

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

In the Matter of
Washoe County, Nevada
and Sprint Nextel
Mediation No. TAM-12342
City of Sparks, Nevada
and Sprint Nextel
Mediation No. TAM-12307
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 (TA) involving disputes between Washoe County, Nevada (Washoe), the City of Sparks, Nevada (Sparks) (collectively, Washoe), and Sprint Nextel Corporation (Sprint). The disputes relate to costs incurred by Washoe and its consultants, Galena Group, Inc. (Galena) and Collins Communications, Inc. (Collins). Based on our de novo review of the mediation record, we find that Washoe is entitled to the compensation it seeks from Sprint for user training, site inspection, and inventory tracking software, but we require further documentation of Washoe's request to perform drive testing. In addition, we approve the majority of Washoe's claims for estimated internal staff and consulting costs. However, we disallow certain items as duplicative, and we direct Washoe to look for cost savings in its actual expenditures with respect to certain other items.

II. BACKGROUND

2. Washoe County is a 6,500 square-mile county in northwestern Nevada that includes Reno, Nevada, the county seat, and extends northward to the Idaho border. Washoe's communication system (licensed under call signs WPRX309, WPUF364, and WPEV464) consists of a 12-site system serving 4239 mobile units, although only 10 of the sites must be rebanded. Sparks operates a Mutual Aid

1 Sparks has agreed to let Washoe negotiate on its behalf. See Proposed Resolution Memorandum of Licensee dated December 4, 2006 (Washoe PRM) at Ex. 3.

2 Recommended Resolution, filed March 22, 2007 by the 800 MHz Transition Administrator, LLC (RR) at 3. The TA describes Washoe's system is a ten-site system. In its Statement of Position, Washoe notes that its system is a twelve-site system but only ten of the sites must be rebanded. See Statement of Position, filed by Washoe County April 5, 2007 (Washoe SOP).

repeater system integrated with the Washoe system, and consisting of a single repeater and 19 portable units that are stored at the City's Fire Department.³ Nineteen separate government agencies utilize the Washoe system, which is connected to and fully integrated with the state-wide Nevada Shared Radio System.⁴

3. Washoe and Sprint commenced negotiations regarding Frequency Relocation Agreement (FRA) for retuning of the system in February 2006.⁵ The case was referred to mediation as part of Wave 1 Stage 2 on November 2, 2006. On March 22, 2007, after mediation proved unsuccessful, the mediator referred the matter to the Public Safety and Homeland Security Bureau (PSHSB) for *de novo* review and resolution, submitting the record in the case as well as his Recommended Resolution.⁶ Sprint and Washoe each filed a Statement of Position with PSHSB on April 5, 2007.⁷ The parties have agreed on 499 internal hours and 381 consultant hours at a cost of \$78,357.50, but they remain at odds on the use of certain software, coverage testing, internal costs, consultant costs, and legal fees.

III. DISCUSSION

A. Standard of Review

4. As an initial matter, the Commission's orders in this docket assign to Washoe 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."⁸ 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.⁹ 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."¹⁰ 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.¹¹

5. Our review of costs is also influenced by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the rebanding process. In this regard, we have the benefit of data from the TA that can provide us with cost metrics for approved agreements for systems of varying size and complexity.¹² 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

³ *Id.*

⁴ Washoe PRM at 3.

⁵ RR at 2.

⁶ *Id.*

⁷ Washoe SOP; Statement of Position, filed by Sprint Nextel, April 5, 2007 (Sprint SOP).

⁸ 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*).

⁹ Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

¹⁰ *Id.* at ¶ 6.

¹¹ *Id.* at ¶ 8.

¹² See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf

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 issues in dispute.

B. User Training

6. Washoe seeks \$77,500 to train its public safety officers on how to use their radios during the rebanding process. We approve this request.

7. *Washoe Position.* Washoe proposes two training sessions for each Washoe public safety officer: one 15-minute session to familiarize each officer with the temporary programs that will be in their radios during the reconfiguration process¹³, and a second 5-minute session to educate each officer about the new channels once reconfiguration is complete, as well as any training for any new or recently-promoted personnel.¹⁴

8. *Sprint Position.* Sprint originally contended that one 10-minute session and one 5-minute session per officer is sufficient and offered \$52,987.50 for this task.¹⁵ In its Statement of Position, Sprint states that it does not concede the issue but is willing to compromise and accept the mediator's recommendation.¹⁶

9. *Mediator Recommendation.* The mediator recommends approval of Washoe's request for \$77,500.¹⁷ The mediator states that Washoe has met its burden of establishing that the costs it seeks for this task are reasonable, prudent, and the minimum necessary to accomplish the task.¹⁸

10. *Discussion.* While Sprint has offered to settle this issue, we believe it is important to rule on the merits nonetheless to provide guidance to the parties and to other 800 MHz licensees regarding our findings. We concur with the mediator that Washoe has provided sufficient information to support a finding that 20 minutes of training per officer is reasonable, prudent, and the minimum necessary to complete this task.¹⁹ We have previously stated that we will generally defer to the judgment of the public safety licensee when it comes to determining what constitutes a reasonable use of internal resources.²⁰ We believe that Washoe is in the best position to assess the training needs of its officers, and find its assessment to be reasonable in light of the record as a whole.

