

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

In the Matter of
City of Irving, Texas
and Sprint Nextel
Mediation No. TAM-22002
WT Docket No. 02-55

MEMORANDUM OPINION AND ORDER

Adopted: September 6, 2007

Released: September 7, 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 2, Phase 2 mediation by the 800 MHz Transition Administrator, LLC (TA) involving multiple disputes between the City of Irving, Texas (Irving) and Sprint Nextel Corporation (Sprint). The disputes relate to costs incurred by Irving’s consultant, RCC Consultants (RCC), and to the claim by Irving that Sprint has failed to negotiate in good faith.

2. Based on our de novo review of the mediation record, we find that Irving is entitled to compensation from Sprint for costs incurred by RCC in connection with coverage testing, evaluation of user equipment and ancillary systems, negotiation and mediation support, and preparation of the final rebanding cost estimate for submission to Sprint. However, we find RCC’s proposed interference analysis and its proposed “hazard assessment” to be unnecessary, and we reduce its compensation for preparation of Irving’s planning funding request. We also conclude that both parties negotiated in good faith. Finally, we dismiss Irving’s request for leave to file a motion to strike as moot.

II. BACKGROUND

3. Irving operates a ten-channel, five-site Enhanced Digital Access Communications System (EDACS) trunked simulcast communications system in the NPSPAC band (licensed under call signs WPJQ645 and WQCJ480), serving approximately 1,556 subscriber units on a day-to-day basis. Irving also has two channels in the interleaved portion of the 800 MHz band that are not subject to rebanding. The system serves both the Irving police and fire departments and the city’s public services departments.

4. 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. To

1 See Proposed Resolution Memorandum of Licensee, dated March 23, 2007 (Irving PRM). On March 30, 2007, Sprint filed a Reply to the Irving PRM. See Reply to Proposed Resolution Memorandum of Licensee, dated March 30, 2007 (Sprint PRM).

2 See Irving PRM, Ex. 1 at 4.

3 See Appendix 10 at 1 to Irving PRM.

4 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

ensure meaningful FRA negotiations, licensees may seek initial funding for activities associated with planning for the reconfiguration of their communications systems.⁵ 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.

5. Sprint and Irving began PFA negotiations in early 2006. The case was referred to mediation as part of Wave 2 Stage 2 on August 9, 2006. During mediation, Irving and Sprint agreed on all PFA issues except for those addressed in this Order.⁶ On April 16, 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. Irving and Sprint filed their respective Statements of Position (SOP) with PSHSB on May 10, 2007.⁷ On May 18, 2007, Irving filed a request for leave to file motion to strike and a motion to strike the 800 MHz TA's cost metrics for licensee planning funding mentioned in the Sprint's SOP.⁸ On May 24, 2007, Sprint filed an opposition to Irving's Motion to Strike.⁹

III. DISCUSSION

A. Standard of Review

6. As an initial matter, the Commission's orders in this docket assign to the County 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."¹⁰ 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.¹¹ 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."¹² 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.¹³

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*).

⁵ See generally http://www.800ta.org/org/planning_neg/submit1.asp.

⁶ Recommended Resolution, filed April 26, 2007 by the TA (RR) at 3.

⁷ Irving Statement of Position, filed May 10, 2007 (Irving SOP); Sprint Nextel Statement of Position, filed May 10, 2007 (Sprint SOP).

⁸ Request for Leave to File Motion to Strike and a Motion to Strike, filed on May 18, 2007 by City of Irving (collectively, Motion to Strike).

⁹ Opposition to Request for Leave to File Motion to Strike and a Motion to Strike, filed on May 24, 2007 by Nextel Communications, Inc.

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

¹¹ Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, 9820 ¶ 6 (2007) (*Rebanding Cost Clarification Order*).

¹² *Id.*

¹³ *Id.* at ¶ 8.

7. Irving seeks a total of \$360,493.96 in planning funds,¹⁴ of which \$105,733.66 is in dispute.¹⁵ 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 for systems of varying size and complexity.¹⁶ 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 Irving's size (1001-2000 mobile and portable units) is \$79,738 and the 75th percentile amount of these planning funding requests is \$118,770.¹⁷ Thus, Irving requests over four times the median amount of funding and over three times as much as the 75th percentile compared to licensees of similarly-sized systems. Such a large deviation warrants careful scrutiny of these disputed costs. Nevertheless, 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

8. The entire amount in dispute represents costs sought by Irving for work performed by its consultant, RCC. We now consider each of the planning tasks that comprise the dispute.

