

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

In the Matter of
State of Nevada
and Sprint Nextel
Mediation No. TAM-12229
University and Community College System of
Nevada
and Sprint Nextel
Mediation No. TAM-12328
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 cases referred to us for de novo review from Wave 1, Stage 2 mediation by the 800 MHz Transition Administrator (TA) and involving disputes between the State of Nevada and the University and Community College System of Nevada (UCCSN) (collectively "Nevada") and Sprint Nextel Corporation (Sprint). There are multiple issues in dispute that we address below, largely relating to Nevada's proposed use of internal personnel and two consultants, Galena Group International (Galena) and BH Consulting (BHC), to perform rebanding tasks. As a threshold matter, we deny claims that the parties have acted in bad faith, but we admonish both Sprint and Nevada to focus their efforts on moving forward with rebanding rather than continued litigation of these disputes. Turning to the disputed issues, we approve the majority of Nevada's claims, but we require Nevada to provide further justification of certain costs that appear to be inconsistent with similar costs that were requested and approved in our recent Washoe County order.

II. BACKGROUND

2. Nevada's 800 MHz facilities are part of the Nevada Shared Radio System (NSRS), a 79-site statewide system operated by the Nevada Department of Transportation (NDOT). The 800 MHz portion of NSRS operates on 21 frequencies at 9 sites. NSRS is used by 22 separate entities with a total of 6,457 mobile and portable radio units. NSRS is also interoperable with the Washoe County Regional

1 Galena provides telecommunications and project management services while BHC provides engineering, project management and legal services.

2 County of Washoe and Sprint Nextel, Memorandum Opinion and Order, 22 FCC Rcd 11860 (PSHSB 2007) (Washoe MO&O).

3 See Proposed Resolution Memorandum of the State of Nevada and the University and Community College System of Nevada, filed by Nevada on December 11, 2006, Exhibit 1 at 3-4 (Nevada PRM).

4 Id.

Communication System (Washoe).<sup>5</sup> NDOT has been authorized to negotiate a Frequency Relocation Agreement (FRA) with Sprint on behalf of UCCSN for the reconfiguration of its single call sign WPWK236.<sup>6</sup>

3. In May 2006, Nevada provided Sprint with a draft reconfiguration plan without a cost estimate. On October 11, 2006, Nevada provided Sprint an updated reconfiguration plan with a detailed statement of work and a cost estimate totaling \$815,460.88.<sup>7</sup> Nevada has included the costs for reconfiguring call sign WWK236 in its proposal.<sup>8</sup> The parties were unable to conclude an FRA through negotiation and mediation, and on January 29, 2007, the TA mediator forwarded the record and his Recommended Resolution to the Public Safety and Homeland Security Bureau (PSHSB) for *de novo* review and resolution. On February 12, 2007, Sprint and Nevada each filed a Statement of Position in this matter.<sup>9</sup>

### III. DISCUSSION

#### A. Standard of Review

4. As an initial matter, the Commission's orders in this docket assign to Nevada 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>10</sup> 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.<sup>11</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>12</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>13</sup>

5. We also note that the issues in dispute in this case are in many respects similar to those we recently addressed in our *Washoe County* order.<sup>14</sup> As noted above, the Washoe and Nevada systems are interoperable with one another. The Nevada system is larger than Washoe in geographic scope, but the two systems are similar in size and complexity: the Nevada system has 6457 radios and nine sites to

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<sup>5</sup> *Id.*

<sup>6</sup> Nevada PRM at 2 n.3.

<sup>7</sup> *Id.* at 4, Exhibit 4 at 34.

<sup>8</sup> *Id.*

<sup>9</sup> Statement of Position, filed by Sprint Nextel on February 12, 2007 (Sprint SOP) and Statement of Position, filed by State of Nevada on February 12, 2007 (Nevada SOP).

<sup>10</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, 15074 ¶ 198 (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, 25152 ¶ 71 (2004) (*800 MHz Supplemental Order*).

<sup>11</sup> *Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

<sup>12</sup> *Id.* at ¶ 6.

<sup>13</sup> *Id.* at ¶ 8.

<sup>14</sup> See generally *Washoe MO&O*.

be reconfigured, while Washoe has 4239 radios and ten sites to be reconfigured. Finally, Galena, the primary consultant for the Nevada system, is also the primary rebanding consultant in Washoe, and the apportionment of tasks between internal staff and Galena appears to be similar in both cases.<sup>15</sup> Thus, in our review of disputed issues, we rely on our analysis in *Washoe* as well as the record before us in this case.