C. Site Inspection

11. Washoe seeks \$8500 to cover inspection of sites by its personnel. We approve this request.

12. *Washoe Position.* Washoe contends that 160 hours is required for physical inspection of eight sites, to be conducted by two people at 10 hours per site.²¹ Washoe notes that the time allotted for

¹³ Reply to Proposed Resolution Memorandum, filed February 26, 2007 by Washoe County at 32-33. (Washoe Reply PRM).

¹⁴ *Id.*

¹⁵ Proposed Resolution Memorandum of Nextel Communications, Inc., filed March 2, 2007 at 25 (Sprint Reply PRM).

¹⁶ Sprint SOP at 14.

¹⁷ RR at 24.

¹⁸ *Id.*

¹⁹ RR at 24.

²⁰ City of Manassas and Sprint Nextel Mediation No. TAM 12007, *Memorandum Opinion and Order*, 22 FCC Rcd 8526 (PSHSB 2007), ¶ 14.

²¹ Washoe Reply PRM at 17.

inspection takes into account the remote location of many of these sites.²²

13. *Sprint Position.* Sprint originally offered \$4250, contending that two people spending five hours per person per site is sufficient to conduct an adequate inspection of each site.²³ Sprint subsequently stated that it would abide by the mediator's recommendation on this issue.²⁴

14. *Mediator Recommendation.* The mediator recommends finding in favor of Washoe on this issue.²⁵

15. *Discussion.* Again, we acknowledge Sprint's willingness to settle this issue but rule on the merits to provide guidance. We agree with the mediator's finding that Washoe has justified its request for \$8500.²⁶

D. MCM Software

16. Washoe seeks \$54,800 for the purchase of third-party proprietary software developed by MCM Technology LLC (MCM) for inventory management and tracking of radio equipment involved in the reconfiguration process.²⁷ Washoe also seeks \$27,782.84 in internal labor costs for the use of the software. We find that these costs are reasonable and recoverable.

17. *Washoe Position.* Washoe argues that its system is relatively complex, consisting of a twelve-site combination of simulcast and non-simulcast sites, and supporting over 4200 mobiles and portable units.²⁸ Washoe notes that nine of the twelve system sites are on mountaintops, precluding the use of landline interconnection and forcing reliance on microwave links.²⁹ Washoe argues that in light of the complexity of the system, it requires the MCM software to meet its system inventory and tracking needs during rebanding. Washoe also notes that it has used an earlier version of MCM's software prior to rebanding.³⁰

18. Washoe rejects Sprint's proposal that it use an Excel spreadsheet as an alternative to the MCM software. Washoe states that it had a negative experience utilizing Excel as a tracking system when it reprogrammed its radios (for non-rebanding reasons) two years ago.³¹ Washoe contends that the Excel-based tracking system failed in part based on "hundreds of factual errors" and because a failure in methodology led to myriad reprogramming problems.³² Washoe notes that its dissatisfaction with Excel was one of the factors that led it to purchase the earlier version of MCM software.³³

²² Washoe Reply PRM at 17.

²³ Sprint Reply PRM at 15.

²⁴ Sprint SOP at 14.

²⁵ RR at 20-21.

²⁶ *Id.*

²⁷ The software at issue is MCM's "360 Project Management Platform" (hereinafter, "MCM software").

²⁸ Washoe SOP at 2.

²⁹ *Id.*

³⁰ Washoe Reply PRM at 2. Washoe is not seeking to recover the cost of the earlier MCM software version from Sprint.

³¹ Washoe PRM at 3-4.

³² *Id.* at 7. Washoe also lists what it calls serious technical deficiencies in Excel: two-dimensional input interface to input fields; the use of one column to report information regarding each radio type or agency; lack of an audit trail; limitations on shared use; file size limits efficiency; and insufficient security. Washoe Reply PRM at 7.

³³ Washoe Reply PRM at 2.

