

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
State of Indiana	)	WT Docket No. 02-55
and	)	Mediation No. TAM-12005
Sprint Nextel Corporation	)	

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

**Adopted: April 4, 2011**

**Released: April 4, 2011**

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. On February 22, 2011, the State of Indiana (Indiana or State) filed a Petition for Reconsideration (Petition) of the Public Safety and Homeland Security Bureau's (Bureau) *Memorandum Opinion and Order*<sup>1</sup> which resolved a dispute between Indiana and Sprint Nextel Corporation (Sprint).<sup>2</sup> For the reasons set out below, we deny the Petition.<sup>3</sup>

**II. BACKGROUND**

2. Indiana seeks reconsideration of two aspects of the Indiana Order. First, it disputes the Bureau's determination that the cost Indiana proposed for license application services does not comport with the Commission's minimum necessary cost standard.<sup>4</sup> Second, it disputes the Bureau's

<sup>1</sup> State of Indiana and Sprint Nextel Corp., *Memorandum Opinion and Order*, 26 FCC Rcd 1023 (PSHSB 2011), DA 11-191, Feb. 2, 2011 (Indiana Order).

<sup>2</sup> Indiana filed a contemporaneous Motion for a Stay which the Bureau denied on March 10, 2011 for failure to meet the Commission's established criteria for a stay. State of Indiana and Sprint Nextel, *Order*, \_\_\_ FCC Rcd \_\_\_ (PSHSB 2011), DA 11-452A1, March 9, 2011.

<sup>3</sup> Sprint Nextel Corp. (Sprint) filed an Opposition to Petition for Reconsideration on February 28, 2011. The Enterprise Wireless Alliance (EWA) filed "comments" to the Indiana Petition, claiming that Indiana made "erroneous and gratuitous criticism of the Alliance and its qualifications." It also noted Indiana's counsel's "bombastic approach" to questioning EWA's qualifications and Indiana's "attempted vilification or the Alliance's entirely neutral role through a litany of inaccurate and misleading statements in the Petition." The Commission's rules make no provision for the filing of comments in adjudicatory proceedings. We therefore dismiss EWA's unauthorized pleading and have not taken it into account in the instant *Memorandum Opinion and Order on Reconsideration*.

<sup>4</sup> The Commission's orders in this docket assign Indiana 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" (Minimum Cost Standard). 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 (2004); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004). The Commission has clarified 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." Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005); See Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, 9820 ¶ 6 (2007).

determination that Indiana was responsible for ensuring that certain subscriber radios were supplied with both the pre-rebanding and post-rebanding frequencies before the radios were deployed to the field.<sup>5</sup>

3. After a mediation that began in 2006, Indiana and Sprint executed a Frequency Reconfiguration Agreement (FRA) that the 800 MHz Transition Administrator (TA) approved on June 16, 2009.<sup>6</sup> The FRA covers the State's agreed-upon rebanding costs of approximately \$27 million. After the FRA was executed, however, the State submitted change order requests, asserting that Sprint was responsible for paying the following additional costs:

- \$164,907.13 for retuning the 1,073 new radios that the State deployed without programming replacement frequencies into the radios;<sup>7</sup>
- \$100,000 for its vendor to file license applications for the State's reconfigured system.<sup>8</sup>

4. The *Indiana Order* disallowed the \$164,907.13 claim for retuning radios because the Bureau found that Sprint and Indiana had agreed that the radios at issue were to be supplied with both the pre-rebanding and post-rebanding channels installed in them, thereby obviating the need to retune the radios in the field.<sup>9</sup> Indiana, however, did not honor that agreement and the radios at issue were deployed with only the pre-rebanding channels installed. The *Indiana Order* held that Indiana's failure to supply the radios with both sets of channels installed was inconsistent with the Commission's minimum necessary cost rebanding standard, and found that Sprint was not liable for paying the \$164,907.13 cost of giving the radios a "first touch."<sup>10</sup>