1. Interference Analysis

9. Irving seeks \$11,574 for RCC to conduct an interference analysis of both Irving's existing frequencies in the interleaved band and the frequencies it will receive in the new NPSPAC band, as well as \$1,340 for a coverage study.¹⁸ We approve the coverage study but we conclude that the proposed interference analysis is unnecessary.

10. *Irving Position.* Irving contends that even though its two interleaved channels are not subject to rebanding, it must conduct an interference analysis of these channels because new co-channel "neighbors" could relocate from Channels 1-120 and cause interference to Irving's system.¹⁹ Irving estimates that the interference analysis of the interleaved band will cost \$5,952 for 34 hours.²⁰ Irving also asserts that a similar analysis of its new NPSPAC frequencies is required. Although all NPSPAC facilities in the area will be reconfigured to frequencies that are 15 megahertz below their current assignments, Irving contends that it must research the presence of secondary NPSPAC licensees in the area to ensure that they would not cause harmful interference to Irving's retuned NPSPAC operations.²¹ Irving estimates that the interference analysis of the new NPSPAC frequencies will cost \$5,622 for 32 hours.²² Irving also seeks \$1,340 for RCC to spend eight hours conducting drive tests to assess the signal strength of its five transmitter sites and to determine coverage and audio quality in overlap areas.²³ Irving contends that the

¹⁴ See Irving PRM, App. 125 at 578.

¹⁵ We derive these numbers from our independent calculations of the number of hours in dispute and the hourly rates provided by Irving. See Irving PRM, App. 125 at 578. We do not discuss the remaining \$58,050.61 in costs in the following categories comprising a PFA: System and Subscriber Unit Inventory or Legal.

¹⁶ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf.

¹⁷ See *Id.*

¹⁸ See Irving PRM, App. 10 at 144-45 (aggregating the hours and cost estimates for Tasks 1.6.3, 4.1, 4.4, 4.5, and 4.8).

¹⁹ See Irving PRM at 6.

²⁰ See Irving SOP at 5.

²¹ *Id.*

²² *Id.* at 6.

²³ *Id.* at 7.

coverage study is needed because the system is a simulcast system.²⁴

11. *Sprint Position.* Sprint contends that the proposed interference analysis is unnecessary and beyond the scope of the rebanding process.²⁵ Sprint argues that there is no justification for analyzing Irving's two interleaved band frequencies because they are not being relocated.²⁶ Sprint also contends that identifying secondary licensees in the new NPSPAC band is unnecessary because it has no bearing on whether Irving will receive "comparable facilities" and will not affect the overall capacity of Irving's system.²⁷ Sprint also questions the need for RCC to perform a coverage analysis and argues that any such analysis should be covered in the context of the FRA rather than the PFA.²⁸

12. *Mediator Recommendation.* The mediator concurs with Sprint and recommends that Irving not be compensated for the proposed interference analysis or coverage test.²⁹ The mediator states that Sprint is not responsible for frequencies that are not subject to rebanding, and therefore is not required to pay for an analysis of Irving's two interleaved channels.³⁰ The mediator also finds no justification for analyzing the potential interference impact of secondary facilities on Irving's new NPSPAC frequencies, because any secondary authorization holders will be required to protect Irving from harmful interference.³¹

13. *Discussion.* We conclude that the proposed interference analysis is unnecessary for rebanding purposes and is therefore not a recoverable cost. Irving does not require an interference analysis of its interleaved channels because these channels will not be rebanded. Nor is an interference analysis necessary if other licensees are relocated from Channels 1-120 to Irving's interleaved channels. Any relocated licensees that become co-channel with Irving will be separated from Irving's system in accordance with the distance-based separation requirements of the Commission's rules.³² Thus, Irving will continue to receive the same interference protection that it receives currently. Similarly, there is no need to analyze the potential interference impact of secondary licensees in the new NPSPAC band, because any such secondary licensees must either protect Irving from harmful interference or cease operations that cause such interference.

14. However, we agree with Irving that the cost of its coverage analysis is recoverable because Irving's system is a simulcast system. Although the TA's Reconfiguration Handbook states that drive testing to measure signal coverage is not necessary in most cases, the guidelines indicate that drive testing is appropriate for simulcast systems because any change in the effective radiated power or antenna pattern of a simulcast system could result in a change in coverage.³³ Therefore, we approve Irving's request for \$1,340 to perform this task.

