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

In the Matter of	)	
	)	
TOM D. PHILLIPS	)	WT Docket 02-55
	)	TAM-45126
and	)	
	)	
NEXTEL OF TEXAS, INC	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2019 **Released: May 23, 2019**

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

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I. INTRODUCTION

1. In this *Memorandum Opinion and Order* we address a case referred to us for *de novo* review from mediation by the 800 MHz Transition Administrator, LLC (TA) involving disputes between Tom D. Phillips (Phillips) and Nextel of Texas, Inc., a wholly owned subsidiary of Sprint Corporation (Sprint).[1] The disputes concern certain rebanding costs incurred by Phillips, his consultants and legal counsel, and Sprint's contention that Phillips does not have an operating 800 MHz system eligible for rebanding. Based on our *de novo* review of the mediation record, we find that that Phillips has established that he has an operating 800 MHz system eligible for rebanding at Sprint's expense, but that Sprint is not responsible for substantial portions of Phillips' claimed costs.

[1] For purposes of uniformity in decisions related to 800 MHz rebanding, we refer to such subsidiaries in the name of the parent, Sprint Corporation.

II. BACKGROUND

2. Phillips is licensed to operate a five-site 800 MHz Specialized Mobile Radio (SMR) system under call signs WQPX915, WQPX917, WQPX919, WQPX923, and WQPX924.[2] In 2013, Phillips and Sprint entered negotiations which culminated in a Frequency Reconfiguration Agreement (FRA)[3] with an effective date of April 18, 2014.[4] On November 13, 2017, Phillips submitted a Change Notice request[5] to Sprint stating that the replacement frequencies assigned for his use could not be implemented without reducing the coverage from some of the system's sites and thus would not provide "comparable facilities," *i.e*., facilities comparable to those existing prior to rebanding.[6] Sprint rejected Phillips' Change Notice request on December 28, 2017,[7] contending that Phillips could attain comparable facilities if he replaced a device in his system known as a combiner.[8] Sprint also claimed that Phillips' system was not operational and therefore not eligible for rebanding at Sprint's expense.[9]

3. In mediation, Phillips and Sprint failed to agree on the use of a substitute combiner, the operating status of Phillips' system, and on various supporting costs and fees claimed by Phillips.[10] On October 27, 2017, the TA-appointed mediator issued a request for information to the parties to assist the parties in resolving their disputes.[11] On May 14, 2018, after finding that the parties were at an impasse in mediation, the mediator transmitted the mediation record to the Policy and Licensing Division of the Public Safety and Homeland Security Bureau (Division) for decision.[12] The parties filed Proposed Resolution Memoranda on May 1, 2018 and Reply Proposed Resolution Memoranda on May 8, 2018.[13] In August 2018, the Division sent a Letter of Inquiry to Phillips requesting evidence that his system was operational.[14]

III. DISCUSSION

A. Standard of Review

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[2] Proposed Resolution Memorandum of Tom D. Phillips, Incumbent, May 1, 2018 (Phillips PRM) at 4.

[3] The *800 MHz Report and Order* and subsequent orders in this docket require Sprint to negotiate an FRA with each 800 MHz licensee that is subject to rebanding. *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 paras. 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*). 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. *See 800 MHz Report and Order*, 19 FCC Rcd at 15077 para. 201.

[4] FRA between Nextel of Texas and Tom D. Phillips, effective April 18, 2014.

[5] *See* letter dated Nov. 30, 2017 from Marjorie Conner, Esq., Counsel for Phillips to Heather Brown, Esq., Counsel for Sprint, transmitting Schedule C – Amended December 2017, 800 MHz Reconfiguration Cost Estimate – Certified Request, Docket 02-55.

[6] 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. "Comparable facilities are those that will provide the same level of service as the incumbent's existing facilities, with transition to the new facilities as transparent as possible to the end user. Specifically, (1) equivalent channel capacity; (2) equivalent signaling capability, baud rate and access time; (3) coextensive geographic coverage; and (4) operating costs." *800 MHz Report and Order*, 19 FCC Rcd at 15077 para. 201 (footnotes omitted).

[7] *See* Phillips PRM, Ex. 10, Letter dated Dec. 28, 2017 from Stephen Kelley, Spectrum Manager, Sprint, to Tom Phillips, Docket 02-55.

[8] *See* Phillips PRM, Ex. 10, Letter dated Dec. 28, 2017 from Stephen Kelley, Spectrum Manager, Sprint, to Tom Phillips. Docket 02-55, at 1. A combiner, as the name implies, is "a network for putting two or more frequency

(continued….)

4. The Commission's orders in this docket assign Phillips the burden of proving that the funding he has requested is reasonable, prudent, and the "minimum necessary to provide facilities comparable to those presently in use."[15] The Commission later 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.[16] Our review of costs is also informed by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the rebanding process.

B. Operational Status of Phillips' System

5. *Sprint Position*. Sprint contends that Phillips' system is non-operational, stating that it monitored the system for "nearly six months" without detecting signals.[17] Sprint further contends that as a result of the system's alleged discontinuance of operation, Phillips' license terminated automatically by rule and therefore Sprint is not obligated to pay for rebanding Phillips' system.[18]

6. *Phillip's Position*. In its response to the PSHSB LOI,[19] Phillips supplied (a) maintenance records showing that the Phillips system was periodically checked and, when necessary, repaired, in years 2013-2018;[20] (b) a listing of 40 subscribers together with invoices for service[21]; and (c) two declarations from Specialized Mobile Radio operators who share Phillips' system stating that they have not received complaints about Phillips' system being out of service.[22]

7. *Discussion.* In referring this issue to the Division, the TA mediator left open the question of which party bears the burden of proof when the operational status of a rebanding licensee's system is in dispute.[23] We conclude that it is unnecessary for us to resolve this question because regardless of which party bears the burden, we find that the record supports resolving the issue in Phillips' favor. First, we find that Phillips' response to the PSHSB LOI provided documentary evidence establishing that his system was operational. Second, we conclude that Sprint has failed to provide sufficient evidence of

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bands or channels together for transmission over a single line." Newton's Telecom Dictionary, 20th Ed. at 193. In land mobile systems, the combiner connects the output of multiple transmitters into a single output fed to the antenna by a single transmission line.

[9] *Id*. at 2. ("The frequencies listed on the licenses in question and for which alternate Replacement Frequencies are requested due to your assertion of comparability under a combiner loss analysis are not currently in operation.").

