

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

In the Matter of
City of Vacaville, California
and Sprint Nextel
Mediation No. TAM-12013
WT Docket No. 02-55

MEMORANDUM OPINION AND ORDER

Adopted: July 2, 2007

Released: July 3, 2007

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a case referred to us for de novo review from Wave 1, Phase 2 mediation by the 800 MHz Transition Administrator, LLC (TA) involving a single-issue dispute between the City of Vacaville, California (Vacaville) and Sprint Nextel Corporation (Sprint). The dispute relates to certain costs that Vacaville’s primary vendor, Motorola, Inc. (Motorola) proposes for project management and customer support during the rebanding process. Based on our de novo review of the mediation record, we find that Vacaville is entitled to compensation from Sprint for the full amount of these proposed costs.

II. BACKGROUND

2. The 800 MHz R&O and subsequent orders in this docket require Sprint to negotiate a Frequency Relocation Agreement (FRA) with each 800 MHz licensee that is subject to rebanding. The FRA must provide for relocation of the licensee’s system to its new channel assignment(s) 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 relocation process.

A. Issue in Dispute

3. Vacaville operates a two-site six-channel trunked simulcast system and two conventional systems under call sign WPZJ387. Vacaville has 308 mobile and 250 portable radios that are to be retuned or replaced. The combined systems cover seven fleets that are used by multiple city

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); and Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005) (800 MHz MO&O).

2 800 MHz Report and Order, 19 FCC Rcd at 15077 ¶ 201.

3 Statement of Position of the City of Vacaville at 2, 4 (May 29, 2007) (Vacaville SOP).

departments, including police, fire, public works, transit, and schools.<sup>4</sup> Vacaville has relied on Motorola for system maintenance and upgrades throughout the life of the system, and Motorola will manage the rebanding project on Vacaville's behalf.<sup>5</sup>

4. In support of Vacaville's FRA proposal to Sprint, Motorola has provided a cost estimate to Vacaville for total rebanding project costs of \$328,687.<sup>6</sup> Of this amount, the only costs that are disputed by Sprint are the \$80,150 in proposed costs that Vacaville requests for Motorola to provide project management and customer support during the rebanding process. Vacaville requests \$80,150 for 458 hours of work by Motorola under these line items, while Sprint offers \$27,300 for 156 hours.<sup>7</sup> On May 14, 2007, after mediation proved unsuccessful on this issue, the mediator referred the matter to PSHSB for *de novo* review and resolution, submitting the record in the case as well as a Recommended Resolution.<sup>8</sup> Vacaville and Sprint filed their Statements of Position with PSHSB on May 29, 2007.<sup>9</sup>

## B. Parties' Positions

5. *Vacaville Position.* Vacaville contends that 458 hours for project management and customer support by Motorola is reasonable because the system covers seven fleets and is used by multiple agencies, including police and fire, which increases the complexity of implementing rebanding while maintaining the system's operability.<sup>10</sup> Vacaville emphasizes that it has limited internal staff to work on rebanding and is therefore depending on Motorola to manage the project and coordinate the process with system users.<sup>11</sup> Vacaville also contends that in light of the project's overall scope and duration, Motorola's proposed hours for project management and customer support are not disproportionately high as Sprint suggests. Vacaville notes that over the estimated seven month duration of the rebanding project, these proposed hours amount to less than eight days of work per month.<sup>12</sup>

6. *Sprint Position.* Sprint argues that the 458 hours that Motorola proposes to spend on project management and customer support are excessive relative to the amount of time it will spend performing the actual work of rebanding.<sup>13</sup> Sprint contends that its proposal of 156 hours is consistent

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<sup>4</sup> Proposed Resolution Memorandum of the City of Vacaville at 5 (Apr. 27, 2007) (Vacaville PRM); Vacaville SOP at 2.

<sup>5</sup> Vacaville PRM at 6; Vacaville SOP at 5.

<sup>6</sup> Motorola originally provided a cost estimate of \$337,087, but that estimate has been reduced by \$8,400. *See* note 7, *infra*.

<sup>7</sup> Vacaville initially sought compensation for 506 hours, consisting of 86 hours for project management and 420 hours for customer support, for a total cost of \$88,550. In its SOP, Vacaville agreed to reduce the proposed hours from 506 to 458 hours, reducing proposed costs by \$8,400. Vacaville SOP at 3.

<sup>8</sup> *See* Recommended Resolution, TAM-12013, (May 14, 2007) (RR). The record includes the Proposed Resolution Memoranda of Vacaville and Sprint. *See* Vacaville PRM; Proposed Resolution Memorandum of Nextel Communications, Inc. (Apr. 27, 2007) (Sprint PRM). The record also includes supplemental statements submitted by both Vacaville and Sprint. *See* Supplemental Proposed Resolution Memorandum of the City of Vacaville (Apr. 27, 2007) (Vacaville Supp.); Supplemental Proposed Resolution Memorandum of Nextel Communications, Inc. (Apr. 27, 2007) (Sprint Supp.).

<sup>9</sup> Vacaville SOP; Statement of Position of Sprint Nextel Corp. (May 29, 2007).

<sup>10</sup> Vacaville SOP at 4-5.

<sup>11</sup> *Id.* at 8-9; Vacaville Supp. at 3-4. Vacaville states that it "has not asked for any reimbursement for the significant hours of its own staff time that will be necessary for the rebanding implementation and is depending on its vendor, Motorola, to perform the rebanding project management and keep the City informed of its progress." *Id.*

<sup>12</sup> Vacaville PRM at 11; Vacaville SOP at 5.