2. Survey of End User and Ancillary Equipment

15. Irving seeks \$5,400 for RCC to spend an estimated 28 hours determining whether

²⁴ *Id.* at 11.

²⁵ Sprint PRM at 4.

²⁶ *Id.*

²⁷ See Sprint SOP at 11.

²⁸ Sprint PRM at 4.

²⁹ RR at 14-16.

³⁰ *Id.* at 14.

³¹ *Id.* at 15.

³² State of Maryland and Sprint Nextel, *Memorandum Opinion and Order*, WT Docket No. 02-55, 21 FCC Rcd 11939, 11943 ¶ 12 (PSHSB 2006) (citing 47 C.F.R. ¶ 90.621(b)).

³³ Reconfiguration Handbook v2.3 at 99-100.

Irving's user equipment and ancillary systems can be retuned or must be replaced during the reconfiguration process.³⁴ We conclude that Sprint should compensate Irving for the full amount requested.

16. *Irving Position.* Irving proposes that RCC spend 16 hours to locate, identify, and inventory equipment that must be reviewed by M/A-Com in order to determine whether the equipment can be retuned or must be replaced.³⁵ Irving also proposes that RCC spend 12 hours to review the results of M/A-COM's analysis and to provide comment and advice to Irving on M/A-Com's findings.³⁶ Irving states that much of this task involves research of non-M/A-Com ancillary equipment such as bi-directional amplifiers (BDAs) to determine whether such equipment will be able to operate in the new NPSPAC band.³⁷

17. *Sprint Position.* Sprint offers to pay for 20 of the 28 hours requested by Irving.³⁸ Sprint concedes that the proposed analysis of user equipment is necessary but argues that Irving has failed to substantiate its request for 28 hours to complete the task.³⁹

18. *Mediator Recommendation.* The mediator recommends that the Commission find in Irving's favor on this issue.⁴⁰ The mediator finds that "significant effort will be required" on the part of Irving and RCC to analyze the technical capabilities of ancillary and other non-M/A-COM equipment that will be affected by the reconfiguration process.⁴¹

19. *Discussion.* We conclude that Irving's cost is fully recoverable by Irving. Surveying of end user equipment and ancillary equipment such as BDAs is important to ensure that Irving receives comparable facilities. In addition, the amount in dispute between Irving and Sprint on this issue is *de minimis*.

3. Analysis of Rebanding Effects

20. Irving seeks \$1,033 for 32 hours of work by the City's internal staff and \$20,865 for 96 hours of work by RCC to analyze the effects of rebanding on the Irving system, including preparation of a "hazard assessment" by RCC.⁴² The 32 hours of work by the City's internal staff is not in dispute; therefore, we limit our review to the costs for work to be performed by RCC. We reduce this amount to \$9,916 for 46 hours.

21. *Irving Position.* Irving states that RCC's analysis will help it to determine how rebanding will affect the "availability, capacity and functionality, and related risks to the continued operations" of Irving's radio system.⁴³ As part of its "Rebanding Risk" analysis, RCC proposes to spend 48 hours analyzing the effect physical rebanding will have on the City, including to what extent alternate channels or systems will need to be available as a backup.⁴⁴ The "Rebanding Risk" analysis also includes a hazard

³⁴ See Irving PRM, App. 10 at 145.

³⁵ See *id.* at 132.

³⁶ *Id.*

³⁷ *Id.* at 7-8.

³⁸ Sprint PRM at 9-10.

³⁹ *Id.*

⁴⁰ RR at 16.

⁴¹ *Id.*

⁴² See Irving PRM, App. 10 at 145.

⁴³ *Id.* at 133.