[10] The initial Schedule C—a listing of the costs of equipment and services required for the rebanding of Phillips' system— is contained in the April 18, 2014 FRA. Phillips then submitted a Schedule C captioned "Schedule C – Amended December 2017." That document is referred to herein as the December 2017 Schedule C. Sprint rejected the December 2017 Schedule C on December 28, 2017. *See* letter dated Dec. 28, 2017 from Stephen Kelley, Sprint, to Tom Phillips, Docket 02-55 at 1. Thereafter, Phillips filed an amended Schedule C captioned "Schedule C – Amended March 5, 2018." That document is referred to herein as the March 5, 2018 Schedule C. Unless specifically stated otherwise, references herein to Phillips' claimed costs are those contained in the March 5, 2018 Schedule C.

[11] *See* Phillips PRM, Ex. 23, at unnumbered page 2, para. 12, reciting that Phillips, through counsel, contacted the TA for "intervention," and para. 13, reciting that the TA Mediator issued his first request for information on Oct. 27, 2017. Sprint, however, asserts that it was the party that requested mediation. *See* Sprint Position on Open Issues and Settlement Offers – Tom Phillips, March 2018, Ex. 20 of the Phillips PRM ("Sprint requested mediation in November of 2017 . . .")

[12] Mediator's *Order to Submit Proposed Resolution Memoranda,* Apr. 23, 2018, Docket No. 02-55, TAM-45126. In the *Order to Submit Proposed Resolution Memoranda*, the mediator directed the parties to brief the following issues: (a) Which party bears the burden of proof to show that Phillips has or does not have a licensed, operating 800 MHz communications system eligible for rebanding payments from Sprint; (b) whether Phillips has a licensed, operating 800 MHz communications system eligible for rebanding payments from Sprint; (c) whether the need for the goods and services (equipment, management fees, legal fees and consultant fees) reflected in Phillips' March 5, 2018 Change Notice were foreseeable at the time the parties' FRA was executed; (d) whether the support costs reflected in Phillips' March 5, 2018 Change Notice are the minimum necessary cost for the rebanding of Phillips' system; and (continued….)

discontinuation of operation that would result in Phillips' license being automatically terminated. Section 1.953(c) of the Commission's rules defines discontinuation of service as lack of service for 365 continuous days, whereas, at best, Sprint monitored Phillips' system for six months, and then only sporadically.[24]

C. Change Notice Requests

1. Comparable Facilities

8. *Background*. Sprint agreed to pay $27,932.21 for the rebanding of Phillips' system and Phillips initially acknowledged that the cost estimate in Schedule C and the equipment in Schedule D of the FRA described all that was necessary to reconfigure Phillips' existing facilities to comparable facilities on his replacement frequencies.[25]

9. After executing the FRA, Phillips commissioned engineering studies to analyze the replacement frequencies specified for his system by the TA. The studies concluded that the replacement frequencies at three sites, when used with Phillips' existing equipment, would not provide coverage comparable to that which Philips had previously.[26] On January 13, 2015, Phillips asserted that he was not being afforded comparable facilities and requested new replacement frequencies.[27] Phillips also claimed that one of his sites was short-spaced to another facility.[28] Although initially asserting lack of comparable facilities at three sites, Phillips eventually asserted that only the Brackettville, Texas site was affected.[29]

10. Phillips contended that the Brackettville site had deficient coverage because the transmitter combiner used at the site had excessive insertion loss when used with the replacement frequencies selected by the TA.[30] Sprint offered Phillips a replacement combiner that, when used with the replacement frequencies, would provide comparable facilities at Brackettville.[31] Phillips declined Sprint's offer to replace the combiner and instead requested new replacement frequencies[32] and retained counsel to pursue the claim.[33]

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(e) whether each party has acted in utmost good faith in the negotiation and mediation process, and, if not, what is the appropriate remedy?

[13] Sprint PRM; Reply Proposed Resolution of Sprint Corp. May 8, 2018 (Sprint Reply PRM); Reply Proposed Resolution Memorandum of Tom D. Phillips, Incumbent, May 8, 2018 (Phillips Reply PRM).

[14] Letter dated Aug. 15, 2018 from John Evanoff, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, to Tom Phillips and Marjorie Conner, Esq., Docket No. 02-55 (PSHSB LOI).

[15] *See 800 MHz Report and Order*, 19 FCC Rcd at 15074 para. 198; *800 MHz Supplemental Order*, 19 FCC Rcd at 25152 para. 71; *800 MHz MO&O*, 20 FCC Rcd 16015 (2005) (*800 MHz MO&O*).

[16] *Improving Public Safety Communications in the 800 MHz Band,* Memorandum Opinion and Order, 22 FCC Rcd 9818 (2007) (*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." *Id.* at 9820 para 6. This standard considers 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 licensees' ability to operate during the transition. *Id.* at para. 8.

[17] Sprint PRM at 4.

[18] *Id.*

[19] *See* Letter dated Aug. 30, 2018 from Marjorie Conner, Esq. to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC and enclosures thereto. Docket No. 02-55. The information transmitted with the letter was supplemented on Sept. 11, 2018. *See* Letter dated Sept. 11, 2018 from Marjorie Conner, Esq. to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC and enclosures thereto, Docket No. 02-55 (jointly, Phillips LOI Reply).

11. The rebanding cost in the Schedule C from the FRA was $27,932.21.[34] The rebanding cost on the amended Schedule C Phillips submitted dated November 30, 2017 was $88,233.78 if Phillips received his requested new replacement frequencies and $303,633.78 if Phillips did not receive his requested new replacement Frequencies and instead implemented his alternative solution of using separate transmission lines and antennas, which would obviate the need for new replacement frequencies.[35] The rebanding cost contained in the Schedule C submitted as part of Phillips' Proposed Resolution Memorandum (PRM), dated March 5, 2018, is $158,389.72,[36] and reflects, *inter alia*, increased legal fees.[37] In rejecting Phillips' Amended Schedule C dated March 5, 2018, Sprint renews its argument that Phillips is not entitled to new replacement frequencies and claims that Phillips has overstated his claimed rebanding costs.[38]

12. *Phillips Position*. Phillips claims that the Commission's comparable facilities standard dictates that he receive new replacement frequencies and that he cannot be required to accept Sprint's offer of a "whiz bang," "fancy" replacement combiner that would provide him with comparable facilities at the Brackettville site.[39] In connection with his Change Notice requests containing amended Schedules C—the December 2017 Schedule C,[40] and the March 5, 2018 Schedule C[41]—Phillips asserts entitlement to compensation from Sprint for funds he has expended in furtherance of his claim that the comparable facilities standard requires that he be provided with new replacement frequencies.

