

Cost Classification Policy

APPROVED POLICY:

Incumbent licensees may receive reimbursement for two basic categories of relocation costs during the 800 MHz reconfiguration: hard costs and transactional costs. This Cost Classification Policy addresses the distinction between the terms hard costs and transactional costs as used by the FCC.

All licensee reconfiguration costs must be included in a Request for Planning Funding or a Cost Estimate and are subject to negotiation with Sprint Nextel and approval by 800 MHz Transition Administrator, LLC.

OVERVIEW

The 800 MHz Transition Administrator, LLC (“TA”) has adopted this Cost Classification Policy to govern the reimbursement of reconfiguration expenses incurred by incumbent licensees, pursuant to the *800 MHz Report and Order*, FCC 04-168, as amended and supplemented from time to time, and consistent with standards provided by the Federal Communications Commission (“FCC”).

GENERAL POLICY

Hard costs are defined by the FCC as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. Hard costs include, but are not limited to, equipment, engineering costs, project management, training, FCC filing costs, new towers and/or tower modifications, site costs, seamless transition expenses, system inventory, and system design. Expenses that are associated with relocation, but that do not fit within the definition of hard costs, fall within the category of transactional costs. Transactional costs include, but are not limited to, fees for attorneys, fees for consultants, negotiation of agreements, analysis of “comparable facilities” proposals, the bid process, and education.

CATEGORIZATION OF 800 MHz RECONFIGURATION COSTS

Hard costs shall include, but not be limited to, the following items:

- Equipment – e.g., test equipment, spare equipment, back-up power equipment, and disposal of old equipment
- Engineering costs – e.g., installation and system testing
- Project management – e.g., implementation planning
- Training – e.g., instruction and training associated with providing new equipment or a replacement system
- FCC filing costs
- New towers and/or tower modifications
- Site costs – e.g., site acquisition, civil works, zoning costs, and site lease negotiation

- Seamless transition expenses – e.g., costs to simultaneously operate incumbent licensee’s old system and new system
- System inventory
- System design.

Transactional costs shall include, but not be limited to, the following items:

- Fees for attorneys
- Fees for consultants - In some situations, fees for consultants may be classified as hard costs, such as when the consulting activities are associated with a hard cost item or service. When evaluating whether fees for consultants are a hard cost or a transactional cost, the TA will focus on the nature of the work performed, rather than who performed the work.
- Negotiation of agreements and analysis of “comparable facilities” proposals (including, but not limited to, fees for attorneys and consultants) – e.g., any legal or other work associated with developing and negotiating agreements, and fees or labor for analysis of agreements, proposals, and proposed frequencies
- Licensee costs associated with the bid process - Vendor charges associated with responding to requests for proposals or providing bids and quotes are not reimbursable costs.
- Education – e.g., licensee costs to attend educational symposiums or seminars and conferences or association meetings. More detailed information about the specific types of education costs for which a licensee may receive reimbursement can be found in the TA’s Educational Reimbursement Policy available at www.800ta.org.
- For relocation of Economic Area (“EA”) licenses of non-ESMR EA licensees that elect to relocate to the ESMR band (i.e., 817-824 MHz/862-869 MHz) – engineering and legal fees directly related to determination of comparable spectrum, such as determining channel assignments or “white area.” Non-ESMR EA licensees must pay all hard costs and transactional costs associated with relocating site-based stations to the ESMR Band.

The TA has determined that the classification of taxes – e.g., sales taxes and taxes related to travel and lodging of contractors and vendors (including, but not limited to, hotel, restaurant, airline, taxi, and parking taxes) – shall be based upon the type of item or service being taxed. When a tax is associated with a hard cost item or service, then the tax would be considered a hard cost. For example, sales taxes on equipment purchases would be hard costs. When a tax is associated with a transactional cost item or service, then the tax would be considered a transactional cost.

