

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

In the Matter of
City of Overland Park, Kansas
and Sprint Nextel
Mediation No. TAM-22166
WT Docket No. 02-55

MEMORANDUM OPINION AND ORDER

Adopted: November 20, 2007

Released: November 20, 2007

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address disputes referred to us for de novo review from Wave 2, Stage 2 mediation by the 800 MHz Transition Administrator (TA) involving the City of Overland Park, Kansas (Overland Park) and Sprint Nextel Corporation (Sprint). We find that the "comparable facilities" standard requires Sprint to replace repeaters operating on the one channel in the Overland Park system that requires rebanding, but does not require Sprint to replace repeaters operating on channels that are not affected by rebanding. However, to ensure that comparable facilities are provided, Sprint must support reasonable testing of the reconfigured system, and if the testing reveals any deficiencies, Sprint must remedy them. We also find that Overland Park is entitled to recover in part on its claims for subscriber unit reprogramming and quality assurance, and in full on its claims for licensee and consultant oversight of the reconfiguration process.

II. BACKGROUND

2. The 800 MHz R&O and subsequent orders in this docket require Sprint to negotiate a frequency reconfiguration agreement (FRA) with each 800 MHz licensee that is subject to rebanding. The FRA must provide for relocation of the licensee's system to its new channel assignment at Sprint's expense, including the expense of retuning or replacing the licensee's equipment as required. Sprint must provide the relocating licensee with "comparable facilities" on the new channel(s), and must provide for a seamless transition to enable licensee operations to continue without interruption during the retuning process. If the parties cannot reach agreement on a FRA, the case is referred to mediation and issues that cannot be resolved in this mediation are referred to the Public Safety and Homeland Security Bureau for de novo review.

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

2 800 MHz Report and Order, 19 FCC Rcd at 14977 ¶ 11.

3 Id. at 14986 ¶ 26.

4 Id. at 15076 ¶ 201.

3. This case concerns Overland Park's five-channel public safety radio system operating in the interleaved portion of the 800 MHz band under call sign WPIC220.⁵ The system provides service to 703 subscriber units and 4 control stations.⁶ The system has three sites operating in simulcast mode, each of which is equipped with five MASTR II base station trunked repeaters, one for each channel.⁷ Although four of the system's five channels do not require rebanding, the remaining channel is in the 815-816/860-861 MHz Expansion Band and therefore must be reconfigured. In order to reband the single Expansion Band channel, Sprint proposes replacing one of the five MASTR II repeaters at each site with a MASTR III repeater.⁸ Overland Park contends that Sprint must replace all five MASTR II repeaters at each site.

4. The parties entered into mediation on January 31, 2007. When the parties were unable to resolve their dispute over the extent of Sprint's obligation to replace the MASTR II repeaters and other cost issues, the mediator forwarded the mediation record and his Recommended Resolution to the Public Safety and Homeland Security Bureau (PSHSB).⁹

III. DISCUSSION

A. MASTR II Repeater

5. Overland Park requests that Sprint replace all of the MASTR II repeaters in the Overland Park system. We find that replacing a single MASTR II repeater at each site will provide Overland Park with comparable facilities.

6. *Overland Park Position.* Overland Park contends that under the comparable facilities standard, Sprint must replace all of the MASTR II repeaters in the Overland Park system, not just a single repeater at each of the three sites. Overland Park states that if only a single MASTR II repeater is replaced with a MASTR III at each site, it is unsure whether it can safely operate MASTR II and MASTR III repeaters at the same site.¹⁰ Overland Park acknowledges that M/A-COM has filed letters in the record stating that it is possible to co-locate MASTR II and MASTR III repeaters.¹¹ However, Overland Park contends that M/A-COM's representations should be discounted because they do not directly address Overland Park's situation, are based upon belief as opposed to knowledge gained by testing and operation, and are not attributed to any particular individual at M/A-COM.¹²

7. In the alternative, Overland Park argues that for it to accept replacement of a single repeater at each site, Sprint must pay for testing to ensure that the proposed co-location of MASTR II and MASTR III repeaters is technically feasible.¹³ Overland Park's consultant, Tusa Consulting, states that Sprint and M/A-COM must test the configuration as follows:

- Produce a "paper design," depicting the hardware and software necessary to support the potential integration of same-site MASTR II and MASTR III base stations into an existing MODEM Simulcast design;

⁵ Recommended Resolution, filed by the TA Mediator August 2, 2007 at 2 (RR).