13. *Sprint Position.* Sprint contends that Phillips will achieve comparable facilities at Brackettville if he replaces the Brackettville combiner with one offered by Sprint that has less insertion loss than the existing combiner.[42] In rejecting Phillips' November 2017 Schedule C, Sprint claimed, *inter alia*, that Phillips' request did not meet the minimum necessary cost standard and that the same result—

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[20] *See* Phillips LOI Reply at unnumbered pages 56-57, Declaration of Jacob Swiantkiewicz, System Maintainer (attesting to the validity of the maintenance logs provided with the submission).

[21] *See id.* at unnumbered pages 26-48. The subscribers' names and contact information are redacted in the submission, but the city and ZIP code are provided. We deem the redaction acceptable because of privacy concerns.

[22] *See id.* at unnumbered pages 54-55.

[23] *See supra* note 12. (enumerating the issues the TA Mediator directed the parties to brief).

[24] "Permanent discontinuance of service or operations for Covered Site-based Licenses is defined as 365 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier." 47 CFR 1.953(c). *See also David L. Godo, Memorandum Opinion and Order,* 15 FCC Rcd 1, 2 para. 6 (WTB 1999) *citing Cellular Design Corp. Memorandum Opinion and Order,* 14 FCC Rcd 13059, 13064 pa ra. 12 (1999); *James A. Cassell v. FCC*, 154 F. 3d 478, 480 (D.C. Cir. 1998) *citing* 47 CFR § 90.173(k); *Keller Communications, Inc. v. FCC,* 130 F.3d 1073, 1075 (D.C. Cir.1997).

[25] FRA at 2, para. 3(a)(i). The understanding of the parties at the time they executed the FRA was that Phillips would be responsible for rebanding his system without legal or engineering assistance and that APW Electronics would be the rebanding contractor. *See* Phillips PRM at 3-4, 7.

[26] Phillips PRM at 5, 14. *See also* letter from Marjorie Conner, Esq., Counsel for Phillips, to Heather Brown, Esq., Sprint, and William Jenkins, Sprint, Docket No. 02-55, Nov. 30, 2017 at 2.

[27] *Id.* at Ex. 3. *See also* Phillips Reply PRM at 1 and note 4.

[28] *Id.* at Ex 10.

[29] Initially, Phillips claimed that Replacement Frequencies used at the Carizzo Springs site were short-spaced in violation of the Commission's rules and that those for the Freer, Del Rio and Brackettville sites were too closely spaced to provide Phillips with comparable facilities. Phillips later conceded that the short spacing at Carizzo Springs existed in its pre-rebanding channels and that the Replacement Frequencies at Freer and Del Rio would provide comparable facilities. *See* Phillips PRM at 5.

providing comparable facilities at Brackettville—could be achieved by Phillips' use of the combiner offered by Sprint at no cost to Phillips

14. *Discussion.* We find that Phillips would receive comparable facilities using the combiner offered by Sprint. During the rebanding process, we often have regularly required licensees to accept, or Sprint to provide, ancillary equipment necessary to adapt systems to new rebanding frequencies. For example, we required a licensee to use hybrid combiners—the type Sprint has proposed here—instead of more expensive tunable combiners, finding that the hybrid combiners would provide comparable facilities.[43] We also required a licensee to accept Sprint-supplied frequency-determining modules for the licensee's base stations to achieve comparable facilities instead of ordering Sprint to provide the licensee with new base stations.[44] The Commission has also noted that where licensees encounter more closely-spaced replacement frequencies (e.g., in the Canada Border area) Sprint should supply the licensee with more efficient combiners to achieve comparable facilities on the replacement frequencies.[45] Requiring Phillips to accept Sprint's offer of a combiner that would provide coverage comparable to that which Phillips had previously is consistent with this precedent.

15. Phillips' has not provided a basis for his request to receive new replacement frequencies in lieu of the Sprint provided combiner that is consistent with the Commission's comparable facilities standard. Rather, Phillips' position, which is contrary to the minimum necessary cost standard and precedent established in similar rebanding cases, needlessly prolonged the negotiations with Sprint, made successful mediation impossible, and resulted in the unnecessary expenditure of tens of thousands of dollars of legal fees and other expenses. Had Phillips accepted Sprint's offer to supply a more efficient

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[30] Phillips Reply PRM at 1 and note 4. *See also* Phillips PRM, Ex. 2.

[31] *See* Sprint Reply PRM at 2.

[32] Phillips rejected the Sprint offer on June 13, 2017. Phillips PRM at 4. ("In response Mr. Kelley reiterated his offer for replacement four-port combiners which the licensee rejected on June 13, Exhibit 4A.") We note that Phillips did not provide an "Exhibit 4A" with his PRM or otherwise.

[33] Counsel first provided services on Aug. 8, 2017. Phillips PRM at Ex. 22.

[34] *See* Phillips FRA at 16, Schedule C.

[35] The $303,633.78 amount is premised on Phillips operating one of the frequencies at the Brackettville, Freer and Del Rio sites without a combiner. Under this arrangement, one transmitter at each site would be connected directly to a separate transmission line that would feed a separate antenna. Installing separate antennas on the towers would, in Phillips' estimation, require an increased payment under his tower leases for twenty years. *See* Phillips PRM, Ex. 9 at 7, Dec. 2017 Schedule C at 6. Note that Phillips later withdrew his claim for Replacement Frequencies or separate transmission lines, antennas and increased tower lease costs at the Freer and Del Rio sites. *See* Phillips Reply PRM at 7, 8. We observe that the Phillips proposal does not present a choice between the $88,233.78 rebanding cost and the $215,400 cost of using separate antennas, transmission lines and tower space to accommodate the close-spacing of the Replacement Frequencies. Rather, under Phillips' proposal, the $215,400 cost would be in addition to the $88,233.78 he sought in the superseded Dec. 2017 Schedule C.

[36] The $158,389.72 total in the March 5, 2018 Schedule C is incorrect. *See* Phillips PRM, Ex. 19, Mar. 5, 2018 Schedule C at unnumbered page 5. The correct sum of the items listed in the Mar. 5, 2018 Schedule C is $158,289.72. The correct figure is used hereinafter.

[37] *See* Phillips' PRM Ex. 19.

[38] See Phillips PRM at Ex. 10, Letter dated Dec. 28, 2017 from Stephen Kelley, Sprint, to Tom Phillips, Docket 02-55.