5. The Bureau also disallowed the \$100,000 fee for filing license applications because it found the fee was excessive and therefore inconsistent with the Commission's minimum necessary cost standard. The Bureau agreed with Sprint, which had provided a quote from the Enterprise Wireless Association (EWA) to prepare and file the license applications for \$51,590, that a lower cost alternative was available for this essentially clerical function.<sup>11</sup>

### III. DISCUSSION

6. Indiana's Petition fails to conform to the Commission's rules and applicable precedent governing petitions for reconsideration. Section 1.106 of the Commission's rules,<sup>12</sup> and the cases applying that rule section, dictate that we should not consider arguments and allegations already made in prior pleadings.<sup>13</sup> Section 1.106 and interpreting cases, also instruct us not to consider new matter raised

<sup>5</sup> *Indiana Order* 26 FCC Rcd at 1029-30 ¶24.

<sup>6</sup> TA Mediator Recommended Resolution at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* The State sought \$100,000, while Sprint offered \$51,590, resulting in a disputed amount of \$48,410.

<sup>9</sup> *Indiana Order* 26 FCC Rcd at 1030 ¶25

<sup>10</sup> *Indiana Order* 26 FCC Rcd at 1029-30 ¶24. In industry usage, a "touch" refers to the modification of a mobile or portable radio as part of the rebanding process, typically through installation of software to change the radio's channel configuration. Typically, the "touch" is made in the field – as opposed to the factory – requiring the user of the radio to deliver it to a central location.

<sup>11</sup> *Indiana Order* 26 FCC Rcd at 1032 ¶33

<sup>12</sup> 47 C.F.R. § 1.106.

<sup>13</sup> Kin Shaw Wong, *Memorandum Opinion and Order*, 12 FCC Rcd 6987, 6988 (1997) (Reconsideration petitions that merely parrot previously rejected claims are subject to summary dismissal).

for the first time in a petition for reconsideration unless the petitioner demonstrates that it was unable, with exercise of diligence, to raise the matter earlier.<sup>14</sup>

7. We have recently pointed out that pleadings inconsistent with the Commission's procedural rules waste the resources of the Commission and other parties to a proceeding.<sup>15</sup> Indiana's Petition is such a pleading. It primarily consists of a reprise of arguments that Indiana made earlier concerning its change order requests for giving radios a first touch and for \$100,000 in licensing services. The Petition also relies on new evidence which, with exercise of ordinary diligence, Indiana could have presented earlier. Accordingly, as detailed below, and as the Commission's rules and cases dictate, we decline to consider matter that is repetitious of that contained in Indiana's Statement of Position, and new matter raised by Indiana which, with exercise of ordinary diligence, it could have raised in its Statement of Position.

#### A. License Preparation and Filing Fees

8. Indiana submits that the quote that Sprint submitted from EWA to perform the licensing work is "irrelevant"<sup>16</sup> because, "it did not include all actions which must be taken by the State in modifying its existing authorizations."<sup>17</sup> It then goes on to state – for the first time in this proceeding – that the licensing services it requires include such engineering tasks as co-channel and adjacent-channel frequency analysis, and the filing of applications to replace current Special Temporary Authorizations (STA) held by Indiana.<sup>18</sup>

9. There is no mention in Indiana's Statement of Position, or elsewhere in the record, that "licensing services" included engineering analysis or STA-associated tasks. Indiana has not demonstrated that it was unable, with exercise of diligence, to earlier have claimed that the application services involved engineering analysis and the filing of STA-related applications. Indiana adding these tasks in the context of a petition for reconsideration constitutes an improper attempt to introduce new evidence concerning the scope of its licensing services requirements. We are foreclosed from considering this new evidence. As the United States Court of Appeals for the District of Columbia has instructed: "We cannot allow a party to 'sit back' and hope that a decision will be in its favor, and when it isn't, to parry with an offer of more evidence."<sup>19</sup> Accordingly, we are disregarding Indiana's claim that its required application services include co-channel and adjacent-channel engineering analysis and STA-related applications.