⁶ Overland Park PRM at 2.

⁷ Proposed Resolution Memorandum of Licensee, filed by Overland Park July 19, 2007 at 1 (Overland Park PRM).

⁸ Proposed Resolution Memorandum of Nextel Communications, Inc., filed by Sprint July 20, 2007 at 2 (Sprint PRM).

⁹ *Id.*

¹⁰ Overland Park PRM at 4.

¹¹ Reply of Licensee to Nextel Communications, Inc.'s Proposed Resolution Memorandum, filed July 23, 2007 at 3-7 (Overland Park Reply).

¹² *Id.* at 4-5.

¹³ *Id.* at 5-6.

- Demonstrate the operation of the envisioned same-site MASTR II and MASTR III base station integration on a test simulcast system;
- Allow Overland Park to witness testing of the evaluation system and present Overland Park with formal test result findings at the conclusion of the evaluation period; and
- Provide technical support for any reconfiguration of Overland Park's facilities for a minimum seven-year period.¹⁴

8. *Sprint Position.* Sprint proposes replacing one MASTR II repeater with a MASTR III repeater at each of the three sites for the single channel that must be reconfigured.¹⁵ Sprint contends that MASTR II and MASTR III repeaters can be co-located because the two types of repeaters will operate on separate channels.¹⁶ Sprint relies upon two letters from M/A-COM addressing the feasibility of co-locating MASTR II and MASTR III repeaters in simulcast systems.¹⁷ These letters indicate that while the specific arrangement Sprint proposes has never been used in the field, non-simulcast systems have operated with different types of repeaters co-located in the field without adverse effects.¹⁸ Moreover, M/A-COM's engineering department tested co-located MASTR II and MASTR III repeaters, each operating on a different frequency, and found no issues.¹⁹ M/A-COM states that any difficulties related to the audio differences between the two models of repeaters are eliminated by placing only similar models on individual channels.²⁰ Thus, Sprint asserts that its proposed arrangement will ensure that Overland Park will receive comparable facilities.²¹

9. *Mediator Recommendation.* The Mediator recommends finding that Sprint's proposal to replace a single MASTR II repeater at each site will provide Overland Park with comparable facilities.²² The mediator states that because only one channel needs to be reconfigured, it is only necessary to replace the repeater that operates on that channel.²³ However, the mediator recommends that the Commission require Sprint to develop a testing regime similar to what Overland Park proposes. Specifically, the mediator recommends:

- A written engineering, implementation, and operational plan that describes the necessary hardware, software, and procedures to test, implement, and then operate the system following reconfiguration.
- Testing the operation of same-site MASTR II and MASTR III base station integration on a test simulcast system.
- Providing Overland Park with a reasonable opportunity to operate its system as reconfigured, prior to closing, to identify any operational issues and, if necessary, resolve those issues.²⁴

10. *Decision.* We conclude that Sprint is required to replace only one MASTR II repeater at

¹⁴ Overland Park PRM Ex. 7 at 72-73.

¹⁵ Sprint PRM at 5.

¹⁶ *Id.* at 6-7.

¹⁷ *Id.*, App. 3 at 12-13; App. 5 at 20.

¹⁸ *Id.* App. 5 at 20.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 6-7.

²² RR at 10.

²³ *Id.*

²⁴ RR at 16.

each of the three Overland Park sites as opposed to all five repeaters at each site. Because only one of the five channels in the system requires rebanding, only the repeaters that operate on that channel need to be reconfigured. We do not believe Overland Park is entitled to have all of the repeaters replaced based on its stated concerns about co-locating MASTR II and MASTR III repeaters. M/A-COM's statements that co-location of the repeaters is technically feasible provide sufficient basis to conclude that Sprint's proposed approach will provide Overland Park with comparable facilities.