19. Finally, Washoe argues that the use of MCM software will lead to cost savings in the rebanding process. Specifically, Washoe notes that the software will automatically assemble timesheets, track hours and rebanded radios, and schedule radios for rebanding.³⁴ Washoe also contends that at the conclusion of rebanding, the software will generate reports that will streamline the audit process.³⁵ Washoe contends that without the software it would have to hire a full-time employee for two years to perform these tasks at a cost of \$127,688.³⁶

20. *Sprint Position.* Sprint offers \$890.41 and 20 hours for Washoe to train two people on Excel and to develop an Excel tracking database.³⁷ Sprint contends that the MCM software is exorbitantly priced and unnecessary.³⁸ Sprint argues that Washoe must have some existing method to inventory its current subscriber base and therefore it does not need MCM software for that portion of the project.³⁹ Sprint also argues that Excel is a viable substitute for MCM software⁴⁰ and that the prior problems Washoe encountered with Excel were the result of human error, not the result of flaws in the software.⁴¹ Sprint also argues that Washoe failed to examine all viable alternatives to MCM software, citing seven additional software packages that it contends are cheaper than MCM and provide equivalent functionality.⁴² Sprint finally argues that Washoe's estimated costs for performing rebanding without the MCM software are unsupported and speculative.⁴³

21. *Mediator Recommendation.* The mediator recommends finding that Washoe is not entitled to reimbursement for the MCM software or associated labor costs. The mediator cites to our prior *City of Boston* decision, in which we found that MCM software was not operationally necessary for the City of Boston to reband its system and therefore was not a recoverable expense.⁴⁴ The mediator also finds insufficient evidence that Washoe seriously considered any alternatives to the MCM software when it formulated its cost proposal.⁴⁵ The mediator questions Washoe's estimate that without the MCM software, it would need to hire a full-time employee for two years to perform the same inventory and tracking tasks.⁴⁶ However, the mediator did not make any recommendation as to what would be a reasonable and prudent alternative to MCM software, finding insufficient evidence in the record to

³⁴ *Id.* at 11-12. Washoe notes the following attributes of the MCM software: Tracking of which units have been programmed, and with what program templates; creation of an audit trail, integrating timesheets for workers with assets worked on, creating a complete transactional record; ability to create work orders, and schedule assets for reprogramming; ability to remotely access the software and enter information, including information on completed radios, repeaters, combiners, tower top amplifiers, and possible antenna. Washoe PRM at 8.

³⁵ Washoe Reply PRM at 11-12.

³⁶ *Id.*

³⁷ Sprint SOP at 9.

³⁸ Sprint PRM, Summary at 3.

³⁹ Sprint Reply PRM at 5-6.

⁴⁰ Sprint PRM at 13-17.

⁴¹ *Id.* at 11.

⁴² *Id.* at 22.

⁴³ Sprint Reply PRM at 14.

⁴⁴ City of Boston, Massachusetts and Sprint Nextel, *Memorandum Opinion and Order*, WT 02-55, 21 FCC Rcd 14661 (PSHSB 2007) (*Boston MO&O*).

⁴⁵ RR at 10.

⁴⁶ *Id.* at 11.

support such a recommendation.⁴⁷

22. *Discussion.* We find that Washoe's proposed use of MCM software in this case is a recoverable expense. The facts of this case are distinguishable from those in the *City of Boston*, and Washoe has presented sufficient justification to support its claim. First, in *City of Boston*, we found that sophisticated inventory and tracking software was not necessary in part because the systems at issue were not unusually large or complex.⁴⁸ Washoe's system, however, is larger and more complex than either of the Boston systems: it has four times as many sites as the Boston Trunking and Transportation (BTT) system, the larger of the two Boston systems, and the majority of these sites are on difficult-to-reach mountaintops.⁴⁹ Washoe's system also serves 19 agencies, supports almost twice as many subscriber units as the BTT system (4239 units compared to 2203),⁵⁰ and covers an area of 6500 square miles—more than two-thirds the land area of Massachusetts.⁵¹ Thus, it is in some respects comparable to a large urban or statewide system. Moreover, unlike Boston, Washoe has documented that its system supports a high level of interoperability and integration with the statewide Nevada Shared Radio System and users of that system.⁵²

23. We also note that the MCM software that Washoe seeks to employ is less costly and more directly tailored to rebanding than what Boston sought to employ. In *City of Boston*, MCM proposed to sell Boston a package costing \$159,825 that consisted of a backbone system, asset management software, and report-writing software.⁵³ We found that this package and associated training would provide benefits and capabilities beyond those necessary to support Boston's rebanding effort.⁵⁴ Washoe, on the other hand, proposes to spend \$54,800 to obtain use of the MCM software solely for rebanding purposes.⁵⁵ Washoe will not acquire the backbone system but will instead access the software on MCM's servers, and will cease using it once rebanding is completed.⁵⁶ Even when Washoe's proposed labor costs are factored in, the proposed combined cost of the MCM software and associated labor in this case is significantly less than was proposed in *City of Boston*: in the latter case, these costs represented 12 percent of the total retuning costs and totaled \$59 per radio.⁵⁷ In this case, Washoe's proposed combined cost of \$82,582.84 is approximately 7.5 percent of total retuning costs and approximately \$19.40 per radio.⁵⁸ We find these costs to be reasonable for a system of Washoe's size and complexity.