<sup>13</sup> Sprint PRM at 7.

with project management hours associated with similar systems and the metrics developed by the TA. The 156 hours offered by Sprint include 123 hours for project management and customer support associated with subscriber units, which Sprint bases on the TA's Subscriber Equipment Deployment Initiative (SED) formula for computing the level of effort for rebanding subscriber units.<sup>14</sup> The remaining 33 hours in Sprint's proposal are for infrastructure-related work, which Sprint derives from Motorola's estimate for infrastructure project management.<sup>15</sup>

7. *Mediator Recommendation.* The mediator recommended finding that Sprint's offer for a reduction in project management and customer support hours is reasonable.<sup>16</sup> The mediator found the hour figure proposed by Vacaville to be disproportionately high, noting that according to metrics issued by the TA, project management costs typically account for approximately 16 percent of total rebanding costs.<sup>17</sup> The mediator further found that Vacaville did not present evidence of factors that would justify the disproportionate amount of project management time proposed by Motorola.<sup>18</sup>

### III. DISCUSSION

#### A. Standard of Review

8. As an initial matter, the Commission's orders in this docket assign to Vacaville 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>19</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>20</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>21</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>22</sup>

9. Our review of costs is also influenced by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the planning process. In this regard, we have the benefit of data from the TA that can provide us with cost metrics for approved planning funding agreements for

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<sup>14</sup> Sprint Supp. at 4, App. 1 at 6. The SED formula provides a "set of activities and levels of effort (LOE, or time per task) associated with the deployment of subscriber units that the TA considers presumptively reasonable and prudent." See 800 MHz Transition Administrator, LLC, Instructions for Submitting a Subscriber Equipment Deployment Request at 2. Those LOEs are "based on discussion with stakeholders and [the TA's] own experience." *Id.* Where a licensee's LOE "exceeds the suggested standard, that is presumed to be reasonable, the licensee must justify the additional time required." *Id.*

<sup>15</sup> Sprint Supp. at 4.

<sup>16</sup> RR at 6-7.

<sup>17</sup> *Id.* at 6, citing 800 MHz Transition Administrator, LLC, Cost Metrics for Frequency Reconfiguration Agreements v. 1.0 at 4.

<sup>18</sup> RR at 6.

<sup>19</sup> 800 MHz Report and Order, 19 FCC Rcd at 15074 ¶ 198.

<sup>20</sup> Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

<sup>21</sup> *Id.* at 9821 ¶ 6.

<sup>22</sup> *Id.* at ¶ 8.

systems of varying size and complexity.<sup>23</sup> We stress that these metrics are only one guiding factor underlying our analysis of the reasonableness of planning costs. Depending on the facts the licensee has established in the record, we may disapprove costs that fall below the guidelines or, conversely, approve costs that exceed the guidelines. We now turn to the specific costs that are in dispute.

#### **B. Project Management and Customer Support**

10. We approve the \$80,150 for 458 hours of work by Motorola on project management and customer support. Because Vacaville is relying on Motorola to manage the entire rebanding project, Motorola will have primary responsibility not only for reprogramming and replacement of equipment, but for all scheduling and coordinating of the project with the multiple Vacaville agencies that use the system.<sup>24</sup> The documentation provided by Vacaville shows that these tasks will be complex. Even though the Vacaville system is not large overall, reprogramming/replacement of the system's 558 subscriber units involves multiple departments, including police and fire, which must maintain operability throughout the transition. In addition, Vacaville uses 11 different radio models in seven different fleets, and has 46 existing talk groups, each with its own scheduling and operational needs.<sup>25</sup> Careful coordination of all of these elements is necessary to ensure a seamless rebanding process without any impact on public safety operations.<sup>26</sup>

11. We also conclude that the proposed hours for project management and customer support, though high in proportion to other project costs, are within an acceptable range when compared to TA metrics and costs in other projects. The 458 project management and customer support hours constitute less than eight days per month over the estimated seven-month duration of the project.<sup>27</sup> The proposed hours also constitute approximately 19 percent of the total hours that have been estimated for the project, and the \$80,150 that Vacaville requests represents approximately 25 percent of the total project cost.<sup>28</sup> These figures are somewhat higher than the TA's project management metric of 16 percent, but we believe Vacaville has provided sufficient documentation to support the higher figures in this case.<sup>29</sup> We also remind Vacaville that, as with all tasks for which it seeks compensation, the cost specified is not a liquid amount that will automatically be credited, but will only be paid based on documentation that the budgeted time is actually spent in the manner described and contributes to rebanding of the system.<sup>30</sup>

#### **IV. ORDERING CLAUSES**

12. 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.

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<sup>23</sup> See [http://800ta.org/content/PDF/other/Planning\\_Funding\\_Cost\\_Metrics.pdf](http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf)

<sup>24</sup> Vacaville SOP at 3.

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

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

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 6 Appendix H (itemizing total rebanding project labor hours).

<sup>29</sup> *Id.* at 7.

<sup>30</sup> See City of Manassas, Virginia and Sprint Nextel, *Memorandum Opinion and Order*, 22 FCC Rcd 8526, 85311 ¶ 16 (PSHSB 2007).

13. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties within seven days of the date of this Order for the purpose of negotiating a 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