## B. Good Faith

6. *Nevada Position.* Nevada contends that Sprint has failed to negotiate in good faith throughout this mediation.<sup>16</sup> Nevada asserts that Sprint's questioning of multiple line items in the Nevada proposal is unreasonable and has prolonged the process and increased Nevada's costs.<sup>17</sup> Nevada also contends that the mediator's statements in the RR support a finding that Sprint failed to negotiate in good faith.<sup>18</sup>

7. *Sprint Position.* Sprint asserts that its questioning of Nevada's proposal was reasonable and consistent with its obligation to ensure that Nevada's costs met the "minimum necessary" cost standard.<sup>19</sup> Sprint also contends that Nevada ignored Commission precedent with regard to its burden of proof and unreasonably refused to respond to requests for further information.<sup>20</sup> Sprint asserts that the mediator erred in supporting Nevada's objections to providing further information and was unfairly biased in Nevada's favor in the mediation.<sup>21</sup>

8. *Mediator Recommendation.* The mediator strongly criticized Sprint's conduct in the mediation, although it did not expressly find that Sprint acted in bad faith.<sup>22</sup>

9. *Discussion.* We do not find that either party has acted in bad faith, but we note that this proceeding has been unusually contentious and has resulted in a large number of disputed issues being referred to the Bureau. Sprint has stated that prior to the issuance of the *Rebanding Cost Clarification Order*, it felt compelled in negotiations "to challenge virtually every dollar spent on band reconfiguration to assure compliance with 'minimum cost.'"<sup>23</sup> In this particular case, Sprint's narrow interpretation of the standard caused it to respond to Nevada's detailed proposal and timeline by challenging or requesting additional information on numerous line items. In response, Nevada objected to Sprint's requests for more information and questioned Sprint's motives in the negotiations. The result was that both sides resorted to further litigation rather than seeking to resolve their disputes, and the mediator became increasingly frustrated at the parties' lack of progress.

10. Based on the record as a whole, we believe that Sprint has not "crossed the line" and acted in bad faith, but that it was overzealous in challenging "virtually every dollar" in the Nevada proposal. We also reject Sprint's contention that Nevada responded unreasonably. While Nevada could arguably have done more to seek a negotiated solution, we find that the overall level of detail that it provided in its proposal was sufficient to meet its burden of proof on most issues. Finally, we do not

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<sup>15</sup> *Washoe MO&O* at ¶ 31.

<sup>16</sup> Nevada SOP at 4-13.

<sup>17</sup> *Id.* at 3-4.

<sup>18</sup> *Id.* at 6-9.

<sup>19</sup> Sprint SOP at 7-8.

<sup>20</sup> Reply of Nextel Communications, Inc. to the Proposed Resolution Memorandum of Licensee, filed December 13, 2006 by Sprint, at 3-4 (Sprint Reply PRM).

<sup>21</sup> Sprint SOP at 8-9.

<sup>22</sup> Recommended Resolution, filed January 29, 2007 by the 800 MHz Transition Administrator, LLC at 50-51 (RR).

<sup>23</sup> *Rebanding Cost Clarification Order.* at ¶ 3.

agree with Sprint's assertion of unfair bias by the mediator. In any event, because our review is *de novo*, the mediator's findings are advisory only and are not afforded deference in this review.

11. In reaching the above conclusions, we underscore that it is Nevada and Sprint's future behavior—not their past behavior—that is now most critical to successfully completing the rebanding of the Nevada system. It is our expectation that—as the Commission admonished in the *Rebanding Cost Clarification Order* —“our action today will spur the parties to reorient their approach to this process.”<sup>24</sup> The core goal of the rebanding proceeding is not to minimize costs, but to complete rebanding in a “reasonable, prudent, and timely manner,” so that the interference problem that threatens 800 MHz public safety systems “is resolved as quickly and as comprehensively as possible.”<sup>25</sup> Going forward, we expect Sprint and Nevada to “keep their eyes on that prize...as they work through the details of this complex process.”<sup>26</sup>

### C. Negotiation Costs

#### 1. Licensee and Consultant Negotiation Costs

12. *Nevada Position.* Nevada requests compensation for 400 hours spent by internal staff, Galena, and BHC during negotiations responding to questions and requests from Sprint for supporting documentation.<sup>27</sup> Nevada originally estimated that 176 hours would be sufficient to cover these tasks but states that the increase is reflective of the actual hours incurred.<sup>28</sup>

13. *Sprint Position.* Sprint contends that the increased request is not justified because Nevada utilized a six-person negotiating team (three state employees, two Galena representatives, and one BHC representative) when a three-person team would have sufficed.<sup>29</sup>

14. *Mediator Recommendation.* The mediator recommends the Commission allow at least 300 of the 400 hours requested.<sup>30</sup>

15. *Discussion.* We approve Nevada's request for 400 hours. The time requested covers not only face-to-face negotiations, but the considerable additional time that Nevada's negotiators spent assembling data to respond to Sprint's multiple requests for information. In addition, Sprint did not object to the size of Nevada's negotiation team during the negotiations.<sup>31</sup>

#### 2. M/A-Com Negotiation Costs

16. *Nevada Position.* Nevada seeks reimbursement for 27 hours of time spent by M/A-Com in support of Nevada's negotiations with Sprint. These hours include communications between M/A-Com and Sprint as well as conferring with State employees and consultants on various issues.<sup>32</sup>

17. *Sprint Position.* Sprint argues that 12 of the claimed hours are excessive, a claim which it

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<sup>24</sup> *Rebanding Cost Clarification Order*, Joint Statement of Chairman Kevin L. Martin and Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell (Joint Statement).