24. We also find that Washoe adequately considered potentially less costly alternatives to the MCM software, and that its rejection of those alternatives was reasonable. For example, Washoe declined

⁴⁷ *Id.*

⁴⁸ *Boston MO&O*, 22 FCC Rcd at 14666 ¶ 18.

⁴⁹ See Washoe PRM, Exhibit 2.

⁵⁰ *Boston MO&O*, 22 FCC Rcd at 14666 ¶ 18.

⁵¹ Washoe Reply PRM at 5. Massachusetts comprises 8,257 square miles with a net land area of 7,838 miles (<http://www.sec.state.ma.us/cis/cismaf/mflc.htm>).

⁵² Washoe PRM at 3.

⁵³ *Boston MO&O*, 22 FCC Rcd at 14667-68 ¶ 24.

⁵⁴ *Id.* at 14670 ¶ 29.

⁵⁵ Washoe Reply PRM at 12.

⁵⁶ *Id.*

⁵⁷ *Boston MO&O*, 22 FCC Rcd at 14667-68 ¶ 24.

⁵⁸ Based upon the initial cost estimate submitted by Washoe and augmented by the joint cost estimate in which Sprint and Washoe detail their positions on the disputed costs, Washoe seeks almost \$1.1 million in reconfiguration costs. See Washoe PRM Exhibit 4 and Joint Cost Estimate.

to consider Microsoft Access because that package is not supported by the county's information management professionals.⁵⁹ Washoe also purchased an earlier version of MCM software several years ago after considering and rejecting several alternative software packages.⁶⁰ We believe that Washoe is entitled to rely on this prior experience in evaluating software options for rebanding. We also find that Washoe's use of MCM prior to rebanding – at its own expense -- distinguishes it from the licensee in *City of Boston*, which did not previously use MCM and did not provide record support for its assertion that it had looked at and rejected less costly alternatives.⁶¹ Similarly, we do not believe that Sprint has demonstrated that use of Excel with 20 hours of training is a reasonable alternative given that Washoe has previously found Excel to be inadequate for its inventory needs in the non-rebanding context. Even if this was partially due to human error as Sprint contends, we will not compel Washoe to tackle the more complex demands of rebanding using an approach it has previously tried and rejected.

E. Drive Testing

25. Washoe requests a total of \$38,000 for drive testing to verify the system's coverage before and after rebanding.⁶² We find that Washoe is entitled to reasonable compensation for drive testing, but there is insufficient evidence in the record to verify that the amount sought by Washoe to accomplish this task is reasonable.

26. *Washoe Position.* Washoe did not address this issue in its PRM, but in its Statement of Position it argues that drive testing is appropriate because the Washoe system is large, covers a wide area, and is partially simulcast. Washoe contends that its system is similar to a Large Trunked Radio System described in the TA's Coverage Testing Guidelines as warranting drive testing.⁶³ However, Washoe does not describe the scope or methodology of its drive testing proposal, nor does it provide specific documentation to support the proposed \$38,000 cost.

27. *Sprint Position.* Sprint offers \$2,142.80 for one hour of functional testing for each of six multicast sites and eight hours for each of two simulcast sites.⁶⁴ Sprint argues that Washoe did not provide enough information to justify its request for \$38,000 for drive testing and that the testing Sprint proposes is consistent with the TA Handbook.⁶⁵

28. *Mediator Recommendation.* The mediator concurs with Sprint, concluding that Washoe did not provide justification in the record for such extensive testing.⁶⁶

29. *Discussion.* While we find that Washoe may be entitled to perform drive testing, it has not provided sufficient detail of its testing plan to allow for an evaluation of the reasonableness of the plan. The TA's Reconfiguration Handbook states that reconfiguring licensees are entitled to be reimbursed for the reasonable and prudent costs of testing that is necessary to enable them to certify, at the end of the reconfiguration process, that they have received a comparable system.⁶⁷ Although the TA Handbook states that drive testing is not necessary in most cases to verify comparability, the guidelines

⁵⁹ Washoe Reply PRM at 9 and Exhibit 5.