10. Indiana submits, also for the first time, that EWA is not qualified to provide the required application services. It claims it has not earlier challenged EWA's "obvious failings for understandable reasons related to public decorum."<sup>20</sup> There is no "public decorum" exception to Section 1.106 of the Commission's rules which bars Indiana from raising new arguments in a petition for reconsideration. We therefore reject Indiana's attack on EWA's qualifications. We likewise disregard, on the same grounds, Indiana's claim that its preferred vendor, EMR, has "superior qualifications." It has not previously claimed that EMR is "superior" and cannot be heard to do so now.

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<sup>14</sup> 47 C.F.R. § 1.106; *WWIZ, Inc., Memorandum Opinion and Order*, 37 FCC 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

<sup>15</sup> *Ottawa County, Ohio, Order*, 26 FCC Rcd 2205 (PSHSB 2011), DA 11-382, Feb. 28, 2011.

<sup>16</sup> Petition at 1.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 4-6.

<sup>19</sup> *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941).

<sup>20</sup> Petition at 8.

11. Indiana further claims, again for the first time, that, because a Sprint employee is an EWA board member, EWA produced a “bogus” licensing services proposal that is either a “sweetheart deal” or a “negotiating ploy” that “resounds in bad faith,”<sup>21</sup> and “undermines the credibility of the EWA quote.”<sup>22</sup> With but a modicum of diligence, Indiana could have ascertained that the Sprint employee was an EWA board member,<sup>23</sup> and raised that allegation in its Statement of Position. It failed to do so. Therefore, pursuant to Section 1.106 of the Commission’s rules, we disregard Indiana’s “conspiracy theory.” In any event, we find that the allegation of collusion between Sprint and EWA to be wholly speculative.

12. Similarly, we decline to consider the February 15, 2011 letter to Sandra Black, EMR’s president, from David C. Smith, Executive Director of Integrated Public Safety Communications.<sup>24</sup> The author of the letter claims that EWA is unqualified to provide licensing services, *inter alia* because of the alleged conflict of interest arising from a Sprint employee sitting on EWA’s board. Once again, Indiana is attempting to introduce new evidence in a petition for reconsideration without demonstrating why it could not have, with diligence, introduced the evidence sooner.

13. We also reject, on procedural grounds, Indiana’s introducing a quote for licensing services from the Association of Public Safety Communications Officials, International (APCO).<sup>25</sup> Indiana claims the higher APCO quote is evidence that the quote from its vendor, EMR, meets the minimum necessary cost standard.<sup>26</sup> Again, Indiana attempts to “parry with an offer of more evidence” in a petition for reconsideration. With the exercise of ordinary diligence, Indiana could have obtained the APCO quote in sufficient time to include it in its Statement of Position.

14. Indiana repeats in its Petition, an argument it made in its Statement of Position, *i.e.*, that EMR’s initial \$200,200 quote comports with the minimum necessary cost standard because it represents EMR’s standard billing rate, which Sprint had accepted before in other rebanding projects.<sup>27</sup> That argument was considered and disposed of in the *Indiana Order* where the Bureau concluded: “The fact that the State may previously have paid EMR a comparable price does not establish that EMR’s quotes are reasonable.”<sup>28</sup> We decline to revisit Indiana’s “standard billing rate” argument. As the Commission has held, “[i]t is well established that the Commission does not grant reconsideration for the purpose of allowing a petitioner to reargue matters already presented, considered, and disposed of by the Commission. Otherwise, the Commission ‘would be involved in a never-ending process of review that would frustrate the Commission’s ability to conduct its business in an orderly fashion.’”<sup>29</sup>

15. Indiana deems it relevant that Sprint once offered \$100,000 for EMR to provide licensing

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

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

<sup>23</sup> EWA has 37 board members. See <http://www.enterprisewireless.org/About/Board>.