[39] *See, e.g.,* Phillips PRM at 9 ("the licensee rejected the fancy but foreign combiner . . .); *id*. at 10 ("Sprint's problem really was that the Licensee would not accept a fancy but foreign combiner as a solution to the comparability problem."); *id.* at 8 ("Mr. Kelley instead threw a fancy, foreign combiner over the threshold;");

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combiner, it would have obviated these excess expenses and enabled his system to be retuned successfully years ago. We find, therefore, that Phillips is not entitled to have Sprint reimburse him for the greater part of the costs claimed in either of Phillips' revised Change Notice requests because they are inconsistent with precedent and violate the minimum necessary cost standard articulated in the *800 MHz Report and Order* and the *Rebanding Cost Clarification Order*. The unreasonableness of most of Phillips' claimed costs is discussed in detail below.

2. Retention of an Engineer for Coverage Calculations

16. *Phillips Position*. Phillips claims that Sprint is responsible for paying the $11,000 fee of engineer Mehram Nazari retained by Phillips to project pre-rebanding and post-rebanding coverage.[46]

17. *Sprint Position.* Sprint argues that Phillips should not be compensated for Mr. Nazari's work because of faulty assumptions he made in his calculations. Specifically, Sprint contends Mr. Nazari should have conducted pre-rebanding coverage calculations for the Brackettville site using the combiner then installed in the Phillips system and post-rebanding coverage calculations using the combiner that Sprint offered to Phillips (DB Products Model DB8062-4).[47] Instead, Mr. Nazari, in conducting the pre-rebanding coverage projections, assumed use of a Telewave Model M101-860-T5 combiner at Brackettville[48] and premised his post-rebanding coverage projections on the use of a Telewave Model TW 760-4HRB1 combiner.[49] Mr. Nazari concluded that the Brackettville coverage using the Replacement Frequencies was less extensive than the coverage achieved using the pre-rebanding frequencies. Sprint characterizes Mr. Nazari's initial work as a "complete waste of time and effort."[50]

18. *Discussion*. We agree with Sprint to the extent that Mr. Nazari's work was not probative of whether the Sprint combiner, when used at the Brackettville site, would provide Phillips with comparable coverage.[51] His analysis of the Brackettville site should have been based on the existing combiner vs. the combiner offered by Sprint. Mr. Nazari's work, however, also included analysis of

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Phillips PRM at 14 ("Instead Sprint insisted on talking about combiners and whiz-bang ceramic facilities that manage closely spaced channels.")

[40] *See id.* at Ex. 9.

[41] See *id.* at Ex. 19.

[42] *See id.* at Ex. 10, Letter dated Dec. 28, 2017 from Stephen Kelley, Sprint, to Tom Phillips, Docket 02-55.

[43] *State of Connecticut and Sprint Nextel*, Memorandum Opinion and Order, 25 FCC Rcd. 10949 para. 2 (PSHSB 2010).

[44] *See City of Parma, Ohio and Sprint Nextel*, Memorandum Opinion and Order, 25 FCC Rcd 13485, 13487 para. 6, 13489 para. 12 (PSHSB 2010).

[45] *Improving Public Safety Communications in the 800 MHz Band*, Fourth Further Notice of Proposed Rulemaking, 27 FCC Rcd 9563, 9573 para. 39 (PSHSB 2012).

[46] Phillips' Dec. 2017 Schedule C contains an entry for "Engineering Consult Preparation of Materials in support of response to TAM RFI $8,000." Phillips has represented that Mr. Nazari is the only engineer who has worked on the project. *See* Phillips PRM at 14. Phillips' Mar. 5, 2018 Schedule C also contains an entry for "Engineering Consult Preparation of Materials in support of response to TAM RFI $11,000." We assume Phillips intended to include Mr. Nazari as the "Engineering Consult," and that the effort involved was preparation of the coverage maps. We cannot, however, account for the increase in cost from $8,000 to $11,000.

[47] Sprint Reply PRM at 21.

[48] Phillips represented that he employed a Celwave Model TDF8110A in his system. Phillips Reply PRM at Exhibit R-4 (photograph of Celwave TDF8110A provided by Phillips). Phillips later claimed, however, that the Brackettville combiner was a Telewave combiner ("For clarity's sake, the Telewave combiner is in use at the Brackettville site."). Phillips Reply PRM at 8. Regardless of the confusion over what combiner was in use at the
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whether Phillips' sites at Del Rio and Freer would provide comparable coverage on the Replacement Frequencies assigned there.[52] His conclusions served as the basis for Phillips' acceptance of the Replacement Frequencies at those sites. Accordingly, because two of the three analyses conducted by Mr. Nazari were based on correct assumptions and yielded useful information, we credit Phillips with two-thirds of the work performed by Mr. Nazari, i.e., $7,333.33.

3. Replacement of Rebanding Contractor

19. *Phillips Position.* Phillips asserts that the original contractor, APW Electronics, which provided the cost quotation used in the FRA, later refused to reband Phillip's system and provided him with a statement to that effect.[53] Phillips contends that he is thus justified in obtaining a new contractor—All Points Communications—at the higher cost of $12,917.50.[54]

20. *Sprint Position*. Sprint claims that All Points Communications could retune Phillips' infrastructure for $8,575.48 and submits that All Points Communications' quote, based on 1.5 hours for repeater and combiner retuning, is "unreasonable."[55]

21. *Decision*. We find that Sprint has neither supported its "unreasonable" claim nor controverted Phillip's claim that APW Electronics refused to perform. We also note that Phillips was diligent in finding a replacement rebanding contractor. We therefore approve the use of All Points Communications as a rebanding contractor for a fee of $17,492.50.

4. Licensee's Participation in Rebanding

22. *Phillips Position*. Phillips claims that he is entitled to payment of $6,255.82 for his participation in on-site rebanding project management including oversight of the rebanding vendor and coordination of the retuning of subscriber units.[56] He also claims $4,500 for "Support and oversight of reband process; negotiation of Amendment 1 and response to TAM RFI."[57]

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Brackettville site, neither of the combiners used in the studies was the DB Products Model DB8062-4 offered by Sprint.

[49] It is unclear where Mr. Nazari derived his assumption that the Telewave TW760-4HRB1 combiner used in his "replacement configuration" calculations had 7 dB insertion loss. *See* Assumptions and Methodology Used to Develop Coverage Prediction Plots, unnumbered page 2, Phillips PRM Exhibit 9. If he relied on data from the combiner manufacturer, that is not apparent from his statement. If the information was obtained from Phillips, the record does not establish how he may have measured the combiner loss.

[50] Sprint Reply PRM at 22. Sprint also objected that Mr. Nazari based his calculations on the use of a "Motorola MTR5000, a repeater that Motorola has never made." However, this was harmless error because, with the same repeater assumed for both the pre-rebanding and post-rebanding calculations, the model number of the repeater would be immaterial.