⁴⁴ *Id.*

assessment “to identify the nature, frequency, and seriousness of the emergency situations that may arise” to which Irving would be required to respond.⁴⁵ The hazard assessment includes an evaluation of the probability of a major emergency event occurring in Irving while rebanding is in progress.⁴⁶

22. *Sprint Position.* Sprint contends that RCC’s proposed hazard assessment is “unnecessary and represents a waste of resources.”⁴⁷ Sprint states that even if the hazard assessment indicated that Irving requires a more reliable system that it has, such a showing would not be relevant to the rebanding process because Sprint is only required to provide facilities that are comparable to Irving’s existing facilities.⁴⁸ Sprint offers 46 hours for RCC to complete other elements of the proposed analysis at an estimated cost of \$9,916.⁴⁹

23. *Mediator Recommendation.* The mediator agrees with Sprint that the proposed hazard assessment is outside the scope of the rebanding process.⁵⁰ The mediator concludes that Sprint’s offer to fund 46 hours of work by RCC is adequate to compensate RCC for any analysis that is rebanding-related.⁵¹

24. *Discussion.* We find that Sprint’s offer for \$9,916 for 46 hours of effort is reasonable. We agree with Sprint that RCC’s proposed hazard assessment falls outside the scope of the rebanding process. The stated purpose of the proposed assessment is to determine the probability of various types of emergency situations, and to assess the capacity of Irving’s system to respond to them. While this is a highly worthwhile exercise for any public safety licensee, the fact that Irving is faced with rebanding does not necessitate such an assessment. Rebanding obligates Sprint to provide Irving with “comparable facilities,” *i.e.*, to provide facilities that will support the same level of responsiveness to emergencies as Irving’s current system. It does not obligate Sprint to support the licensee in responding to emergencies that are beyond its current capacity. Thus, whether Irving’s rebanded system is or is not capable of responding to particular hazards is not a rebanding-related issue, so long as it has the same capabilities as the original system.

25. For the same reason, we see no need for Sprint to pay for an evaluation of the probability of a major emergency event occurring while rebanding is in progress. Sprint’s obligation while rebanding is under way is to ensure that the licensee retains its full operational capability throughout the transition, whatever that operational capability may be. Evaluating the probability of a major emergency will not provide any information that would be relevant to determining whether Sprint has met this obligation.

4. Preparation of the Request for Planning Funding

26. Irving requests planning costs of \$55,359.23 for preparation of its RFPF.⁵² Of this total amount, Irving requests \$49,392.50 for 252 hours of work performed by RCC.⁵³ We reduce this amount to \$14,680 for 80 hours of work performed by RCC.

27. *Irving Position.* Irving states that because it was one of the first cities to submit an RFPF,

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Sprint PRM at 10.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ RR at 18.

⁵¹ *Id.*

⁵² See Irving PRM, App. 125 at 584.

⁵³ *Id.*

it could not rely on another RFPF as a guide and, therefore, the requested amount of time is warranted.⁵⁴ Irving states that none of RCC's time was spent on developing a template for other clients and that all of RCC's efforts were necessary to complete the RFPF solely for Irving.⁵⁵

28. *Sprint Position.* Sprint accepts the cost estimates for Irving's internal staff and for representatives of M/A-Com,⁵⁶ but claims that RCC's request to be credited for 252 hours on this task greatly exceeds the minimum time necessary to complete the RFPF.⁵⁷ Sprint argues that the RFPF was not an "unduly lengthy or complex document," and points out that one RCC consultant billed 18 hours for one day, thus "suggesting either a liberal approach to recordation of time or serious inefficiencies in operation."⁵⁸ Sprint also states that to the extent RCC used any portion of the 252 hours to develop a template RFPF for its future clients, such an allocation of time to Irving's reconfiguration project would be inappropriate.⁵⁹

29. *Mediator Recommendation.* The mediator concluded that RCC's expenditure of 252 hours to prepare Irving's RFPF was excessive, regardless of whether the RFPF was one of the first that RCC completed.⁶⁰ The mediator calculated that RCC's request translates to an estimated six hours of work for each page of the RFPF, without any justification having been provided for this amount of work.⁶¹ The mediator recommends that RCC be credited for 80 hours or \$14,680 for its contributions to the RFPF.⁶²

30. *Discussion.* We agree with Sprint that Irving has not justified the exceedingly high costs claimed for preparation of the RFPF in this case. RCC claims to have spent over six weeks' work preparing this document, which is far more time than it has spent to develop RFPFs for many other rebanding projects.⁶³ We find no merit to the claim that more time was required to prepare Irving's RFPF because the RFPF procedure was still new.⁶⁴ Addressing a similar claim in the *Manassas* case, we noted that "RCC represents itself as providing skilled professional services in the design and project management of public safety radio systems, and thus could be reasonably expected to prepare the RFPF in considerably shorter time than is claimed here."⁶⁵ Taking into account the complexity of the planning issues in this case, we conclude that 80 hours is a sufficient amount for this task.