11. In approving Sprint's proposed approach, however, we emphasize that "comparable facilities" requires Sprint to provide Overland Park with a system that is comparable in fact, not merely in theory. Therefore, we believe that Sprint should either test the reconfigured system or provide Overland Park with an opportunity to test the system before it is placed in operation. We will not require Sprint to follow the specific testing protocol proposed by Overland Park's consultant, so long as it supports testing that is reasonably sufficient to demonstrate that the co-located repeaters in the reconfigured system will operate without adverse effects. We also note that if testing reveals any deficiencies in the reconfigured system, Sprint must remedy them.

B. Cost Issues

1. Subscriber Touches

12. Overland Park requests \$138,080.80 for reprogramming work by M/A COM technicians. We approve funding for reprogramming work at a cost of \$90,283.60.

13. *Overland Park Position.* Overland Park seeks funding for four M/A-COM technicians to work a total of 26 days each on two radio reprogramming "touches" of Overland Park's subscriber units, at a total cost of \$138,080.80. Overland Park states that the technicians will require 14 days each at a total cost of \$74,351.20 to reprogram 679 subscriber units during the first touch,²⁵ and 12 days each at a total cost of \$63,729.60 to reprogram 703 subscriber units during the second touch.²⁶

14. *Sprint Position.* Sprint calculates that the reprogramming of Overland Park's subscriber units will take four M/A-COM technicians 17 days at a total cost of \$90,283.60.²⁷ Sprint contends that Overland Park has overstated the number of radios that need to be reprogrammed during the first touch because 303 of the 679 subscriber units that will be part of the first touch are radios that are being replaced.²⁸ Sprint asserts that the cost of programming these replacement radios is separately covered as part of the radio replacement cost, so that M/A-COM technicians will only need to reprogram 376 subscriber units during the first touch.²⁹

15. Sprint also contends that Overland Park has underestimated the number of radios that each technician can reprogram per day. Sprint states that it has agreed with M/A-COM on a reprogramming rate of 16 radios per technician per day.³⁰ Applying this reprogramming rate to Overland Park's system, Sprint calculates that it will take four M/A-COM technicians 17 days to reprogram Overland Park's radios. For the first touch, Sprint calculates six days per technician to reprogram 376 subscriber units, at a total cost of \$31,864.80.³¹ For the second touch, Sprint calculates 11 days per technician to complete the reprogramming of 703 subscriber units, at a total cost of \$58,418.80.³²

²⁵ Sprint PRM, Appendix 1 at 3 (Overland Park Cost Estimate).

²⁶ *Id.* at 4.

²⁷ Sprint PRM at 14.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

16. *Mediator Recommendation.* The mediator recommends funding four technicians for a total of 21 days at a cost of \$111,526.80. The mediator agrees with Sprint that only 376 units will need to be reprogrammed during the first touch. However, the mediator believes that Sprint has not accounted for “contingencies” that could slow the rate at which subscriber units can be reprogrammed.³³ Consequently, the mediator recommends that four technicians be funded for 21 days: 9 days each for the first touch and 12 days each for the second touch.³⁴

17. *Decision.* We approve funding for a total of 17 days of reprogramming work by four M/A-COM technicians at a cost of \$90,283.60. We agree with Sprint that Overland Park has overestimated the number of subscriber units that must be reprogrammed during the first touch. We also agree with Sprint that the agreed-upon rate of 16 radios per M/A-COM technician per day should be applied for purposes of estimating reprogramming costs. Therefore, we approve six days per technician to reprogram 376 subscriber units during the first touch at a total cost of \$31,864.80, and 11 days per technician to complete the reprogramming of 703 subscriber units during the second touch at a total cost of \$58,418.80. However, if the actual time required for the M/A-COM technicians to complete the reprogramming turns out to be longer than estimated, Overland Park is entitled to recover the additional amount through the change order process.