<sup>24</sup> Petition at Attachment 2.

<sup>25</sup> *Id.* at Attachment 4.

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Indiana Order* 26 FCC Rcd at 1032 ¶33.

<sup>29</sup> Warren Price Communications, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 6850 (1992). See *Improving Public Safety Communications in the 800 MHz Band - New 800 MHz Band Plan for Puerto Rico and the U.S. Virgin Islands*, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4443, 4449 (PSHSB 2010).

services, but withdrew the offer when Indiana did not accept it. Sprint later found that EWA would provide licensing services for \$51,590. The \$100,000 withdrawn offer, Indiana claims, establishes the minimum necessary cost for licensing services.<sup>30</sup>

16. We disagree with Indiana's contention that Sprint's \$100,000 offer set the "floor" for licensing services. Indiana had rejected the offer and Sprint located a lower-cost vendor. In so doing, Sprint followed the Commission's directive that "Sprint should not propose to pay and the TA should not approve payment of higher costs when a lower-cost alternative is clearly available that would provide the licensee with comparable facilities."<sup>31</sup> In any event, offers made in negotiation and mediation are often withdrawn as circumstances change, and we are unwilling to conclude that an offer, not accepted, is relevant to a determination of whether a service is being provided at the minimum necessary cost.

17. Indiana's claim that the Bureau has usurped Indiana's right to select its own vendor,<sup>32</sup> repeats arguments from its Statement of Position and contests a matter settled in the *Indiana Order* where the Bureau explained:

We do not, however, require Indiana to use EWA or any similar provider. We hold only that EMR's initial \$200,200 quote and its later \$100,000 quote are excessive as evidenced by the fact that EWA would do the work for a little more than one-half the price quoted by EMR.<sup>33</sup> \* \* \* If the State wishes to use EMR to enter the data necessary to modify its licenses, it may do so. We hold only that Sprint's responsibility for that work is limited to \$51,590.<sup>34</sup>

Precedent establishes that Indiana may not use a petition for reconsideration "merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken."<sup>35</sup> We therefore disregard Indiana's reprised arguments about usurpation of its right to a vendor. On the same basis, we disregard Indiana's argument – previously made in its Statement of Position – that Sprint treats Motorola differently than it has treated EMR in this proceeding.<sup>36</sup>

18. Indiana accuses the TA Mediator of bias because he at first encouraged Indiana to accept Sprint's counteroffer of \$ 100,000 for licensing services and then "reversed his position and found the EWA quote to be the appropriate basis for setting the value of those services."<sup>37</sup> Indiana faults the Bureau for not addressing, in the *Indiana Order*, "the obvious implication of bias that is revealed by that action."<sup>38</sup>

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<sup>30</sup> Petition at 11-12.

<sup>31</sup> Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, 9821 (2007).

<sup>32</sup> Petition at 13-15.

<sup>33</sup> *Indiana Order* 26 FCC Rcd at 1032 ¶33.

<sup>34</sup> *Id.*

<sup>35</sup> WWIZ, Inc., *Memorandum Opinion and Order*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>36</sup> Petition at 14-15.

<sup>37</sup> *Id.* at 12, n.16.

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

19. This is not the first time Indiana has accused the TA Mediator of bias. In its Statement of Position, Indiana charged the TA mediator with “demonstrat[ing] . . . a reckless bias toward Nextel’s position.”<sup>39</sup> We find no evidence of such bias. The TA Mediator’s “reversal of position” when he became aware that licensing services were available at almost half the cost quoted by EMR is consistent with the Commission’s directive that “the TA should not approve payment of higher costs when a lower-cost alternative is clearly available that would provide the licensee with comparable facilities.”<sup>40</sup>