<sup>25</sup> *Rebanding Cost Clarification Order* at ¶ 8.

<sup>26</sup> *Id.*, Joint Statement.

<sup>27</sup> Nevada Reply PRM at 29-31.

<sup>28</sup> *Id.*

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

<sup>30</sup> RR at 47.

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

<sup>32</sup> See Supplemental Proposed Resolution Memorandum of the State of Nevada and the University and Community College Systems of Nevada, filed January 11, 2007 at 5-6, App C at 3, App. E at 2 (Nevada Supplemental PRM).

bases on the fact that M/A-Com is requesting reimbursement for 14 hours of negotiation time during a time period when Sprint and M/A-Com had no direct communications.<sup>33</sup>

18. *Mediator Recommendation.* The mediator recommends that the Commission approve Nevada's request for 27 hours of M/A-Com time.<sup>34</sup> The mediator found that M/A-Com participated in the negotiation of the FRA with Sprint and the licensees on a regular basis since October 2006, including meetings with Nevada of which Sprint was not aware.<sup>35</sup>

19. *Discussion.* We approve Nevada's request for 27 hours. The hours attributed to M/A-Com are not limited to communications with Sprint. In addition, the difference in the amount sought by Nevada and the amount offered by Sprint is *de minimis*. The Commission has made clear in the *Rebanding Cost Clarification Order* that under such circumstances, it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation.<sup>36</sup>

#### **D. Planning Costs**

##### **1. Site Inspection**

20. *Nevada Position.* Nevada seeks approximately \$24,500 for 56 Galena and 347 internal hours to physically inspect and inventory the equipment at the system's nine 800 MHz sites, as well as verification of site documentation and identification of any site-related technical issues.<sup>37</sup>

21. *Sprint Position.* Sprint offers 270 hours for these tasks (assuming 3 people spending 10 hours per site at each site).<sup>38</sup>

22. *Mediator Recommendation.* The mediator recommends that the Commission allow all 403 hours requested by Nevada.<sup>39</sup> The mediator argues that Sprint's offer of 270 hours misinterprets Nevada's explanation of the various tasks and ignores the time required by key consultants.<sup>40</sup>

23. *Discussion.* We approve 180 hours for this task. While Nevada is clearly entitled to reasonable compensation for site inspection and related tasks, we note that Nevada's request for these tasks is significantly higher than the similar request we approved in *Washoe County*. In *Washoe*, we approved 160 hours for inspection of eight sites, to be conducted by two people at 10 hours per site.<sup>41</sup> We also approved 30 hours for verification of site documentation.<sup>42</sup> Nevada requires inspection of nine sites, and the work will be performed by the same consultant (Galena) that is performing the work for Washoe County. However, Nevada has requested 296 hours for site inspection, more than 50 percent higher than in Washoe on a per-site basis.<sup>43</sup> In addition, Nevada requests 60 hours—twice the amount in Washoe—

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<sup>33</sup> See Supplemental Proposed Resolution Memorandum of Nextel Communications, filed January 11, 2007 (Sprint Supplemental PRM). Sprint does accept 2 hours of M/A-COM time to prepare a one and one-half page letter during that time period. *Id.* at 10.

<sup>34</sup> RR at 50.

<sup>35</sup> *Id.*

<sup>36</sup> *Rebanding Cost Clarification Order* at ¶ 6.

<sup>37</sup> Nevada PRM, Ex. 6 at 2, Ex. 4 at 32.

<sup>38</sup> Sprint Supplemental PRM at 10.

<sup>39</sup> RR at 44.

<sup>40</sup> *Id.*

<sup>41</sup> *Washoe MO&O* at ¶¶ 11-15.

<sup>42</sup> *Id.* at ¶ 36.

<sup>43</sup> *Washoe MO&O.* at ¶¶ 11-15, Nevada PRM, Exhibit 4 at 32.

for site document verification.<sup>44</sup> In the absence of any explanation for the difference, we conclude that 180 hours (two people spending 10 hours per site) is reasonable for site inspection and 30 hours is reasonable for document verification. However, we will provide Nevada an opportunity to request additional compensation for this task by submitting a showing to Sprint and the mediator justifying the difference in comparison to *Washoe*. Nevada must submit this showing within fourteen days of release of this order.<sup>45</sup> Finally, we approve Nevada's request for 23 hours to identify and resolve any issues that might arise from these other tasks.