⁶⁰ *Id.* at 10.

⁶¹ *Boston MO&O*, 21 FCC Rcd at 14668-69 ¶¶ 27-28. Specifically, we found that Boston failed to show that it lacked the existing capability to manage rebanding tasks or that it could not use off-the-shelf software. *Id.*

⁶² Joint Cost Statement.

⁶³ Washoe SOP at 14. See *DriveTestGuidelines100105.pdf* available at <http://pericle.com/papers/index.html>.

⁶⁴ Sprint SOP at 12.

⁶⁵ *Id.*

⁶⁶ RR at 25.

⁶⁷ Reconfiguration Handbook v 2.3 at 97-98.

state that drive testing may be justified where the reconfiguration involves large wide-area and simulcast systems.⁶⁸ As noted above, Washoe's system includes simulcast sites and covers 6500 square miles, with a wide variety of terrain. Based on these factors, we conclude that Washoe may be entitled to perform drive testing. However, we agree with Sprint and the mediator that Washoe has provided insufficient detail regarding its testing proposal, leaving us unable to determine whether the proposed \$38,000 cost is reasonable. We will consider Washoe's claim for \$38,000 if it can provide specific documentation in support of its claim to the Mediator within seven days of this Order. However, in the absence of sufficient documentation, we must limit Sprint's payment obligation to \$2,140.80.

F. Project Management Costs

30. We now turn to disputes over twelve project management tasks for which Washoe seeks compensation for work performed by its own personnel as well as work performed by its consultant, Galena Group (Galena).⁶⁹ We approve most of the requested compensation, but with certain adjustments detailed below.

31. *Washoe Position.* Washoe submitted a detailed project timeline that lays out how it intends to accomplish rebanding. For many of the tasks, Washoe proposes having both internal personnel and consultants working on the same task. In total, Washoe seeks 1208 hours for internal staff work and 648 hours for work by Galena. Washoe argues that it is reasonable and not duplicative to have both its own personnel and Galena's personnel working on common tasks, contending that while its personnel will perform most of the individual tasks, Galena is responsible for overseeing the work and providing project management and quality assurance.⁷⁰ Washoe analogizes Galena's role in this regard to a senior partner in a law firm reviewing and editing a brief written by an associate attorney.⁷¹

32. *Sprint Position.* Sprint objects to paying Washoe's proposed consultant costs, characterizing them as duplicative of Washoe's internal costs. Sprint offers 656 hours for project management tasks performed by Washoe personnel⁷² and 48 hours for the tasks performed by Galena.⁷³

33. *Mediator Recommendation.* The mediator generally recommended finding in favor of Sprint on these issues. The mediator found that Sprint documented its objections to Washoe's requests and that Washoe did not successfully rebut those objections.⁷⁴

34. *Discussion.* We agree with Washoe that public safety licensees have the discretion to outsource supervisory duties to consultants provided that the consultant's hours spent supervising a task are proportionate to the licensee's hours spent performing the task. Therefore, we conclude that most of Washoe's claims for consultant costs associated with project management are recoverable. However, a few line items appear to be duplicative, and some others may not fully take into account the efficiencies Washoe indicates it will gain from use of the MCM software, which we have approved above. Therefore, while we approve most of the estimated costs, we direct Washoe to look for ways to take advantage of these efficiencies to reduce actual expenditures where possible. We discuss each of the specific items in dispute below in greater detail.

35. Site Equipment Inventory Analysis. Washoe seeks compensation for 28 hours of internal

⁶⁸ *Id.* at 99-100.

⁶⁹ Washoe PRM at 7, Sprint PRM at 23.

⁷⁰ Washoe SOP at 6.

⁷¹ *Id.* at 8-9.

⁷² Joint Cost Estimate.

⁷³ Sprint PRM at 23.

⁷⁴ *Id.* at 16, 19.

staff time and two hours of Galena's time to analyze the inventory of site equipment compiled during the site inspection.⁷⁵ Sprint contends that these hours are duplicative of time that Washoe has budgeted separately for site inspection.⁷⁶ We conclude that off-site analysis of the inventory is not duplicative of time spent at the site conducting the inventory itself. We therefore approve the request, but we direct Washoe to look for ways to use the MCM software to realize actual cost reductions for this task.

36. Site Documentation Verification. Washoe seeks reimbursement of 28 hours of internal time and two hours of Galena's time to review and catalog site documentation.⁷⁷ Sprint rejects those hours as duplicative of the site inspection.⁷⁸ We agree with Washoe that this verification is necessary, and therefore approve the request, but again direct Washoe to look for cost reduction opportunities through use of the MCM software.