[51] Mr. Nazari's engineering study for Brackettville concluded that a Telewave Model TW 760-4HRB1 combiner had an insertion loss that precluded Phillips from obtaining the ERP necessary to give him comparable coverage at Brackettville. However, he did not determine whether the Sprint-proposed DB Products Model DB8062-4, when used at the Brackettville site, would provide Phillips with comparable coverage.

[52] Phillips PRM at Exhibit 9.

[53] *See id*. at 10-13.

[54] *See id*., Ex. 19, Mar. 5, 2018 Schedule C at unnumbered page 3. (The $12,917.50 amount is the sum of the services proposed for All Points Communications in the March 5, 2018 Schedule C less $4,300.00 for the Programmable Read Only Memory (PROM) units.).

[55] Sprint Reply PRM at 13-14. Sprint also challenges the rate-per-mile charged by All Points Communication for transportation and urges that we adopt the Internal Revenue Service rate for passenger vehicles. Sprint has not provided the cost difference and the record is silent on whether All Points Communications would use a passenger
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23. *Sprint Position*. Sprint contends that Phillips is entitled to no more than $256.94 as compensation for travel to Brackettville to photograph the equipment and provide the pictures to Sprint.[58] Sprint argues that Phillips' $6255.82 claim for project management should be disallowed because Phillips has not provided detail of his activities and because Phillips' time was allegedly spent "towards deflecting questions, creating new issues, and avoiding answering questions that would have resolved or narrowed issues."[59]

24. *Discussion*. We find that Phillips, as the owner and operator of his system, reasonably should be compensated for time spent in oversight of All Points Communications. We note that Sprint agreed to on-site project management by Phillips in the original FRA for $6,716.76[60]—a higher amount than the $6,255.82 Phillips is claiming in his March 5, 2018 Schedule C. Assuming, *arguendo*, that Phillips also spent time "deflecting questions, creating new issues and avoiding answering questions," as Sprint claims, we note that Phillips has not claimed compensation for doing so. His claimed compensation is for on-site supervision of the replacement rebanding vendor and he adequately, though sparingly, has detailed his activities associated with such supervision.[61] We therefore allow Phillips' $6,255.82 claim for on-site project management.

25. We disapprove, however, Phillips' claim of $4,500 for "Support and oversight of reband process; negotiation of Amendment 1 and response to TAM RFI."[62] The "oversight of reband process" task duplicates the "On-site project management to include overseeing vendor and coordinating reprogramming of subscriber units" task[63] for which we allowed $6,255.82. Moreover, because the costs of other tasks for which he seeks $4,500—negotiation of Amendment 1 and response to TAM RFI—are not broken out, we cannot determine the amounts allocable to each task. As we said in *Port Authority of New York and New Jersey and Nextel Communications, Inc*:[64]

> The Commission's Minimum Necessary Cost Standard demands that the licensee provide sufficient documentation to carry its evidentiary burden. That, at minimum, requires a description of specific services performed and the costs incurred. Otherwise, it is not possible to determine whether the services were necessary and performed at minimum cost, *e.g.*, whether a service was performed in support of a disallowed task.

Accordingly, we limit Phillips' reimbursement for on-site project management to $6,255.82.

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vehicle or truck when rebanding Phillips system. In any event, the amount is *de minimis* when considered against the $17,492.50 infrastructure rebanding cost.

[56] *See id.,* Ex. 19, March 5, 2018 Schedule C, at unnumbered page 9.

[57] Mar. 5, 2018 Schedule C. TAM is an abbreviation of Transition Administrator Mediator; RFI is an abbreviation of the Request for Information made by the Transition Administrator Mediator.

[58] Phillips PRM at 20.

[59] Sprint Reply PRM at 20.

[60] April 18, 2014 FRA at 14-15 (Schedule C).

[61] Phillips PRM Ex. 19, March 8, 2018 Schedule C.

[62] *Id.* at unnumbered page 4.

[63] *Id*.

[64] *Port Authority of New York and New Jersey and Nextel Communications, Inc.,* 27 FCC Rcd 1888, 1906, para. 69 (PSHSB 2012) (*New Jersey*).

5. All Points Communications Activities

26. *Phillips Position*. Phillips seeks $1,875 for 15 hours by All Points Communications to perform "frequency analysis."[65] He also asks for $2,700 for 30 hours of All Points Communications' time in "[i]nfrastructure and subscriber inventory"[66] and $1,125 for All Points Communications to conduct infrastructure planning, preparation and review at a rate of $225/hour for 5 hours work.[67] Phillips also claims $4,300 for four PROM modules for use in control channel programming.[68]

27. *Sprint Position*. Sprint acknowledges the need for the PROM equipment[69] but claims that the infrastructure and subscriber inventory tasks were done at an earlier stage of rebanding and are duplicative.[70]

28. *Discussion*. Although scantily described and with a rate significantly above the rate charged by All Points Communications for other services, we find that the planning, preparation and review task is reasonably related to the infrastructure rebanding work to be performed by All Points Communications. We also find that the record does not support Sprint's contention that the described work was "done at an earlier stage" and is duplicative. We therefore allow $1,125 for All Points Communications to conduct infrastructure planning, preparation and review[71] and allow the $4,300 cost for the PROM units which are a necessary component in rebanding Phillips' system. However, the frequencies supplied by the TA were analyzed by Phillips' engineer and because of that analysis, Phillips concluded that they were suitable at all sites other than Brackettville where Phillips claims that the TA should furnish new replacement frequencies. We resolve that claim herein by concluding that Phillips is not entitled to new replacement frequencies at Brackettville and that his frequencies assigned by the TA are suitable. Accordingly, we do not perceive, and Phillips does not explain, why additional analysis of his frequencies by All Points Communications is necessary. We therefore disallow the $1,875 Phillips claims for frequency analysis. We agree with Sprint that the $2,700 that Phillips claims for infrastructure and subscriber inventory is unnecessary because that work already was performed by the prior contractor, APW Electronics, in its preparation of the estimate it provided to Phillips for rebanding of his system.

6. Consultant William A. Morgan

29. *Phillips Position.* Phillips seeks $11,250 for the services of consultant William A. Morgan (Morgan) at $225/hour for 40 hours.[72] Phillips describes Morgan's role as "[s]upport counsel in negotiations for Amendment 1 and response to TAM RFI."[73] Phillips also claims 5 hours of Morgan's time at $225/hr. for "project management" of reconciliation and closing.[74]

30. *Sprint Position*. Sprint claims that Morgan owns or formerly owned Phillips' proposed contractor, All Points Communications, and suggests that Morgan is seeking a double recovery in his

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[65] Phillips PRM, Ex. 19, Mar. 5, 2018 Schedule C, unnumbered page 3.