## 2. Radio Personality Inventory

24. *Nevada Position.* Nevada seeks 308 hours to inventory radio "personalities" in its existing radios<sup>46</sup> and 12 hours to baseline test one of each type and model of radio involved in rebanding.<sup>47</sup> A radio personality is the specific program that controls the radio.<sup>48</sup> Nevada proposes to analyze the personalities in order to reduce the large number of unique personalities in its existing system (currently over 640) to a smaller number that will be used post-rebanding. Nevada claims that reducing the number of personalities will make the final reprogramming of system radios more efficient.<sup>49</sup>

25. *Sprint Position.* Sprint offers no hours for these tasks, arguing that this task is not necessary for rebanding but is an attempt by Nevada to have Sprint pay for repacking of channels in its radios.<sup>50</sup>

26. *Mediator Recommendation.* The mediator recommends that the Commission allow the 308 hours requested by Nevada.<sup>51</sup> The mediator contends that Nevada has shown that the computer-based radios could malfunction and be totally inoperable without proper programming for features and functions and that it must deal with over 640 unique radio programs.<sup>52</sup> The mediator rejects Sprint's argument that the inventory is part of Nevada's repacking plan.<sup>53</sup>

27. *Discussion.* We approve 200 hours for this task. We note that Washoe intends to perform the same task in its rebanding plan even though there is not evidence that Washoe intends to repack its radios.<sup>54</sup> However, we also note that Nevada has requested almost three times as many hours for this task (320 hours) as we approved in *Washoe* (128 hours).<sup>55</sup> Given that the same consultant (Galena) is working on both projects, and that Washoe has approximately two-thirds as many radios as Nevada, we believe 200 hours for these tasks is sufficient. However, in accordance with the procedure described in Section III.D.1 above, Nevada may request additional compensation by submitting a showing to Sprint and the

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<sup>44</sup> *Washoe MO&O*, at ¶¶ 11-15, Nevada PRM, Exhibit 6 at 2, Exhibit 4 at 32.

<sup>45</sup> If Nevada submits a showing and the parties are unable to resolve the issue through mediation within 14 days thereafter, the mediator shall refer the issue to PSHSB.

<sup>46</sup> Reply of the State of Nevada and the University and Community College Systems of Nevada, filed December 13, 2006 by Nevada at 18 (Nevada Reply PRM).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 18-19.

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

<sup>50</sup> Sprint PRM at 13-14.

<sup>51</sup> RR at 45.

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

<sup>53</sup> *Id.*

<sup>54</sup> *Washoe MO&O* at ¶ 38.

<sup>55</sup> *Id.*



mediator within fourteen days of release of this order explaining and justifying the difference in comparison to Washoe.

### 3. Development of New Radio Personalities and System Profiles

28. *Nevada Position.* Nevada seeks 208 hours to develop the new radio personalities that will be installed in the radios,<sup>56</sup> 246 hours to test these profiles in sample radios<sup>57</sup> and 80 hours to identify any problems and create a solution and retest.<sup>58</sup>

29. *Sprint Position.* Sprint rejects these tasks as unnecessary for rebanding.<sup>59</sup> Sprint argues that the design and testing a new system structure are not necessary to rebanding and suggests that this is a repacking-related task.<sup>60</sup>

30. *Mediator Recommendation.* The mediator recommends that the Commission allow the hours.<sup>61</sup> The mediator contends that Nevada has explained why these tasks are necessary for rebanding, not repacking.<sup>62</sup> The mediator also finds this task essential to provide the proper radio programs to each system user.<sup>63</sup>

31. *Discussion.* We find that these tasks are rebanding-related and therefore represent a recoverable expense for 100 hours.<sup>64</sup> We are again informed by the fact that Washoe intends to undertake a similar task even though there is no evidence that Washoe intends to repack.<sup>65</sup> However, Nevada's total request (534 hours) is over ten times higher than equivalent request that we approved in *Washoe* for the same tasks (50 hours), with no explanation for the difference.<sup>66</sup> Because Nevada has more radio units than Washoe, we approve 100 hours for these tasks, but Nevada may seek more compensation by submitting a showing within fourteen days under the procedure described in Section III.D.1 above.

### 4. Development of Radio Programming Schedule

32. *Nevada Position.* Rebanding Nevada's system will require touching each of the system's 6,457 radios twice, once to program in the new band plan and a second time after the transition is completed to remove pre-rebanding channels and personalities from the radios. Nevada requests compensation for 276 internal staff hours to prepare a schedule for each of the two touches and to identify locations around the state where each radio will be brought for programming.<sup>67</sup>

33. *Sprint Position.* Sprint contends that 100 hours is sufficient to accomplish these tasks.<sup>68</sup>

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<sup>56</sup> Nevada Reply PRM at 20.