APPLICATION OF “HARD LOOK” REQUIREMENT

The *Supplemental Order* contained several provisions designed to safeguard against excessive claims for transactional costs associated with band reconfiguration. In prior reconfiguration proceedings, the FCC adopted rules, such as Section 90.699(c), which limited an incumbent licensee’s reimbursement for transactional costs to two percent of the hard costs involved. In the 800 MHz reconfiguration, the FCC declined to apply Section 90.699(c)’s cap on transactional costs, noting that with respect to public safety entities, “outside costs could raise the transactional cost above two percent of the ‘hard costs.’” The FCC stated, however, that, “the two-percent restriction in the rule provides a useful guideline for determining when transactional costs are excessive or unreasonable” and directed the TA “to give a particularly hard look at any request involving transactional costs that exceed two percent” of the hard costs involved. Thus, licensees can receive reimbursement for transactional costs exceeding the two percent threshold,

but the FCC required that, “in the vast majority of cases, the party requesting transactional costs in excess of two percent will have to meet a high burden of justification.” Applying the “hard look” requirement is part of the TA’s oversight role in the 800 MHz reconfiguration as “a watchdog over excess transactional costs and ‘goldplating.’”

One of the TA’s duties is to obtain and review estimates from licensees regarding the cost of reconfiguring their systems. As part of the TA’s cost estimate review process, the TA has the power to request additional supporting documentation and data from a licensee,

The Transition Administrator will review the estimate - including an analysis to ensure that the estimate does not exceed the cost of providing comparable facilities. If the review indicates the need for additional support, or is otherwise deficient, the licensee will be so informed and will be required to furnish a revised estimate.

In situations where the TA requires additional information for its “hard look” review of transactional costs, the TA may utilize this power to request additional supporting documentation and data.

Based upon language found in FCC precedent, the *800 MHz Report and Order*, and the *Supplemental Order*, the TA has adopted the following policy to implement the “hard look” requirement:

In carrying out the “hard look” required by the FCC, the TA shall require any party requesting payment or reimbursement of transactional costs that exceed two percent of hard costs to articulate its request with clarity in a cost estimate and to be able to provide documentation and supporting data to justify the request. The cost estimate submitted must clearly delineate whether each cost or activity listed is a hard cost or transactional cost based upon the categorizations in this Cost Classification Policy. The TA shall review requests for payment or reimbursement of transactional costs that exceed two percent of hard costs during the TA’s review of Frequency Reconfiguration Agreements. If the TA’s review indicates the need for additional support or justification, or that a cost estimate is otherwise deficient, the licensee will be so informed and will be required to furnish additional supporting documentation and data as well as a revised cost estimate. If the TA denies all or a portion of a request for payment or reimbursement of transactional costs, the TA will issue a letter to the applicant stating with clarity and precision its findings and the reasons for its decision. The TA recognizes that the two percent transaction cost threshold may be difficult to meet for certain small reconfigurations where basic transactional costs will be proportionally greater than in larger reconfigurations. When the TA takes a hard look at transactional costs exceeding two percent during its review of Frequency Reconfiguration Agreements, the TA will take into account that transactional costs in small reconfigurations may be disproportionate. The TA may request additional supporting documentation and data or justification from a licensee during the TA’s review of the Frequency Reconfiguration Agreement or when the TA conducts an audit of the amount expended at the conclusion of system reconfiguration.

About the 800 MHz Transition Administrator

800 MHz Transition Administrator, LLC (“TA LLC”) is the Transition Administrator (“TA”) for the reconfiguration of the 800 MHz band mandated by the Federal Communications Commission (“FCC”). TA, LLC has contracted with Deloitte Consulting L.L.P., Squire, Sanders & Dempsey L.L.P., and Baseline Telecom, Inc. to perform the duties of the TA. Among its duties, the TA establishes reconfiguration guidelines, specifies replacement channels, reviews reconfiguration cost estimates, monitors payment of reconfiguration costs, manages the relocation schedule, facilitates issue resolution and administers the alternative dispute resolution process. TA LLC uses information it receives solely for the purposes of administering the 800 MHz reconfiguration process and may disclose such information to the FCC or other authorized parties pursuant to the requirements of the 800 MHz Order or other applicable law.