37. User Equipment Inventory. Washoe budgets 124 hours of internal time to physically locate, review, and inventory user equipment (mobiles, portables, and base stations).⁷⁹ Washoe also budgets 14 hours of internal time to inventory the quantity and types of equipment and 14 hours of internal time to record serial numbers.⁸⁰ Washoe also seeks compensation for 20 hours of Galena's time for participation in these tasks.⁸¹ Sprint agrees to Washoe's request for internal time, but opposes the claim for consultant hours on the grounds that Galena will not be involved in the physical inventory of the equipment.⁸² We approve Washoe's internal costs to conduct the inventory but reject the claim for consultant costs. The use of the MCM software appears to obviate the need for the consultant to participate in the physical inventory. Moreover, once the information that Washoe compiles is uploaded into the MCM program, information needed for additional verification and analysis should be readily accessible from reports generated by the software.

38. Personality Inventory and Radio Check. Washoe seeks 92 internal staff hours and eight consultant hours to inventory radio "personalities."⁸³ A radio personality is the specific program that controls the radio.⁸⁴ These programs will be downloaded from each radio and stored prior to rebanding.⁸⁵ Washoe proposes to analyze the personalities in an attempt to reduce the number of unique personalities in its existing system (currently over 300) to a smaller number that will be used post-rebanding. Washoe claims that reducing the number of personalities will make the final reprogramming of system radios more efficient.⁸⁶ Sprint agrees to Washoe's proposal for internal staff time, but contends that the consultant's participation is not necessary for this task.⁸⁷ We agree with Washoe that given the

⁷⁵ Sprint Reply PRM at 15 and Washoe Reply PRM at 17.

⁷⁶ Sprint Reply PRM at 15.

⁷⁷ Sprint Reply PRM at 15 and Washoe Reply PRM at 17.

⁷⁸ Sprint Reply PRM at 15.

⁷⁹ Sprint Reply PRM at 15-16 and Washoe Reply PRM at 20.

⁸⁰ Sprint Reply PRM at 16 and Washoe Reply PRM at 20-21. Part of this task is to ensure that all radios have up to date firmware. Washoe Reply PRM at 21.

⁸¹ Washoe Reply PRM at 20.

⁸² Sprint Reply PRM at 15-16.

⁸³ *Id.*

⁸⁴ Washoe Reply PRM at 20.

⁸⁵ *Id.*

⁸⁶ *Id.* at 20-21.

⁸⁷ Sprint Reply PRM at 16.

importance of radio personalities in its communications system, budgeting eight hours of consultant time for review/supervision of this project is reasonable.⁸⁸

39. Washoe also seeks 28 internal hours to test one of each type and model of radio with the new frequencies and personalities prior to rebanding.⁸⁹ Washoe contends that this will allow for the discovery and resolution of systemic problems before system-wide rebanding begins.⁹⁰ Sprint opposes this task as unnecessary for rebanding.⁹¹ We find that this task is prudent and will not substitute our judgment for that of the licensee in this matter.

40. Statewide Coordination. Washoe seeks 20 internal hours and 10 consultant hours to coordinate system structures statewide.⁹² Washoe describes this task as including coordination and agreement on the system structure (radio programs/personalities) with all the agencies that use the Washoe system and outside agencies that use the system's shared sites.⁹³ These agreements will require meetings and discussions between Galena, Washoe personnel, and the associated agencies.⁹⁴ In addition, possible agreements will need to be drafted and signed by associated parties.⁹⁵ Sprint argues that these tasks are duplicative of statewide coordination tasks for which it has already agreed to compensate Washoe.⁹⁶ We disagree. Washoe's itemization indicates that the two coordination tasks in question (coordination on the system architecture and coordination on radio personalities) are separate from other tasks associated with statewide coordination of project implementation, and there is no evidence in the record that the amount of time being sought for these tasks is excessive.⁹⁷ We therefore approve this claim.

41. Identifying Needed Training and Associated Costs. Washoe budgets 16 internal hours and 20 consultant hours for identifying needed training and associated costs. Sprint contends that this item is duplicative of the line item for training costs.⁹⁸ We conclude that developing a training curriculum is a separate task from implementing a curriculum and that Sprint has not shown that the requested hours are unreasonable. We therefore approve Washoe's request.

42. Identifying Personnel and Costs. Washoe budgets 15 hours for Galena to determine the amount of time and effort that will be devoted to preparation of a Job Cost Worksheet and Financial Sheet.⁹⁹ Sprint argues that these hours are either Galena's cost of doing business, or duplicative of hours allocated to other tasks.¹⁰⁰ We reduce the time allocated for this task to three hours. While we agree that the identification of personnel and costs is a separate task, Washoe allocates twelve hours in this line item

⁸⁸ Washoe SOP at 10.

