PRM at 20.

⁵¹ RR at 17.

⁵² *Id.*

20. *Decision.* We conclude that Chester's hours to develop a coverage test plan should be reduced to 181 hours which equates to a total cost of approximately \$19,000.⁵³ We acknowledge that Chester must resolve several issues before implementing its coverage test, and that separate test protocols need to be developed for the three components of the Chester system.⁵⁴ However, Chester has not satisfactorily explained why it requires more time to create a plan for testing than to conduct the testing itself. We also find Sprint's proposed figure of 94 hours for coverage test planning to be thinly supported in the record. In its PRM, however, Sprint identifies a licensee with similar systems that provides a basis for comparison. Specifically, the City of Virginia Beach, a licensee with a simulcast system, a mobile data system, and a conventional repeater system,⁵⁵ agreed to plan its coverage test in 181 hours, approximately half of the time requested by Chester.⁵⁶ Therefore, in the absence of a further explanation from Chester as to why additional planning time is needed, we conclude that approximately \$19,000 for 181 hours is reasonable for planning Chester's coverage testing. If Chester ultimately incurs coverage testing costs in excess of this amount, and can document that the additional effort was necessary to the reconfiguration of its system, the true-up provisions in the PFA would permit Chester to request that additional amount.

D. PFA Negotiations and Mediation

21. Chester has requested \$228,321 in reimbursement for PFA negotiation and mediation expenses incurred to date. Of this amount, \$170,987 is for expenses prior to the beginning of mediation on September 2, 2006, \$18,598 is for mediation costs from September 2, 2006 through April 12, 2007, and \$38,736 is for the period since April 12, 2007.⁵⁷ We approve Chester's expenses incurred to date, but direct Chester to monitor costs carefully on a going forward basis.

22. *Chester Position.* Chester states that between July 2005 and April 2007, it spent nearly 1,400 hours in PFA negotiations and mediation.⁵⁸ Chester acknowledges that this is far more time than it originally projected would be required, but claims that it was eager to start planning as early as possible and that a variety of factors beyond its control prolonged the process.⁵⁹ First, uncertainty regarding the availability and reliability of replacement radios caused negotiations between Chester and Sprint to start and stop several times. Chester contends that each time negotiations were stopped and then restarted, it had to spend time gathering information and preparing its negotiation team.⁶⁰ Prior to the start of formal mediation, the parties sought the assistance of the TA to facilitate their negotiations, an effort that proved to be time-consuming but yielded limited results.⁶¹ Chester also claims that its hours increased

⁵³ The approximate total cost of \$19,000 is derived from the hourly rates listed by Chester to perform this task. See Chester PRM, Appendix at A-39-40.

⁵⁴ Chester Reply at 9.

⁵⁵ The Virginia Beach system consists of a 20-channel, 6-site simulcast trunked radio system, 3-channel, 5-site data system and a 5-channel, 6-site conventional repeater system. See Sprint PRM, Appendix 6 at 26.

⁵⁶ Sprint Reply at 10.

⁵⁷ RR at 16.

⁵⁸ Chester PRM at 15. There are three additional categories: assembling pre-negotiation documentation, planning sessions, and initial negotiation, but those appear to relate to Chester's FRA related estimates, which are not at issue here. *Id.* at 16-17.

⁵⁹ In its original RFPF, Chester "estimated that it would require 344 hours for both PFA and FRA negotiations." Chester PRM at 15.

⁶⁰ *Id.* at 8.

⁶¹ *Id.* at 8, 15.

significantly because of multiple and repetitive requests by Sprint to provide additional documentation regarding its costs.⁶² Chester states that “County employees have expended an enormous amount of resources, while attempting to balance their critical day-to-day responsibilities regarding the County's emergency communications systems.”⁶³ Additionally, Chester states that its consultants “have devoted many hours to the multiple tasks surrounding the ‘negotiation’ of an agreement over the past two years and deserve payment for those services.”⁶⁴ Chester states that it has provided extensive documentation for the time expended, including detailed time-based descriptions of the tasks performed and personnel involved.⁶⁵ These efforts, Chester argues, “must be fully and fairly compensated as set forth in the FCC's *Report and Order*.”⁶⁶

23. *Sprint Position.* Sprint “objects to the notion that Chester’s unilateral decisions about how it would proceed could ever obligate Nextel to pay for any of Chester’s expended efforts if they fail to meet the reasonable, prudent, and minimum necessary requirements of the Commission and the TA.”⁶⁷ Sprint further argues that the time spent by Chester significantly exceeds the TA cost metrics and that Chester has not provided a satisfactory justification for such high costs. Sprint argues that Chester “made a number of unilateral decisions concerning its conduct of negotiations that appear unreasonable by comparison both to Nextel’s experience and to the TA’s cost metrics.”⁶⁸ Sprint takes issue with Chester’s staffing decisions and billing practices, suggesting that they were inefficient and unnecessarily inflated costs. Sprint argues that the fact that Chester has already spent a substantial amount of resources is not relevant, because Chester is at risk if it incurs costs prior to approval by Sprint and the TA.⁶⁹