<sup>57</sup> *Id.* at 21.

<sup>58</sup> *Id.*

<sup>59</sup> Sprint PRM at 14-15.

<sup>60</sup> *Id.*

<sup>61</sup> RR at 46.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> RR at 46.

<sup>65</sup> *Washoe MO&O* at ¶ 38.

<sup>66</sup> *Id.*

<sup>67</sup> Nevada Reply PRM at 33, 36.

<sup>68</sup> *Id.*

34. *Mediator Recommendation.* The mediator recommends reducing this amount to 207 hours because Nevada should require less time for development of the schedule for the second touch than the schedule for the first touch (138 hours for the first iteration and 69 hours for the second).<sup>69</sup>

35. *Discussion.* We agree with Nevada that development of multiple schedules is not inherently duplicative: because each radio will be touched twice, it is reasonable for Nevada to develop separate schedules for the first and second touches.<sup>70</sup> We also agree with Nevada that it is appropriate for both internal staff and consultant staff to be involved in the schedule development process, particularly given the large number of agencies that use the Nevada system and the dispersion of users across the state. However, we agree with the mediator that Nevada should be able to gain efficiencies in development of the second schedule based on similar elements that have been developed in the first schedule. For example, the selection of locations for the first touch of each radio should save time and effort in the selection of locations for the second touch of each radio. Therefore, we concur with the mediator's conclusion that 207 hours is sufficient because development of the first schedule will lead to cost reductions in developing the second.

### 5. Refinement of Site Retuning Plan

36. *Nevada Position.* Nevada seeks 48 hours to refine the infrastructure site retuning plan<sup>71</sup> and 25 hours to estimate the cost of the repeater site retuning efforts.<sup>72</sup>

37. *Sprint Position.* Sprint argues that these costs are not reimbursable because M/A-Com will develop a site retuning plan, which will include a timeline and estimated costs.<sup>73</sup>

38. *Mediator Recommendation.* The mediator finds that Nevada has met its burden of proof on these matters and that these efforts are not duplicative of M/A-Com's efforts because M/A-Com's efforts are in implementation rather than planning.<sup>74</sup>

39. *Discussion.* We concur with the mediator's finding that these hours are not duplicative of M/A-Com's efforts. Again, however, we note that Nevada's proposed hours for these tasks (73 hours) are over three times higher than Washoe's (24 hours).<sup>75</sup> We approve 50 hours for these tasks, unless Nevada incurs greater actual costs and can demonstrate that the additional time is justified.

### 6. Galena Hourly Rates

40. *Nevada Position.* Nevada proposes that the principal Galena employee working on the project will bill at \$200/hour and his associate will bill at \$150/hour.<sup>76</sup> Nevada argues that it has provided historical justification for these rates.<sup>77</sup>

41. *Sprint Position.* Sprint objects that these are excessive premium rates.<sup>78</sup>

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<sup>69</sup> RR at 48.

<sup>70</sup> *Washoe MO&O* at ¶ 45.

<sup>71</sup> Nevada Supplemental PRM at 13.

<sup>72</sup> *Id.* at 14.

<sup>73</sup> Sprint PRM at 11.

<sup>74</sup> RR at 45.

<sup>75</sup> Proposed Resolution Memorandum of Nextel Communications, Inc. in TAM 12342 (Washoe County), filed March 2, 2007, Exhibit B at 1 (Washoe Task List).

<sup>76</sup> RR at 39.

<sup>77</sup> Nevada Reply PRM at 47.

<sup>78</sup> Sprint PRM at 27-29.



42. *Mediator Recommendation.* The mediator recommends that the Commission allow the rates requested by Nevada on behalf of Galena.<sup>79</sup> The mediator argues that rates have been justified in numerous documents. While Sprint objects to the lack of any historical data on these rates, Galena as a relatively new entity does not have a track record of invoices.<sup>80</sup> Moreover, Sprint does not mention the fact that Galena Group has billed Nevada at the requested rates for work on non-reconfiguration matters.<sup>81</sup> The mediator also notes that it can not evaluate Sprint's contention that Galena Group has charged lower rates to other licensees because Sprint Nextel has refused to provide this information to the mediator.<sup>82</sup>

43. *Discussion.* We conclude that Galena may charge rates for its employees that are consistent with their standard billing rates for other projects. However, we note that Galena is proposing to charge Nevada at a \$200/hour rate for tasks that will be billed to Washoe County at \$150/hour.<sup>83</sup> We therefore direct Nevada to either apply the lower rate or provide documentation to the mediator in support of charging a higher rate than in Washoe.