⁸⁹ Washoe Reply PRM at 21.

⁹⁰ *Id.*

⁹¹ Sprint Reply PRM at 16.

⁹² *Id.*

⁹³ Washoe Reply PRM at 22.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Sprint Reply PRM at 16.

⁹⁷ *See* Washoe Reply PRM at 16-17, 22.

⁹⁸ Sprint Reply PRM at 16.

⁹⁹ *Id.* at 17. *See* Washoe Reply PRM at 24.

¹⁰⁰ Sprint Reply PRM at 17.

for identifying the costs and time associated with management of the site retuning portion of the project, a task that Sprint has already allocated 16 hours for.¹⁰¹ Washoe does not explain why this additional time is needed.

43. Timeline Creation. Washoe lists two separate tasks pertaining to creation of a project timeline.¹⁰² Sprint approved the hours allocated for the creation of the initial timeline,¹⁰³ but disputes Washoe's request for eight internal and 40 consultant hours for the second timeline task, arguing that the creation of a second timeline is duplicative.¹⁰⁴ Washoe responds that the second task does not entail creation of a duplicative timeline, but provides for refinement of the original timeline based upon the knowledge gained during the negotiation and inventory process. We find this argument persuasive and allow the hours.¹⁰⁵

44. Maintain Schedule and Coordinate Activity, Status Reporting. Washoe budgets 216 hours of consultant time to maintain the project schedule and coordinate activity, based on the assumption that three Galena employees will work three hours per month for 24 months.¹⁰⁶ Similarly, Washoe budgets 96 hours for Galena to provide status reporting, assuming two employees working two hours per month for 24 months.¹⁰⁷ Sprint does not dispute Galena's proposed monthly level of effort, but argues that its hours should be reduced by half because reconfiguration of the Washoe system should only take 12 months.¹⁰⁸ We conclude that Washoe should recover costs at the proposed per-month rate, including costs already incurred, for the actual duration of the rebanding process.¹⁰⁹ Because we do not yet know how many months rebanding of the Washoe system will take, we need not decide between Washoe's 24-month figure and Sprint's 12-month figure, but we emphasize that rebanding of the system must be timely and expeditious.

45. Development of Radio Programming Schedule. Rebanding Washoe's system will require programming each of the county's 4239 mobile and portable unit two times, 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. Washoe seeks 476 hours of internal staff time and 219 hours of Galena's time for planning and scheduling the two steps in this process.¹¹⁰ Specifically, Washoe proposes that internal and Galena staff will prepare an initial rough programming schedule, followed by a detailed schedule for the first programming session and a subsequent detailed schedule for the second programming session. In addition, as part of the development of each of these schedules, Washoe proposes to have internal and Galena staff inspect and evaluate potential locations in order to select the locations where programming of each radio will take place.¹¹¹

¹⁰¹ See Sprint Reply PRM Appendix B, Tasks 29-30 and 76.

¹⁰² *Id.*, Tasks 8 and 79.

¹⁰³ *Id.*, Task 8.

¹⁰⁴ *Id.* at 17.

¹⁰⁵ Washoe SOP at 12-13.

¹⁰⁶ See Sprint Reply PRM, Appendix B, Tasks 87 and Washoe Reply PRM at 27.

¹⁰⁷ See Sprint Reply PRM, Appendix B, Task 87 and Washoe Reply PRM at 27.

¹⁰⁸ *Id.*

¹⁰⁹ Washoe SOP at 12.

¹¹⁰ See Sprint Reply PRM, Appendix B, Tasks 59, 98, 136 (Scheduling Locations) and Tasks 60, 99, 137 (Agency Coordination and Scheduling).

¹¹¹ See Washoe Reply PRM at 27-8.

46. Sprint argues that 142 hours of internal staff time is sufficient for Washoe to accomplish these tasks, and that Galena's participation in these tasks is not necessary at all. Sprint also argues that the development of multiple schedules for the reprogramming of radios is duplicative.¹¹²

47. We agree with Washoe that development of multiple schedules is not duplicative: because each radio will be touched twice, it is reasonable for Washoe to develop an initial rough schedule, and then a more detailed schedule for both the first and the second programming phase. We also agree with Washoe that it is appropriate for both internal staff and consultant staff to be involved in the schedule development process. Preparing a schedule for touching each of 4236 radios twice without disrupting ongoing operations will require careful planning and coordination, particularly given the large number of agencies that use the Washoe system and the dispersion of users over the systems' large service area. However, we believe that Washoe's request does not fully take into account potential efficiencies that it may realize in the schedule development process as a result of its use of the MCM software. In addition, in the development of each successive schedule, we would expect Washoe to be able to gain efficiency by capitalizing on similar elements that have been developed in prior schedules. 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, while we approve the requested hours for this category, we anticipate that Washoe's use of the MCM software and efficiencies gained through development of successive schedules to lead to actual cost reductions for this task, and we direct Washoe to look for such cost-saving opportunities.