**B. Indiana’s Obligation to Ensure that Radios Were Replaced at the Minimum Necessary Cost.**

20. The *Indiana Order* found that the State had not conformed to the minimum necessary cost standard when it allowed replacement radios to be deployed with only the pre-reconfiguration NPSPAC channels programmed into them. This gave rise to the need to retrieve the radios from the field to give them a “first touch” to add the post-reconfiguration frequencies at a cost of over \$164,000.<sup>41</sup>

21. The *Indiana Order* found that Indiana knew, at least four months before the radios were deployed, of the need to program the radios with both sets of frequencies.<sup>42</sup> That fact alone – foreseeability of the need to provide the radios with both sets of frequencies installed – barred Indiana from filing a change notice request for a first touch to the radios. Change notices are appropriate only for “unanticipated changes in cost, scope, or schedule which occur during implementation or in the case of an emergency.”<sup>43</sup> Moreover, a licensee may not use the change notice process to recover costs that were reasonably foreseeable during planning or FRA negotiations but were not raised in negotiations, or were considered and rejected.<sup>44</sup>

22. The *Indiana Order* found that “it was foreseeable at the time [the radios were deployed] that the 1,073 radios would later have to be retrieved from their users and reprogrammed to add the post-rebanding frequencies at a cost of \$164,907.13.”<sup>45</sup> Accordingly, the Bureau disallowed the change order request.<sup>46</sup>

23. In its Petition, Indiana claims “foreseeability is not the issue” and concedes that “the State did foresee the problem.”<sup>47</sup> It argues, however, that although it did foresee the problem, it “did not

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<sup>39</sup> Indiana Statement of Position at 11.

<sup>40</sup> Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, 9821 (2007).

<sup>41</sup> *Indiana Order* 26 FCC Rcd at 1031 ¶29.

<sup>42</sup> *Id.* at 1029-30 ¶24.

<sup>43</sup> See FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, *Public Notice*, 22 FCC Rcd 17227, 17229 (2007).

<sup>44</sup> *Id.* The Commission subsequently clarified that change notices are appropriate to allow licensees to recover costs that are the result of “unanticipated changes in cost, scope or schedule that occur during implementation or in the case of emergency,” but “it is not reasonable for licensees to use the change notice process to attempt to re-negotiate their agreements after the fact based on issues that should have been or actually were raised earlier.” Improving Public Safety Communications in the 800 MHz Band, *Fourth Memorandum Opinion and Order*, 23 FCC Rcd 18512, 18522 ¶ 31 (2008).

<sup>45</sup> *Indiana Order* 26 FCC Rcd at 1030-31 ¶27.

<sup>46</sup> *Id.* at 1031 ¶29.

<sup>47</sup> Petition at 15.



provide a warranty within the FRA” that it would have the radios deployed with both sets of frequencies installed.<sup>48</sup> The *Indiana Order* fully considered Indiana’s “lack of warranty” claim, its invocation of the parol evidence rule, and its other contractual claims, and found them irrelevant to the central fact issue of whether Indiana knew, before the radios were deployed, that they should be equipped with both sets of frequencies.<sup>49</sup> Therefore, because the issue was both considered and resolved in the *Indiana Order*, Indiana is not entitled to use a petition for reconsideration “merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken.”<sup>50</sup>

24. Notwithstanding the fact that the Bureau already has fully considered and ruled on the foreseeability matter, Indiana, in its Petition, invites us to find that the *Indiana Order* “results in a forced renegotiation [of the FRA] contrary to Commission policy”<sup>51</sup> and invokes the *Mobile Sierra Doctrine* which, Indiana avers, “bars agencies from attempting to modify agreements to protect the private interests of contracting parties such as Nextel.”<sup>52</sup> Even were it relevant to this case, Indiana’s invocation of the *Mobile Sierra Doctrine* comes too late because it violates the prohibition against raising new arguments in petitions for reconsideration, absent newly discovered evidence.<sup>53</sup> Moreover, Indiana is plainly wrong in its assertion that the doctrine applies here. The State grossly overextends the reach of the *Mobile Sierra Doctrine* which arose from a rate case interpreting – and specific to – the Federal Power Commission’s organic statute.