## **E. Implementation Costs**

### **1. User Training**

44. *Nevada Position.* Nevada proposes to spend 2475 hours training each 800 MHz radio user how to use the reconfigured radios.<sup>84</sup> Training will consist of two training sessions for each user: one 15-minute session to familiarize each officer with the temporary programs that will be in their radios during the reconfiguration process, and a second 10-minute session to educate each officer about the new channels once reconfiguration is complete.<sup>85</sup>

45. *Sprint Position.* Sprint contends that one 10-minute session and one 5-minute session per officer is sufficient and offers 1465 hours for this task.<sup>86</sup>

46. *Mediator Recommendation.* The mediator recommends that the Commission allow 2475 hours.<sup>87</sup> The mediator notes that both parties recognize the need to train radio users during both reprogramming phases and opines that Nevada's estimate is more realistic than Sprint's.<sup>88</sup>

47. *Discussion.* We approve 2475 hours for user training. As we stated in *Washoe*, we believe that the licensee is generally in the best position to assess the training needs of its users, and we will not substitute our judgment provided the licensee's assessment is reasonable in light of the record as a whole.<sup>89</sup> We find that to be the case here, and therefore approve Nevada's request.

### **2. Tracking Rebanding Hours and Expenditures**

48. *Nevada Position.* Nevada proposes to budget 440 hours (320 for internal staff, 96 for

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<sup>79</sup> RR at 50.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Washoe Task List.

<sup>84</sup> Nevada PRM Ex. 4 at 33.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> RR at 49.

<sup>88</sup> *Id.*

<sup>89</sup> *Washoe MO&O* at ¶ 10.

Galena, and 24 for BHC) to track rebanding work hours and expenditures for audit purposes. Nevada estimates that internal staff and consultants will spend slightly less than 20 hours per month on this task over a 24-month project cycle.<sup>90</sup>

49. *Sprint Position.* Sprint offers 120 hours based on 10 hours per month and a 12-month project cycle.<sup>91</sup> Sprint also contends that costs incurred by vendors to track internal time are not reimbursable to licensees.<sup>92</sup>

50. *Mediator Recommendation.* The mediator recommends allowing Nevada 350 hours over 24 months, but does not allocate the hours in any fashion.<sup>93</sup>

51. *Discussion.* We conclude that Nevada should recover costs at its proposed per-month rate, including costs already incurred, for the actual duration of the rebanding process.<sup>94</sup> Because we do not yet know how many months rebanding the Nevada system will take, we need not decide between Nevada's 24-month figure and Sprint's 12-month figure, but we emphasize that rebanding of the system must be timely and expeditious.

### 3. Status Reporting

52. *Nevada Position.* Nevada seeks 88 hours for internal status reporting to state officials over a 475-day period.<sup>95</sup> Nevada explains that it will use a variety of methods for this reporting, which will occur at all levels of the project, including project management and NDOT management as well.<sup>96</sup> Nevada states that it has allocated BHC hours for this task because BHC's principal is a former Chief Deputy Attorney General and former prosecutor and thus is well acquainted with NDOT and the public safety agencies that are part of the State radio system.<sup>97</sup>

53. *Sprint Position.* Sprint offers 40 hours for this task, arguing that most reporting to state officials is not necessary because at least one state employee will be present during all phases of the reconfiguration process, including the implementation phase.<sup>98</sup> Sprint also challenges the BHC hours on the grounds that Galena is the project manager, and that BHC is primarily tasked with providing legal assistance.<sup>99</sup>

54. *Mediator Recommendation.* The mediator recommends that the Commission allow the 88 hours requested by Nevada.<sup>100</sup> The mediator notes that Nevada requires status reporting for all projects of this size and nature, including internal reports for NDOT personnel.<sup>101</sup>

55. *Discussion.* We approve 88 hours. We note that the expertise offered in support of the 8

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<sup>90</sup> Nevada PRM at 11.

<sup>91</sup> Sprint PRM at 20-21.

<sup>92</sup> *Id.*

<sup>93</sup> RR at 48.

<sup>94</sup> *Washoe MO&O* at ¶ 44.

<sup>95</sup> Nevada Reply PRM at 31-32.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 32.

<sup>98</sup> Sprint PRM at 19-20.

<sup>99</sup> *Id.*

<sup>100</sup> RR at 47-48.

<sup>101</sup> *Id.*

BHC hours would be relevant in a lobbying context but is usually not necessary for communicating how the project is progressing to state agencies. However the amount at issue is *de minimis* so we will approve.