[66] *Id.*, at unnumbered page 4.

[67] *Id.*

[68] *Id.*, Ex.19, Mar. 5, 2018 Schedule C.

[69] Sprint Reply PRM at 14.

[70] *Id.*

[71] The $ 1,125 for infrastructure planning preparation and review is incorporated in the $12,917.50 we have allowed for All Points Communications services. *See infra* Table 1.

[72] Phillips PRM Ex. 19, Mar. 5, 2018 Schedule C.

[73] *Id.*

[74] Phillips PRM, Ex. 19, Mar. 5, 2018 Schedule C at unnumbered page 5.

proposed role as a consultant to Phillips.[75] Sprint faults Phillips for not providing details of the services Morgan would supply for $11,250.[76]

31. *Discussion.* We find Sprint's assertion about Morgan's ownership interest in All Points Communications to be irrelevant to our decision concerning the allowability of Phillips' claim for Morgan's services. We agree with Sprint, however, about the lack of detail concerning Morgan's services. Phillips supplied a list of dates and the amount of time he claims Morgan worked, but with no reference to the services provided.[77] Phillips asks that we extrapolate the details because "the time billed surged after each inquiry from Sprint or the TA Mediator."[78] It is Phillips' responsibility, not ours, to provide details on the services provided and the particulars of time billed. Moreover, any time Morgan may have spent advising Phillips on his pursuit of new replacement frequencies cannot be credited since Morgan's services would not have been necessary had Phillips accepted Sprint's offer of a combiner that would provide comparable facilities at the Brackettville site. Because Phillips does not provide sufficient detail to determine whether Morgan's services are necessary and provided at minimum reasonable cost, we therefore disallow Phillips' $11,250 claim for Morgan's services. We do, however, allow the 5 hours of Morgan's future services in overseeing the FRA closing process, contingent on his furnishing detailed billing records.[79]

7. Licensing Consultant

32. Phillips *Position*. Phillips claims $10,000 for Blue Wing, Inc. to perform the licensing work necessary for Phillips' rebanding.[80]

33. *Sprint Position*. Sprint asserts the licensing work could be performed by the Enterprise Wireless Alliance (EWA) at a cost of $3,450.[81]

34. *Discussion.* Phillips and Sprint agreed to have the licensing work performed by EWA at a cost of $3,450.[82] We therefore approve that amount as consistent with the Commission's minimum necessary cost standard.

8. Legal Services

35. *Phillips Position*. Phillips claims $69,234.00 in legal fees,"[83] incurred after he retained counsel on August 8, 2017, following his rejection of Sprint's offer to supply a new combiner that would have provided comparable facilities at the Brackettville site.

36. Phillips supplied a list of dates and times he claims constitute adequate billing detail for his counsel's services.[84] He submits that the activities counsel was engaged in on those dates and times can be extrapolated on the theory that the "time billed surged after each inquiry from Sprint or the TA

[75] Sprint Reply PRM at 21.

[76] *Id.*

[77] *See* Phillips PRM at Ex. 22.

[78] *Id.* at 14.

[79] *See infra* paragraph 41.

[80] *Id.* at Exhibit 22, Mar. 5, 2018 Schedule C at unnumbered page 5.

[81] *See* Sprint PRM at 17.

[82] *See id.*

[83] Phillips PRM Ex 19, Mar. 5, 2018 Schedule C at unnumbered page 5 (fee charged for "Negotiate Amendment 1 Including Response to Various TAM RFI, 104.9 hours at $660.").

[84] *Id.* at 14.

mediator."[85] Phillips also argues that, even if the Commission rejects his position taken with respect to new replacement frequencies at Brackettville, the *Broward County* case establishes that a party is entitled to its legal fees if it makes an "arguable case" for a Change Notice.[86]

37. *Sprint Position*. Sprint asserts that "[w]ithout any detail, it is not possible for Sprint to weed through what was done [by counsel] and determine whether any of it was in support of the [sic] any legitimate comparability analysis."[87] It also accuses Phillips' counsel of advocating frivolous positions such as the alleged short-spacing at one of Phillips' sites.[88]

38. *Discussion—Phillips' Claim for Liquidated Legal Services.* We disagree with Phillips' contention that he has furnished adequate billing data for his counsel and decline to attempt to extrapolate billing details from Phillips' listing of dates and times, *inter alia*, because it does not account for what counsel may have been doing between "surges." Had adequate billing detail been supplied, we would have been able to determine the time spent by counsel in, for example, defending against Sprint's claim that Phillips did not have an operating system— an allowable expense—and the time spent by counsel advancing Phillips' claim that he was entitled to new replacement frequencies—an expense we disapprove because it does not satisfy the Commission's minimum necessary cost standard.[89] When faced with a record that does not allow us to determine allowable vs. unallowable expenses we have no alternative but to disallow the entire claim.[90]

39. We also disallow the claimed legal fees because the pleadings submitted by Phillips' counsel are frivolous. They contain no substantive technical or other arguments that would sustain a conclusion that the combiner offered by Sprint would not provide him with comparable facilities at the Brackettville site. Rather than advance a substantive technical argument that the combiner offered by Sprint would not provide comparable facilities at Brackettville, Phillips instead frivolously characterized the proposed combiner as "fancy[91] and "whiz-bang."[92] Those meaningless characterizations—which were the only reason advanced by Phillips in demanding new Replacement Frequencies—are not probative of whether the Sprint combiner would provide comparable facilities. The pleadings and such advice as counsel may have offered to Phillips in his attempt to justify new replacement frequencies were neither a minimum nor a necessary cost associated with the rebanding of Phillips' system and Sprint should not be required to compensate Phillips for those services.

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[85] *Id*.

[86] Phillips PRM at 14-15, *citing Broward County Florida and Sprint Nextel Corp*, Memorandum Opinion and Order, 26 FCC Rcd 7635, 7651 para. 62 (PSHSB 2011) (Legal fees allowable where counsel argued, unsuccessfully, that licensee was entitled to future services by a consultant in lieu of licensee's staff services.).

[87] Sprint Reply PRM at 23.

[88] *Id.*

[89] The cost would not have been incurred had Phillips accepted Sprint's offer of a combiner that would have provided comparable facilities at Brackettville.

[90] *New Jersey*, 27 FCC Rcd at 1907 para. 69 ("the Commission's Minimum Necessary Cost Standard demands that the licensee provide sufficient documentation to carry its evidentiary burden. That, at minimum, requires a description of specific services performed and the costs incurred. Otherwise, it is not possible to determine whether the services were necessary and performed at minimum cost, *e.g.*, whether a service was performed in support of a disallowed task . . . ").