5. Negotiation and Mediation Support

31. Irving requests \$70,850.39 for negotiation and mediation support, which includes \$7,498.39 (151.8 hours) for Irving's internal staff, \$8,050 (46 hours) for M/A-Com, and \$55,302 (286.55

⁵⁴ Irving PRM, Ex. 1 at 13.

⁵⁵ Irving Reply PRM at 12.

⁵⁶ Irving PRM, App. 125 at 584.

⁵⁷ Sprint PRM, Ex. 1 at 1.

⁵⁸ Sprint PRM at 9.

⁵⁹ *Id.*

⁶⁰ RR at 19.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See City of Manassas, Virginia and Sprint Nextel, *Memorandum Opinion and Order*, 22 FCC Rcd 8526, 8533 ¶ 27 (PSHSB 2007) (*City of Manassas*).

⁶⁴ See *id.*

⁶⁵ *Id.*

hours) for RCC.⁶⁶ The only portion of this request in dispute is the RCC portion. We credit RCC for the requested hours.

32. *Irving Position.* Irving contends that the large number of hours spent by RCC on negotiation and mediation was justified because Sprint and the mediator requested that Irving have RCC representatives participate in mediation telephone calls.⁶⁷ Irving also states that the amount requested is not a cost estimate, but rather accounts for actual hours that RCC spent in negotiations and mediation.⁶⁸

33. *Sprint's Position.* Sprint offers to pay \$25,230.64 for 118 hours of RCC work in support of negotiations and mediation.⁶⁹ Sprint acknowledges that it requested the presence of RCC representatives during some of the mediation calls, but contends that RCC engaged in unnecessary "double teaming" of staff on these calls.⁷⁰ Sprint also argues that RCC's claimed hours are unreasonable because they exceed the hours that Irving's staff spent on negotiation and mediation support.⁷¹

34. *Mediator Recommendation.* The mediator supports Sprint's position and recommends that RCC be credited for 118 hours for this task.⁷²

35. *Discussion.* We approve Irving's request for 286.55 hours for RCC's participation in negotiations and mediation. Although the hours claimed are high, we believe they are sufficiently supported by the record. Sprint stresses evidence of possible overstaffing of conference calls by RCC, but the record indicates that Sprint requested RCC's participation in the calls and did not object at the time to the number of RCC participants. In addition, as the mediator pointed out, RCC's participation in these calls accounts for only 20 hours (two RCC representatives participating in approximately ten mediation calls lasting about one hour each) of the total time that RCC has requested for negotiation and mediation support.⁷³ Thus, the impact of this issue on overall costs appears to be *de minimis*.⁷⁴

36. With respect to the remainder of RCC's request, Sprint has not provided evidence that RCC engaged in duplicative or unnecessary staffing of the negotiation and mediation effort. We disagree with Irving's contention that merely establishing that the "hours have been spent" constitutes proof that the hours were spent reasonably. However, the length of the negotiation and mediation process is not a matter exclusively within one party's control. Therefore, we are unwilling to find RCC's negotiation and mediation costs on behalf of Irving to be 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."⁷⁵ Although both Sprint and the mediator noted that RCC's hours exceeded the hours that Irving's own internal staff spent on negotiation and mediation support, this does

⁶⁶ Irving PRM, App. 125 at 583.

⁶⁷ *See id.*, App. 1 at 11.

⁶⁸ *Id.* *See also* Irving Reply at 9.

⁶⁹ *See* Sprint PRM, Ex. 1 at 1.

⁷⁰ *Id.* at 8.

⁷¹ *Id.* at 7.

⁷² RR at 19.

⁷³ *Id.*

⁷⁴ 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* 22 FCC Rcd at 9821 ¶ 10; *see also Naperville MO&O* at ¶ 14.

⁷⁵ *Rebanding Cost Clarification Order* 22 FCC Rcd at 9818 ¶ 3, 9821 ¶ 10.

not in and of itself demonstrate that RCC's hours were excessive. The record indicates that Irving has relied heavily on RCC throughout this project, so that it would not be unexpected for RCC's hours to exceed the licensee's with respect to this task.

6. Preparation of Irving's Cost Estimate for Submission to Sprint

37. Irving seeks \$22,472.50 for 104 hours that RCC anticipates spending to assist Irving in preparing its reconfiguration cost estimate to be submitted to Sprint. We approve this request.