48. Washoe Presence During Rebanding. Washoe requests 380 hours of internal staff time for its technicians to be present during the actual retuning of its user equipment.¹¹³ Sprint does not dispute the need for a technician to be present during the first retuning, but argues that this task has been already been accounted for in a separate line item.¹¹⁴ Sprint claims that the hours in the second retuning are not reimbursable because they are duplicative of the first.¹¹⁵ We find that Washoe is entitled to have its personnel present during both retunings, but direct Washoe to reconcile the hours it seeks to supervise Collins employees during subscriber reprogramming.

49. Other (DATA, Conventional Repeaters). Washoe requests eight hours for Galena to perform work related to "DATA" and "Conventional Repeaters." Here we concur with Sprint that the request is not allowable because Washoe presents no information as to what the task entails.¹¹⁶

G. Collins Group Costs

50. *Washoe Position.* In its PRM, Washoe initially sought \$48,700 for project management tasks performed by the Collins Group¹¹⁷, but subsequently reduced this request to \$29,025.¹¹⁸ The Collins Group will be working concurrently with Galena Group on certain rebanding tasks. Washoe also seeks compensation of \$17,245 for 376 hours to be spent by its technicians to accompany Collins employees as they perform tasks at five simulcast sites.¹¹⁹

¹¹² Sprint Reply PRM at 16, 18.

¹¹³ Washoe Reply PRM at 29, 31.

¹¹⁴ Sprint Reply PRM at 18.

¹¹⁵ *Id.* at 19.

¹¹⁶ *Id.* at 17-18.

¹¹⁷ Washoe PRM at 26.

¹¹⁸ RR at 11.

¹¹⁹ Joint Cost Estimate. Washoe seeks 92 hours per site for two of the sites and 64 hours per site for the three additional sites. Sprint Reply PRM at 18.

51. *Sprint Position.* Sprint offers \$19,285.20 for work performed by Collins, but offers no clear explanation as how this figure was derived.¹²⁰ Sprint offers 20 internal hours per simulcast site for Washoe personnel to accompany Collins technicians at the sites, for a total of 100 hours.¹²¹

52. *Mediator Recommendation.* The mediator recommends approving Washoe's reduced request of \$29,025 for project management work to be performed by Collins. The mediator notes that Washoe provided a schedule listing the work that Collins will perform and that Sprint introduced no evidence contradicting Washoe's showing.¹²² The mediator also found that Washoe had justified its request of \$17,245 for internal staff time to accompany Collins personnel to the five simulcast sites.¹²³

53. *Decision.* We concur with the mediator's recommendation and find that Washoe is entitled to \$29,025 in reimbursement for project management work to be performed by Collins. Washoe provided justification for its costs in its Schedule C of the work, meeting its burden of establishing that the costs associated with Collins' project management are reasonable and Sprint introduced no evidence that rebutted Washoe's assertion. Similarly, we find that Washoe has justified its request of \$17,245 for its technicians to accompany Collins' personnel. Sprint has not offered any evidence to show that its assessment of the amount of internal time required for this task is superior to Washoe's.

H. Legal Fees

54. *Washoe Position.* Washoe seeks compensation for 115 hours of legal fees.¹²⁴

55. *Sprint Position.* Sprint does not contest the requested hours, but seeks a breakdown of the legal expenses incurred in the negotiation process (approximately 40 hours).¹²⁵

56. *Mediator Recommendation.* The TA Mediator recommends approving Washoe's request so long as it provides the breakdown requested by Sprint.¹²⁶

57. *Decision.* We concur with the mediator and find that Washoe is entitled to recover its full request for legal fees once it provides the necessary documentation to the mediator regarding the 40 hours of expenses incurred during negotiations.

IV. ORDERING CLAUSES

58. 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.

¹²⁰ Sprint PRM at 23-26 and Sprint Reply PRM at 15-20.

¹²¹ Sprint Reply PRM at 18.

¹²² RR at 13.

¹²³ RR at 22.

¹²⁴ Washoe Reply PRM at 33.

¹²⁵ Sprint Reply PRM at 20.

¹²⁶ RR at 26.

59. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties consistent within seven 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