2. M/A-COM’s Quality Assurance Manager

18. Overland Park requests \$74,550 for work by M/A COM’s Quality Assurance Manager. We approve \$37,375 for this task.

19. *Overland Park Position.* Overland Park requests that M/A-COM supply a Quality Assurance Manager to oversee the reprogramming of its subscriber units.³⁵ Overland Park seeks reimbursement for 70 days work by the Quality Assurance Manager at a total cost of \$74,550.³⁶

20. *Sprint Position.* Sprint argues that based on the standard daily reprogramming rate for M/A-COM radios, reprogramming of Overland Park’s subscriber units would normally take no more than 30 days, and that an additional allowance of five days is sufficient.³⁷ Consequently, Sprint offers to pay for 35 days at a total cost of \$37,375 for a Quality Assurance Manager.³⁸

21. *Mediator Recommendation.* The mediator believes that Overland Park fails to adequately explain its request for 70 days.³⁹ Nonetheless, the mediator believes that Sprint’s offer of 35 days “assumes that reconfiguration will go completely according to plan” and underestimates difficulties that may take place in the field.⁴⁰ Consequently, the mediator recommends that Sprint fund the Quality Assurance Manager for 45 days at a total cost of \$47,925.⁴¹

22. *Decision.* We find that funding the M/A-COM Quality Assurance Manager for 35 days is sufficient to oversee the programming of Overland Park’s subscriber units. Overland Park has not provided support for its position that 70 days is required. As noted above, the record in this case indicates that M/A-COM’s work on the two planned reprogramming touches should take a combined total of 17

³³ RR at 14.

³⁴ *Id.*

³⁵ Overland Park Cost Estimate at 3.

³⁶ *Id.*

³⁷ Sprint PRM at 13.

³⁸ *Id.*

³⁹ RR at 13.

⁴⁰ *Id.* at 14.

⁴¹ *Id.*

work days.⁴² Even assuming that the 17 work days are distributed over a longer period, 35 days total for quality assurance should be sufficient to account for possible contingencies. However, if the actual time required turns out to be longer than estimated, Overland Park is entitled to recover the additional amount through the change order process

3. Licensee and Consulting Costs

23. Overland Park seeks reimbursement at a cost of \$7,080 for Tusa Consulting oversight of the reconfiguration process. We approve this request.

24. *Overland Park Position.* Overland Park seeks reimbursement for 48 hours at a total cost of \$7,080 for Tusa Consulting to oversee the reconfiguration process.⁴³ Overland Park states that Tusa will plan the deactivation/reactivation of each site and oversee the final verification of equipment.⁴⁴ In addition, Overland Park seeks reimbursement for forty hours of work by internal staff at a total cost of \$1,072.⁴⁵

25. *Sprint Position.* Sprint offers 16 hours at a total cost of \$2,360 for Tusa Consulting and 24 hours at a total cost of \$656 for Overland Park's internal costs.⁴⁶ Sprint claims that its offer is sufficient, prudent, and reasonable given the scope of the reconfiguration task.⁴⁷

26. *Mediator Recommendation.* The mediator recommends that Overland Park receive the full amount it seeks for oversight work by Tusa and Overland Park's own internal costs.⁴⁸

27. *Decision.* We find that Sprint should fund the entire amount Overland Park seeks for Tusa Consulting and its own internal costs. We believe Overland Park has provided sufficient justification for its request and that the amount in dispute is *de minimis* and should be reimbursed.⁴⁹

IV. ORDERING CLAUSES

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

⁴² See paragraph 16, *supra*.

⁴³ Overland Park Cost Estimate at 2.

⁴⁴ Overland Park PRM, Exhibit 3 at 47.

⁴⁵ Overland Park Cost Estimate at 2.

⁴⁶ Sprint PRM at 16. See also Overland Park Cost Estimate at 2.

⁴⁷ Sprint PRM at 16.

⁴⁸ *Id.* at 12-13.

⁴⁹ RR at 13.

29. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties within ten days of the date of this Order for the purpose of negotiating a Frequency Reconfiguration 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