24. *Mediator Recommendation.* The mediator questioned the amount requested by Chester for negotiations prior to the start of mediation on September 2, 2006.⁷⁰ The mediator questioned the number of people spending time in negotiations on Chester's behalf, and suggested that Chester's own demands for high levels of planning funding were in part responsible for the protracted nature of the negotiations.⁷¹ Accordingly, the mediator recommended that Chester's pre-mediation negotiation costs be reduced to \$30,421, the amount proposed by Sprint for this period. However, the mediator recommended approving Chester's request for \$18,598 to cover the mediation period from September 2 through April 12. The mediator noted that Chester’s timesheets for this period showed fewer people charging time for meetings and less time per person being charged.⁷² With respect to Chester's request for \$38,736 for the period from April 12 through the conclusion of mediation, the mediator recommended approval of \$12,425 for 35 hours of legal fees associated with filing of Chester's PRM and Reply PRM, but found inadequate

⁶² *Id.* In recognition of the unique nature of this rebanding project, Chester states that it entered into a “Pre-Planning Funding Agreement” with Sprint in 2006 to cover some of the early costs incurred by the County. However, Chester argues that the process of negotiating that agreement was drawn out and required additional expenditures by Chester. *Id.* at 16.

⁶³ *Id.* at 15.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Sprint Reply at 17.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

⁷⁰ RR at 14.

⁷¹ *Id.* at 15.

⁷² *Id.* at 15-17.

documentation to justify the \$26,311 balance for assistance to Chester's attorney provided by Chester's internal staff and the consultant. The mediator recommended reducing the \$26,311 balance to \$5,250, based on 35 hours of work by Chester staff and the consultant at \$150/hour, the rate for the lead project manager.⁷³

25. *Decision.* We approve the \$228,321 in negotiation and mediation costs incurred by Chester. While these costs greatly exceed the TA's cost metrics for similarly sized systems, they are the result of unusual circumstances that were not exclusively within Chester's control. Unlike most licensees, Chester could not initiate the normal planning process because of the unavailability of a replacement radio product line for its radios from EFJ. Instead, Chester entered into a time-consuming series of negotiations with both Sprint and EFJ regarding various options for solving this threshold problem.⁷⁴ The parties further sought the assistance of the TA to facilitate these negotiations. The replacement radio issue proved to be contentious and difficult, with the result that Chester's internal staff devoted a large number of hours to negotiations that for a long time yielded little in the way of successful resolution of issues. Sprint contends that Chester overstaffed these negotiations and drove up negotiation costs by taking unreasonable positions. However, we conclude that Chester should recover its costs for the following reasons.

26. First, Chester made a concerted effort to begin planning for rebanding early, and committed significant resources to rebanding prior to planning funding approval by Sprint and the TA. In this connection, the Commission, the TA, and even Sprint have encouraged public safety agencies to engage in the rebanding process as early as possible to facilitate efficient rebanding.⁷⁵ Although Sprint notes that public safety licensees assume the risk of non-recovery for costs incurred that have not been approved,⁷⁶ we believe denial of reimbursement in this case would effectively penalize Chester for taking voluntary steps to start the process early, and could discourage other public safety agencies from seeking to expedite the rebanding process. We have noted before that "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."⁷⁷

27. Second, the time spent by Chester on pre-mediation negotiation, though high, reflected its good faith effort to resolve the EFJ equipment issue and develop a workable rebanding plan. Although this effort was not successful, and the parties went into mediation, Chester's efforts were reasonably related to the complexity of the issues and the goal of furthering band reconfiguration. As the Commission stated in the *Rebanding Clarification Order*, "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."⁷⁸ We agree with Sprint that merely establishing that hours have been spent does not constitute proof that the hours were spent reasonably.⁷⁹ However, the negotiation process is not a matter exclusively within one party's control. Therefore, we are unwilling to

⁷³ *Id.* at 16.

⁷⁴ Chester PRM at 15-16.

⁷⁵ Chester Reply at 5, n.6 and accompanying text.

⁷⁶ See 800 MHz Transition Administrator, LLC, *800 MHz Band Reconfiguration Handbook* v2.3, 32 (2006) ("Any costs incurred prior to approval are at risk for non-payment/reimbursement if both Sprint and the TA do not subsequently approve them.").

⁷⁷ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9821 ¶ 9

⁷⁸ *Id.* at 9820 ¶ 7.

⁷⁹ Sprint Reply at 8.

find that Chester's negotiation costs were excessive without clear evidence that it was primarily responsible for the excess. We do not find such evidence in the record of this case. To the contrary, Sprint has stated that prior to the issuance of the *Rebanding Cost Clarification Order*, its general practice in negotiation was to routinely "challenge virtually every dollar spent on band reconfiguration to assure compliance with minimum cost."⁸⁰ Thus, while Chester could arguably have done more to seek a negotiated solution, we find Sprint also shares responsibility for the prolonged nature and high cost of negotiation in this matter.

28. We also approve Chester's mediation costs, including its most recent request to cover costs since April 12, 2007. We conclude that Chester's request is reasonable, provided that it documents its actual costs. Moreover, on a going-forward basis, we direct Chester to be judicious in staffing this rebanding project, now that the replacement equipment issue has been largely resolved. In light of the Commission's *Rebanding Cost Clarification Order*, we fully expect the parties to make every effort to expedite the conclusion of this reconfiguration.

IV. ORDERING CLAUSES

29. 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.

30. 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

⁸⁰ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9819, 9821 ¶¶ 3, 10.