#### 4. Radio Reprogramming

56. *Nevada Position.* Nevada seeks 508 hours for participation by internal staff and Galena personnel in the first touch of the system's radio units and 468 hours for the second touch.<sup>102</sup> Nevada estimates that several programming teams will be deployed throughout the state, with each team consisting of several individuals.<sup>103</sup> Although these teams will not conduct the actual reprogramming of radios, Nevada contends that their participation is necessary for quality assurance and because state policy requires that a state representative be present during the entire reprogramming process.<sup>104</sup>

57. *Sprint Position.* Sprint proposes to pay for 220 hours for each of the two programming stages.<sup>105</sup> Sprint argues that because the retuning will be performed by M/A-Com, there is no need for Galena to be involved and the state does not require the large number of personnel that it has proposed for this task.<sup>106</sup>

58. *Mediator Recommendation.* The mediator recommends that the Commission allow the hours requested by Nevada for this task.<sup>107</sup> The mediator accepts Nevada's explanation that even though Nevada's vendor will be responsible for programming, state policy requires state personnel to be present. The mediator also notes that several teams of state employees will be needed for this task because reprogramming will occur at multiple sittings throughout the State.<sup>108</sup>

59. *Discussion.* We approve Nevada's request for 976 hours. As the mediator recognized, reprogramming will involve touching over 6400 radios at over 30 locations and sometimes will involve multiple reprogramming sessions.<sup>109</sup> We believe it is reasonable for the state to have teams to monitor the reprogramming process, particularly where it is required as a matter of state policy.<sup>110</sup> Although Nevada's level of effort in this regard is greater than Washoe's (190 hours/4239 units),<sup>111</sup> Nevada must retune radios throughout the state as opposed to a single county and Nevada has more units.

#### 5. Project Close-Out

60. *Nevada Position.* Nevada estimates that it will require 136 hours over 60 days to complete the close-out of the project after the system is rebanded. The time requested will cover meetings and document review to ensure that all necessary close-out steps have been taken and that Sprint agrees that the project is complete.<sup>112</sup>

61. *Sprint Position.* Sprint offers 24 hours for these tasks, arguing that some of Nevada's

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<sup>102</sup> Nevada Reply PRM at 39.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Sprint PRM at 23-24.

<sup>106</sup> *Id.*

<sup>107</sup> RR at 49.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> RR at 49.

<sup>111</sup> Washoe Task List at 4.

<sup>112</sup> Nevada Reply PRM at 43-44.

proposed work under this line item is duplicative of other tasks.<sup>113</sup>

62. *Mediator Recommendation.* The mediator recommends that the Commission allow the 136 hours.<sup>114</sup> The mediator contends that Sprint's offer of 24 hours is not otherwise explained.<sup>115</sup>

63. *Discussion.* We approve Nevada's request for 136 hours. Sprint has not shown the task to be duplicative. In addition, as we have stated in prior cases, the amount awarded is not a liquidated amount, but Nevada must document that the budgeted time is actually spent in the manner described and contributes to rebanding of the system.<sup>116</sup>

**F. *De Minimis* Costs**

64. In the *Rebanding Cost Clarification Order*, the Commission stated that "it is appropriate for Sprint to agree to (and the TA to approve) payment of disputed costs where such payment will avoid greater expense to negotiate and/or mediate the dispute and will further the goal of timely and efficient rebanding."<sup>117</sup> We conclude that resolving the following disputed issues in Nevada's favor is consistent with this standard, because the combined amounts in dispute for these issues total approximately \$40,000 which is *de minimis* in relation to the overall cost of the project.<sup>118</sup>

- 20 hours for Galena to identify state employees who can assist with completing an accurate inventory of mobile and portable radios.<sup>119</sup>
- 44 hours for Nevada and BHC to researching orders and documents relating to 800 MHz rebanding.<sup>120</sup> Sprint offers to reimburse for 24 hours of work.<sup>121</sup>
- 11 hours for internal staff and Galena to identify legal assistance that Nevada needs for rebanding.<sup>122</sup>
- 16 Galena hours, 18 internal hours, and 3 BHC hours for activities spent determining if additional project management resources are necessary to accomplish rebanding.<sup>123</sup>
- 50 hours of BHC time performing legal work developing an RFP, requesting responses,

<sup>113</sup> Sprint PRM at 25-26.

<sup>114</sup> RR at 49.

<sup>115</sup> *Id.*

<sup>116</sup> See City of Manassas, Virginia and Sprint Nextel, *Memorandum Opinion and Order*, 22 FCC Rcd 8526, 85311 ¶ 16 (PSHSB 2007).

<sup>117</sup> *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9820-21 ¶ 9.

<sup>118</sup> We also approve 99 hours for two issues that are no longer contested. Nevada did not contest the mediator's finding that 24 hours rather than 56 hours is sufficient for development of an internal and external payment process. See Nevada Reply PRM at 27-28, Sprint PRM at 18 and RR at 47. The mediator also found that 75 hours was the appropriate time for review and collaboration with M/A-COM of the site retuning plan effort as opposed to Nevada's request of 112 hours and Sprint's offer of 40 hours. See Nevada Reply PRM at 12-13, Sprint PRM at 10-11 and RR at 44.