25. To indulge Indiana’s theory of the case, we would have to conclude that licensees and Sprint are free to negotiate terms in an FRA that violate the Commission’s rules and policies, *e.g.*, the minimum necessary cost standard, and that the Commission is powerless to require the parties to reform the contract. The theory is faulty and contradicted by several instances in which the Commission has regulated the content of contracts entered into by its licensees.<sup>54</sup>

26. At bottom, this issue is not about enforceability of contracts, it is about the foreseeability of the need to give Indiana’s radios a first touch. Indiana has admitted that the need to do so was foreseeable. That ends the inquiry. The *Indiana Order* correctly disallowed the change order request for a first touch because the need to do so was foreseeable before the parties entered into an FRA.

#### IV. DECISION

27. The procedural flaws, alone, in Indiana’s Petition are sufficient reason to dismiss it. We

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

<sup>49</sup> *Indiana Order* 26 FCC Rcd at 1031 ¶29.

<sup>50</sup> *WWIZ, Inc., Memorandum Opinion and Order*, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>51</sup> Petition at 17.

<sup>52</sup> *Id.* at 18.

<sup>53</sup> *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941).

<sup>54</sup> *See, e.g.*, *AT&T Corp., MCI Telecommunications Corp., Sprint LDDS Worldcom, Order on Review*, 14 FCC Rcd. 8318, 8325 (1999) (Commission requirement that carrier file contract implies Commission authority to review and modify the contract); *Southern Pacific Communications Co., Memorandum Opinion and Order*, 66 FCC 2d 199 (1977) (Commission vested with authority to review terms of carriers’ contracts and determine lawfulness); *Implementation of the Cable Television Consumer Protection Act, Report and Order and Notice of Proposed Rule Making*, 22 FCC Rcd 17791, 17792 (2007) (47 U.S.C. § 628(c)(2)(D) generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators).

agree with Sprint that “the Petition is a repetitious catalogue of alleged injustices presented in the hope that one of them will gain some traction.” This scattershot approach to pleading, with clear disregard for the Commission’s procedural rules, borders on abuse of process and unnecessarily burdens the resources of the Commission and other parties – resources better devoted to the timely completion of nationwide 800 MHz band reconfiguration. We have not, however, summarily dismissed the Petition and, instead, have explained the respects in which it does not conform to the Commission’s procedural rules, in the expectation that Indiana, and any other party similarly disposed to ignore the procedural rules, will fully realize the impropriety, and futility, of doing so.

28. Indiana’s belief that the Commission’s rules and 800 MHz orders entitle it to the vendor of its choice, no matter what the price, is misplaced – the minimum necessary cost standard is to the contrary. We therefore affirm the *Indiana Order’s* determination that the sum of \$51,590 is the minimum necessary cost for obtaining the ministerial licensing services associated with rebanding Indiana’s system. We also affirm the *Indiana Order’s* determination that it was reasonably foreseeable that replacement radios should be deployed with both the pre-rebanding and post-rebanding channels installed. Therefore, Indiana’s change order request to require Sprint to pay for retrieving the radios from the field to give them a first touch was properly disallowed.

#### V. ORDERING CLAUSES

29. Accordingly, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 1.106 and 90.677 of the Commission’s Rules, 47 C.F.R. §§ 1.106, 90.677, IT IS ORDERED that the petition for reconsideration, filed February 22, 2011, by the State of Indiana, IS DENIED.

30. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties within seven business days of the date of this *Memorandum Opinion and Order* for the purpose of negotiating an amendment to the Frequency Reconfiguration Agreement between the parties consistent with the resolution of issues as set forth herein.

31. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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