[91] *See, e.g.,* Philips Reply PRM at 7, 8.

[92] Phillips PRM at 14.

40. Phillips' contention that the *Broward County* decision[93] supports requiring Sprint to pay for the legal services he commissioned and supports his claim that he was entitled to new replacement frequencies at the Brackettville site is unavailing. The *Broward County* case held that "even if a licensee does not prevail on the merits, legal fees may be allowed if the licensee makes an "arguable case" for the Change Notice."[94] Here, however, we have found that the legal services provided did not make even an arguable case that Phillips was entitled to new replacement frequencies.

41. *Discussion—Phillips' Claim for Future Legal and Consulting Services*. Phillips also claims $5,940 in legal fees for 9 hours of counsel's future services for "reconciliation and closing."[95] Reconciliation and closing of an FRA is essentially an accounting exercise and it is unclear why it would occupy over a day of counsel's time to review the involved documents.[96] Phillips also claims $1,125 for Morgan's assistance in closing. Because reconciliation and closing are future events, we approve the amounts sought, conditioned, of course, on counsel's and Morgan's submission of detailed billing records supporting the time claimed and evidence that the services provided met the Commission's reasonable necessary cost standard.

9. Phillips' Channel Exchange Proposal

42. *Phillips Position*. Phillips advanced what he characterized as a "creative solution" whereby he proposed to exchange channels with a "similarly situated" licensee in order to obtain new replacement channels that he contends could be accommodated by his existing combiner at Brackettville.[97]

43. *Sprint's Position*. Sprint "appreciates" that Phillips "seems to have ultimately found a way to reband without seeking equipment from Sprint or asking Sprint to pay for drive tests that are not permitted . . ."[98] It submits, however, that Phillips' proposal does not justify Phillips requesting payment for frivolous arguments and "non-issues"[99] raised by his vendors thereby "increasing the costs of any settlement beyond anything that Sprint would have expected to pay if the vendors supporting the licensees were knowledgeable and efficient."[100]

44. *Discussion*. The record is silent about the identity of the similarly situated licensee, the channels that Phillips claims are available, or the costs, if any, Phillips would incur in the channel exchange. Accordingly, we are unable to evaluate Phillips' proposed solution or understand how, even if it were implemented, it could justify a claim for $158,289.72 in rebanding costs reflected in the March 5,

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[93] *Broward County, Florida and Sprint Nextel Corp,* Memorandum Opinion and Order, 26 FCC Rcd 7635 (PSHSB 2011).

[94] *Id.*, 26 FCC Rcd at 7651 para. 61 *citing City of Virginia Beach, Virginia and Sprint Nextel*, Memorandum Opinion and Order, 25 FCC Rcd 10898, 10913 para. 51 (PSHSB 2010) (noting that "Commission may disallow legal fees incurred in pursuing patently frivolous change notices."); *City of Hartford, Connecticut and Sprint Nextel*, Memorandum Opinion and Order, 25 FCC Rcd 12329, 12335 para. 23 (PSHSB 2010) (*Hartford*).

[95] Phillips PRM, Ex. 19, Mar. 5, 2018 Schedule C at unnumbered page 5.

[96] *Hartford,* 25 FCC Rcd at 12333, para. 12 ("[t]here comes a point during the reconfiguration process at which most required tasks are technical and ministerial and the assistance of counsel is necessary only in the most extraordinary of circumstances.").

[97] Phillips PRM at 6 *citing* Ex. 19, Mar. 5, 2018 Schedule C.

[98] Sprint Reply PRM at 11.

[99] *Id.*

[100] *Id.*

2018 Schedule C cited in the Phillips PRM and included as Exhibit 19 thereto.[101] We thus conclude that Phillips' proposed channel exchange does not meet the minimum necessary cost standard.[102]

D. Good Faith.

45. *Phillips Position*. Phillips characterizes Sprint's participation in Phillips' rebanding as "vindictive" but stops short of claiming that Sprint failed to act in good faith.

46. *Sprint Position*. Sprint does not directly accuse Phillips of failing to act in good faith in its rebanding negotiations but does allege that Phillips engaged in "material misrepresentation" when he claimed he "was and is" operating his system. As a remedy for this alleged misrepresentation, Sprint asserts that Phillips should pay for his own rebanding.[103]

47. *Discussion*. We find no basis to conclude, as Sprint contends, that Phillips engaged in misrepresentation, and hence lacked good faith, when he claimed to have an operating system. Although we have found that Phillips unreasonably rejected the combiner offered by Sprint and then incurred significant expenses in support of an unmeritorious claim, the record is insufficient to show that this conduct rose to the level of lack of good faith and we therefore decline such a finding.

E. Other Decisional Grounds

48. As a separate and independent reason for rejecting unauthorized expenses incurred by Phillips, we have disallowed Phillips' claimed costs that were not described in sufficient detail to permit us to determine which portion of the fees was charged for Phillips rebutting Sprint's claim that his system was not operational and which portion was associated with Phillips' baseless contention that he was entitled to new replacement frequencies at Brackettville.[104]

49. As a further separate and independent reason for not approving Phillips' expenditures after he declined Sprint's offer to provide a replacement combiner, we find these expenditures are not

[101] Incorrectly stated in the Phillips PRM, Ex. 19, Mar. 5, 2018 Schedule C as $158,389.72.

[102] On February 26, 2018 Sprint tendered an offer in which it agreed to provide two combiners (one as a spare) within two weeks of the parties reaching a settlement agreement, informally, without amendment of the FRA, and with Phillips completing rebanding 30 days thereafter. Phillips PRM, Ex. 17, email to Marjorie Conner, Esq. from Laura Phillips, Esq., counsel to Sprint. The Sprint offer would deny Phillips payments for lawyers and consultants used to prepare the March 5, 2018 Change Notice and obligate Phillips to not seek additional payments from Sprint. On February 27, 2018 Phillips tendered a counteroffer contemplating testing of the Sprint-proposed combiner conditioned, *inter alia,* on Sprint paying all costs requested in the March 5, 2018 Schedule C and the cost of drive testing. Phillips PRM, Ex. 18 (email from Marjorie Conner, Esq. to Laura Phillips, Esq.) Sprint declined the Phillips offer; Phillips declined the Sprint counteroffer. On October 18, 2017, Phillips counsel presented four options to Sprint to resolve the combiner issue. Phillips' offer was conditioned on his receiving appropriately-spaced channels or, failing that, providing additional lines, antennas and tower rent for 20 years, a solution that would obviate the combiner problem at a cost of $303,633.78. Alternatively, as a like-kind exchange, Mr. Phillips would accept Sprint channels in a neighboring market, *e.g.*, Houston, Dallas, San Antonio, or Austin. Phillips also advanced a buyout proposition whereby he would sell three of his licenses to Sprint and complete rebanding on his remaining stations. Phillips PRM, Ex. 7 (email from Marjorie Conner, Esq. to Steve Kelley, Sprint, Oct. 18, 2017). We note that the second option—for $303,633.78—is nearly 11 times higher than the $27,932.21 agreed-upon rebanding cost in the FRA and does not meet the minimum necessary cost standard because the same result could be obtained by using a suitable replacement combiner at Brackettville. Phillips' offer to exchange channels with Sprint or to effect a buy-out are matters between Phillips and Sprint and not relevant to our decision.