<sup>119</sup> Nevada Reply PRM at 17-18.

<sup>120</sup> Nevada Reply PRM at 9-10 and Nevada PRM, Exhibit 4 at 32.

<sup>121</sup> Nevada PRM, Exhibit 5 at 1.

<sup>122</sup> Nevada Reply PRM at 7

<sup>123</sup> *Id.* at 8.

selecting a technical services firm, and contracting with that firm.<sup>124</sup>

- 12 hours for attendance by two state employees and two Galena employees at a four-hour meeting to discuss and update Nevada's licensing plan.<sup>125</sup>
- 20 internal and 4 Galena hours to identify testing and quality assurance procedures prior to rebanding and 14 hours to identify the programming and test equipment.<sup>126</sup>
- 12 internal and 4 Galena hours to assess information gathered during initial contacts with specific agencies to identify any additional hardware and/or software necessary for the reprogramming.<sup>127</sup>
- 4 internal and 8 Galena hours to identify internal staff who can resolve technical issues discovered during the site inventory process.<sup>128</sup>

#### **G. Tasks With Higher Costs Than Equivalent Washoe County Costs**

65. Nevada seeks approval of a number of line items that we find to be recoverable costs in principle, but where the amount sought is significantly higher than the amount that has been sought and that we have approved for the equivalent task in our *Washoe* order. As we have noted above, the Nevada and Washoe systems are similar in size, and have the same primary consultant (Galena). Therefore, where Nevada seeks a significantly higher amount than in *Washoe*, we require Nevada to accept a lesser amount unless it submit a showing to Sprint and the mediator explaining and justifying the difference in accordance with the procedure described in section III.D.1 above. Nevada must submit this showing within fourteen days of release of this order.

- 40 hours to identify fixed base radios to be reprogrammed.<sup>129</sup> Nevada notes that it separated this task from the inventory of mobile and portable radios because of its experience with the lax inventory associated with base station radios.<sup>130</sup> The time allotted is over twice the amount that Washoe seeks (14 hours), even though Nevada is working with fewer base stations.<sup>131</sup> We approve 14 hours unless Nevada submits a showing justifying 40 hours.
- 60 hours to identify internal technical staff necessary to prepare for mobile programming.<sup>132</sup> Sprint offers 10 hours for Nevada to determine whether it will reprogram mobiles using internal resources.<sup>133</sup> However, Washoe only sought six hours to accomplish the same task.<sup>134</sup> We approve 10 hours in light of the larger number of mobiles in the Nevada system, unless Nevada submits a showing justifying 60 hours.

<sup>124</sup> Nevada PRM, Ex. 6 at 2, Ex. 4 at 32.

<sup>125</sup> Nevada PRM at 6, Ex. 6 at 2.

<sup>126</sup> Nevada Reply PRM at 22-24, Nevada PRM, Ex. 4 at 32.

<sup>127</sup> Nevada Reply PRM at 23, Nevada PRM, Ex. 4 at 32.

<sup>128</sup> Nevada Reply PRM at 15, Nevada PRM, Ex. 4 at 32.

<sup>129</sup> *Id.* at 24.

<sup>130</sup> *Id.*

<sup>131</sup> Washoe Task List at 3.

<sup>132</sup> Nevada Reply PRM at 17.

<sup>133</sup> Sprint PRM at 12-13.

<sup>134</sup> Washoe Task List at 2.

- 176 hours for development of a cost estimate, identification of what internal, consultant, and legal resources will be included in the cost estimate, and the identification of cost and time for legal assistance and consultants.<sup>135</sup> Washoe's plan does not include a line item for this task. We decline to approve this task unless Nevada submits a showing justifying 176 hours.
- 188 hours to test radios for quality assurance after they have been reprogrammed.<sup>136</sup> This task will occur after each programming iteration. Nevada claims that it is required by state policy to check and accept all work performed by a technical service firm.<sup>137</sup> Nevada also states that testing will protect officer safety and identify potential errors that could otherwise lead to radios needing to be recalled and reprogrammed.<sup>138</sup> We believe that reasonable testing of radios after rebanding is a prudent and recoverable expense to ensure that there are no systemic errors in the radios.<sup>139</sup> However, the 188 hours sought by Nevada are significantly higher than the 20 hours that were requested and approved in *Washoe*.<sup>140</sup> We approve 40 hours unless Nevada submits a showing justifying 188 hours.

#### IV. ORDERING CLAUSES

66. 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.

67. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties consistent within fourteen days of the date of this Order for the purpose of completing a Frequency Relocation 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>135</sup> RR at 21-23.

<sup>136</sup> Nevada Reply PRM at 39.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 38-39.

<sup>139</sup> RR at 49.

<sup>140</sup> Washoe Exhibit at 4. The task is listed at Pre-tests and quality assurance procedures.