38. *Irving Position.* Irving states that RCC requires 104 hours to prepare a report for submission to Sprint justifying Irving's rebanding cost estimate.⁷⁶ Irving states that it is the RCC's job to "coordinate and consolidate the final product."⁷⁷ Irving accuses Sprint of disputing the number of hours needed to accomplish this task without providing details of how it expects the task to be accomplished in less time.⁷⁸ Irving claims that Sprint is forcing public safety to choose between bearing expenses that Sprint would "otherwise be required to pay or forcing public safety users into accepting inferior systems or an unsafe process for change."⁷⁹

39. *Sprint Position.* Sprint offers to pay for 32 hours of RCC work on this task, at an estimated cost of \$6,914.56.⁸⁰ Sprint contends that this task consists of assembling, organizing and finalizing documents that have been accounted for under other task headings and should not involve a great deal of time or effort.⁸¹

40. *Mediator Recommendation.* The mediator recommends that RCC be credited for 32 hours to complete this task.⁸² The mediator, however, regards some of the work proposed under this task as legitimately related to the initiation of FRA negotiations rather than duplicative of other elements of the planning process that have already been accounted for.⁸³

41. *Discussion.* We conclude that Irving is entitled to the full amount it requests for this task. We agree with the mediator that final preparation of the cost estimate is not merely duplicative of prior planning tasks, but is integral to the initiation of the FRA negotiation process. Moreover, time spent ensuring that the cost estimate is well-documented is likely to expedite FRA negotiations and reduce costs at the FRA stage. Accordingly, we conclude that payment of this cost will help "to accomplish rebanding in a reasonable, prudent, and timely manner" consistent with the standard articulated by the Commission in the *Rebanding Cost Clarification Order*.

C. Duty to Negotiate in Good Faith

42. Irving contends that Sprint has acted in bad faith in this negotiation and mediation. We conclude that neither party has acted in bad faith.

43. *Irving Position.* Irving argues that Sprint breached its duty to negotiate in good faith by (i) engaging in numerous calls with Irving in which Sprint had opportunities to have its questions answered, and then abruptly breaking off discussions; (ii) failing to provide specific reasons why Sprint rejected certain tasks without proving any opportunity for Irving to respond; (iii) failing to respond to

⁷⁶ Irving PRM, App. 125 at 581.

⁷⁷ Irving PRM, Ex. 1 at 10.

⁷⁸ *Id.*

⁷⁹ *Id.* at 11.

⁸⁰ *Id.*

⁸¹ Sprint SOP at 14.

⁸² RR at 20.

⁸³ *Id.*

Irving's request for more information, (iv) failing to meet with Irving on a timely basis for negotiations, and (v) failing to contact Irving after appointing a new negotiator.⁸⁴ Irving states that the mediator failed to address its argument that Sprint failed to negotiate in good faith.⁸⁵

44. *Sprint Position.* Sprint states that it made every effort to resolve the dispute through negotiations, and that even after numerous meetings, exchanges of information, and discussions, Irving was "unwilling to change its position."⁸⁶ Sprint states that it more than tripled its initial offer, while Irving remained inflexible in its position and punitive in adding costs as time went by."⁸⁷ Sprint states that Irving never indicated any urgent need to contact Sprint and that Sprint was willing to communicate at all times.⁸⁸

45. *Mediator Recommendation.* The mediator found no evidence of bad faith by either Irving or Sprint.⁸⁹

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

D. Motion to Strike

47. Irving filed a motion to strike the 800 MHz TA's cost metrics for licensee planning funding mentioned in the Sprint SOP. As previously determined, the TA planning statistics are relevant to the mediation process as well as our *de novo* review.⁹⁰ We find that Sprint's reference to the TA planning statistics in its SOP was proper. We therefore deny the Motion to Strike.

IV. ORDERING CLAUSES

48. 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.

49. **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.

⁸⁴ See Irving PRM at 8-12; Reply Irving PRM at 16-21.

⁸⁵ See Irving SOP at 14.

⁸⁶ See Sprint PRM at 12.

⁸⁷ *Id.* at 13.

⁸⁸ *Id.* at 15.

⁸⁹ RR at 3 n.14.

⁹⁰ See *City of Manassas* at ¶ 6.

50. **IT IS FURTHER ORDERED** that request for leave to file motion to strike and a motion to strike filed by the City of Irving is hereby denied for the reasons stated above.

FEDERAL COMMUNICATIONS COMMISSION

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