[103] Sprint PRM at 13.

[104] When fees are not itemized in this manner, the trier of fact has no evidentiary basis to separate them and thus must disallow them in total. *See New Jersey,* 27 FCC Rcd at 1906, para 69. *See also, Broward County, Florida and Sprint Nextel Corp*., 28 FCC Rcd 7635, 7650 para. 56 (PSHSB 2011) *citing Hinds County, Mississippi and Sprint Nextel Corp.*, Memorandum Opinion and Order, 25 FCC Rcd 12336, 12339 para. 9 (PSHSB 2010).

reimbursable because Phillips incurred them without first submitting a Change Notice request and having it approved. In incurring those expenses, Phillips was on notice that he was at risk of the Change Notice not being approved.[105] Moreover, Phillips breached his obligation in the FRA requiring him to advise Sprint in writing before expenses more than those approved in the FRA could be incurred.[106]

50. We previously have emphasized the importance of abiding by the terms of an FRA and the Commission's Change Notice procedures, noting that adherence to such terms and procedures "is essential to the orderly and cost-effective reconfiguration of the 800 MHz band."[107] The Commission's 2007 *Supplemental Guidance PN* notes that "[t]he Change Notice process is designed to address unanticipated changes in cost, scope, or schedule that occur during implementation or in the case of an emergency."[108] Although we find that an "unanticipated change" took place with respect to the Brackettville rebanding when Phillips discovered that the existing combiner there could not accommodate the replacement frequencies, Phillips' disproportionate response and his incurring unauthorized costs, failed to comply with both the Commission's guidance concerning Change Notices and the minimum necessary cost standard.

F. Allowable Costs Summary

51. We summarize the amounts claimed by Phillips, the offers by Sprint, and the amounts we have found allowable for each of the categories *supra*, in the following table:

[105] *See New Jersey,* 27 FCC Rcd at 1903 para. 59 ("costs incurred by a licensee in excess of those authorized in a FRA are at the licensee's risk until a Change Notice is submitted and approved.").

[106] FRA §§ 3(b)(iii), 8 ("If either party believes that a change to the work contemplated by the Cost Estimate is required . . . such party shall notify the other party in writing . . ."). *See also, Liberty Communications, Inc. and Sprint Nextel Corp*., 25 FCC Rcd 9197, 9213 para. 55 ("licensees may not incur expenses and then present an invoice to Sprint as a *fait accompli*.").

[107] *County of Flagler, Florida and Sprint Nextel Corp.*, Memorandum Opinion and Order, 24 FCC Rcd 8235, 8237 paras. 8-9 (PSHSB 2009*)*.

[108] *FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding*, 22 FCC Rcd 17227, 17229 (2007) (2007 *Supplemental Guidance PN*).

TABLE 1

Task	Mar. 5, 2018 Schedule C	Sprint Offer	Allowable
Subscriber reconfiguration (Paid)[109]	$16,485.46	$0.00	$0.00
APC cost for infrastructure retuning[110]	$12,917.50	$8,575.48	$12,917.50
APC cost for frequency analysis	$1,875.00	$0.00	$0.00
APC cost for infrastructure and Subscriber Inventory	$2,700.00	$0.00	$0.00
PROMs - 4 @ $1075	$4,300.00	$4,300.00	$4,300.00
Phillips - oversight of rebanding	$6,255.82	$256.94	$6,255.82
Morgan - support counsel in negotiations and RFI response	$11,250.00	$0.00	$0.00
Phillips - negotiation of amendment 1 and response to RFI	$4,500.00	$0.00	$0.00
Phillips – mileage	$256.94	$256.94	$256.94
Philips – closing	$450.00	$450.00	$450.00
Morgan - closing[111]	$1,125.00	$0.00	$1,125.00
Licensing consultant	$10,000.00	$3,450.00	$3,450.00
Legal - negotiate amendment 1 and respond to RFI	$69,234.00	$0.00	$0.00
Legal - reconciliation and closing[112]	$5,940.00	$0.00	$5,940.00
Engineer - coverage calculations	$11,000.00	$0.00	$7,333.33
TOTAL (Less $16,485.46 Subscriber Reconfiguration)	**$141,804.26**	**$17,289.36**	**$42,028.59**

IV. CONCLUSION

52. For the reasons discussed herein we find that Phillips was operating an 800 MHz system eligible for rebanding at Sprint's expense, but that Sprint is not responsible for substantial portions of Phillips' claimed costs. Thus, we have disapproved those costs and they need not be paid by Sprint.

V. ORDERING CLAUSES

53. Accordingly, IT IS HEREBY ORDERED that the issues referred to the Policy and Licensing Division of the Public Safety and Homeland Security Bureau by the 800 MHz Transition Administrator mediator are decided as described herein.

54. IT IS FURTHER ORDERED that Sprint Corporation's cost responsibility for the

[109] Because Sprint has paid for subscriber reconfiguration, *see* Phillips PRM, Ex. 19, Mar. 5, 2018 Schedule C, this amount is not included in the total of funds Phillips is requesting from Sprint.

[110] All Points Communications is abbreviated APC in the table.

[111] Subject to the submission of detailed billing records.

[112] *Id.*

reconfiguration of the 800 MHz system licensed to Tom D. Phillips is limited to amounts specified in Table 1 herein.

55. IT IS FURTHER ORDERED that representatives of Tom D. Phillips and Sprint Corporation, with the authority to bind their principals, SHALL MEET within 10 days of the effective date of this *Memorandum Opinion and Order* to conclude an amendment to the parties' Frequency Reconfiguration Agreement as necessary to implement the decisions herein. Said meetings shall take place for a minimum of two hours per day each weekday, excluding federal holidays, until such amendment is executed.

56. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau