

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

In the Matter of)
)
Washoe County, Nevada) WT Docket 02-55
and Sprint Nextel)
)
and)
)
City of Sparks, Nevada)
and Sprint Nextel)

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 2008

Released: July 24, 2008

By the Commission:

I. INTRODUCTION

1. In this order, we address an application for review filed by Sprint Nextel Corporation (Sprint)¹ of a July 3, 2007 *Memorandum Opinion and Order (Washoe Order)* issued by the Public Safety and Homeland Security Bureau (PSHSB or Bureau) in the above-captioned matter.² For the reasons set forth below, we deny the application for review and affirm the Bureau’s decision. We also deny Washoe’s request to dismiss the application for review and Washoe’s request to recover expenses it has incurred opposing the application.³

II. BACKGROUND

2. The *800 MHz Report and Order* and subsequent orders in this docket require Sprint to negotiate a Frequency Reconfiguration Agreement (FRA) with each 800 MHz licensee that is subject to rebanding.⁴ 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. If a licensee and Sprint are unable to negotiate a FRA, they enter mediation under the auspices of a TA-appointed mediator. If the parties do not reach agreement in mediation, the mediator forwards the mediation record and a recommended resolution to the Commission’s Public Safety and

¹ Application for Review, filed August 2, 2007 by Sprint Nextel Corporation (Sprint AFR). On August 17, 2007 Washoe filed an Opposition to Application for Review (Washoe Opposition), and on August 27, 2007 Sprint filed a Reply of Nextel Communications, Inc. (Sprint Reply).

² Washoe County, Nevada and Sprint Nextel, *Memorandum Opinion and Order*, 22 FCC Rcd 11860 (PSHSB 2007) (*Washoe Order*).

³ Washoe Opposition at 2, 8.

⁴ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) (*800 MHz Report and Order*); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*); and Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) (*800 MHz MO&O*).

Homeland Security Bureau (PSHSB) for *de novo* review.⁵ The *Washoe Order* involves a case that was referred to the Bureau for *de novo* review under this process.

3. The *Washoe Order* addressed disputed issues between Washoe County, Nevada (Washoe), the City of Sparks, Nevada (Sparks) (collectively, Washoe),⁶ and Sprint. A central issue in dispute was Washoe's request for \$54,800 for the purchase of third-party proprietary software developed by MCM Technology LLC (MCM) for inventory management and tracking of Washoe's radio equipment involved in the reconfiguration process.⁷ Sprint contended that the cost of the MCM software was excessive, and that lower-cost alternatives were available.⁸ In addition, Sprint challenged other costs claimed by Washoe for rebanding-related work performed by Washoe and its consultants.⁹

4. In the *Washoe Order*, the Bureau found that Washoe was entitled to compensation from Sprint for the MCM software.¹⁰ The Bureau also approved Washoe's claims for user training and site inspection, and approved the majority of Washoe's claims for estimated internal staff and consulting costs.¹¹ However, the Bureau disallowed certain claims as duplicative and directed Washoe to look for cost savings in its actual expenditures with respect to certain other items.¹² In addition, the Bureau found that Washoe had not sufficiently documented its request for funding to perform drive testing, but granted additional time for Washoe to provide such documentation.¹³

5. On August 2, 2007, Sprint filed the instant application for review of the *Washoe Order*. In its application for review, Sprint contends that in approving disputed costs claimed by Washoe, the Bureau wrongly shifted the burden of proof on rebanding cost issues from Washoe to Sprint.¹⁴ Sprint specifically challenges the Bureau's approval of the MCM software as a recoverable cost, arguing that the Bureau arbitrarily rejected the TA mediator's contrary recommendation and ignored its own precedent in the *City of Boston* case, in which the Bureau had disapproved another licensee's request to use MCM software.¹⁵ Sprint claims that the Bureau similarly erred in approving the majority of Washoe's other claims for compensation, ignoring record evidence that such costs were duplicative and excessive.¹⁶

⁵ The *800 MHz R&O* originally provided for referral and *de novo* review of unresolved mediation issues by the Public Safety and Critical Infrastructure Division of the Commission's Wireless Telecommunications Bureau (PSCID). *800 MHz R&O*, 19 FCC Rcd at 15075 ¶ 201. However, the Commission has since delegated this authority to the new Public Safety and Homeland Security Bureau. See Establishment of Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁶ 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.

⁷ The software at issue is MCM's "360 Project Management Platform" (hereinafter, "MCM software").

⁸ *Washoe Order*, 22 FCC Rcd 11864 at ¶ 20.

⁹ *Id.* 22 FCC Rcd 11867-72 at ¶¶ 30-53.

¹⁰ *Id.* 22 FCC Rcd 11865-66 at ¶¶ 22-24.

¹¹ *Id.* 22 FCC Rcd 11867-72 at ¶¶ 30-53.

¹² *Id.* 22 FCC Rcd 11867-71 at ¶¶ 35-36, 42, 47-49.

¹³ *Id.* 22 FCC Rcd 11866-67 at ¶ 29.

¹⁴ Sprint AFR at 3.

¹⁵ *Id.* at 5, citing City of Boston, Massachusetts and Sprint Nextel, *Memorandum Opinion and Order*, 21 FCC Rcd 14661 (PSHSB 2006) (*City of Boston*).

¹⁶ *Id.* at 6.

Finally, Sprint objects to the Bureau allowing Washoe to provide additional documentation of its drive testing request, contending that Washoe's submission of this claim was untimely.¹⁷

III. DISCUSSION

A. Procedural Issues

6. As an initial matter, we address Washoe's request that we dismiss the application for review on the grounds that it is duplicative of a petition for *de novo* review filed in this same matter by Sprint on July 13, 2007.¹⁸ Sprint filed the petition pursuant to procedures established in the *800 MHz Report and Order* that allow any party to appeal a Bureau rebanding decision by filing a petition for *de novo* review within ten days, whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge (ALJ).¹⁹ Washoe contends that by filing both a petition for an ALJ hearing and an application for review of the *Washoe Order*, Sprint is impermissibly seeking "two bites of the regulatory apple," leading to duplicative litigation and placing a greater burden on both the Commission's and Washoe's resources.²⁰ Sprint responds that nothing in the Commission's rules precludes it from both requesting an ALJ hearing and filing an application for review of the same order.²¹

7. We deny Washoe's request to dismiss Sprint's application for review. In allowing parties to appeal a Bureau rebanding decision by requesting a *de novo* hearing before an ALJ, the Commission did not intend to supplant the application for review procedures set forth in Part 1 of the Commission's rules.²² The Commission never suggested that this would be the case, and, as Sprint observes, the rules were not written to preclude a party from filing either type of request for review. Even the simultaneous filing of both forms of request—as Sprint had done here—can be handled in a manner that avoids inconsistent results and provides the parties with the review rights that each procedure promises. In the case before us, we resolve the questions of law raised in Sprint's application for review but defer to the Bureau's factual findings unless we find such findings were clearly erroneous. This does not conflict procedurally with Sprint's right to seek *de novo* review of factual issues through development of a new evidentiary record before the ALJ. We note that resolving the legal issues in this application for review will expedite the evidentiary *de novo* review process by limiting the ALJ hearing to questions of fact and eliminating the possibility that any decisional legal conclusions that the judge would otherwise have rendered would conflict with and necessitate reversal by the Commission.²³

¹⁷ *Id.* at 9.

¹⁸ Washoe Opposition at 2. *See* Petition for De Novo Review, filed July 13, 2007.

¹⁹ 47 C.F.R. § 90.677(d)(2). *See 800 MHz R&O*, 19 FCC Rcd at 15075 ¶ 201.

²⁰ *Id.*

²¹ Sprint Reply at 2-3.

²² *See* 47 C.F.R. § 1.115.

²³ We note that in cases where a party has not filed an application for review but has raised significant questions of law in a Section 90.677(d)(2) petition for *de novo* review, the Commission may, for reasons similar to those set out above, treat the petition as an application for review for purposes of resolving those questions of law (and, accordingly, provide the requisite opportunities for opposition and reply). Following disposition of the application for review, any remaining questions of fact may then be designated for a Section 90.677(d)(2) evidentiary hearing before the ALJ. In contrast, where a party has filed only an application for review (and not a request for a Section 90.677(d)(2) petition for *de novo* review), our review of the underlying decision will cover both factual and legal challenges, and our usual standard of review for applications for review will apply.

8. In light of the above, we conclude that the Public Safety and Homeland Security Bureau may, consistent with this order, designate for an evidentiary hearing before an ALJ the following questions of fact for which Sprint has requested *de novo* review: 1) the reasonableness of Washoe's request for \$54,800 to purchase MCM management and tracking software; 2) the reasonableness of Washoe's request for reimbursement of certain project management tasks; and 3) the reasonableness of Washoe's request for \$38,000 for drive testing. Any such designation should further direct the ALJ to abide by the conclusions of law contained in this order.

9. By clarifying that Sprint has the right to pursue multiple forms of appeal, we are not making any determination about whether Sprint's pursuit of this appeal would be consistent with its duty of good faith and its obligation to support timely completion of the rebanding process. We would note, however, that designating this matter for hearing has the potential to significantly delay the rebanding of this system and impose substantial non-recoverable litigation costs on Washoe, and that we may consider these factors in determining whether Sprint has acted in a manner consistent with its duties and obligations set forth in this proceeding.²⁴

B. Burden of Proof

10. Sprint contends that in reviewing the record in this case, the Bureau wrongly shifted the burden of proof on cost issues from Washoe to Sprint.²⁵ We find that the Bureau acted properly and did not impermissibly shift the burden as Sprint contends.

11. In support of its argument, Sprint contends that the Bureau arbitrarily "applied the principle that an incumbent licensee's subjective judgment regarding its rebanding costs should not be questioned."²⁶ Sprint contends that this constituted "absolute deference" to the licensee that effectively shifted the burden of proof to Sprint.²⁷ Washoe responds that the Bureau correctly applied the burden of proof and that Sprint merely does not like the outcome.²⁸ We agree with Washoe and disagree with Sprint's characterization of the standard applied by the Bureau. The Bureau correctly noted at the outset that Washoe has the burden of proving that the funding it requests is reasonable, prudent, and necessary.²⁹ Moreover, far from affording "absolute" deference to Washoe, we find that as a matter of law the Bureau's factual determinations as to whether Washoe met this burden respect to each of Washoe's claims (which resulted in the disallowance or modification of some of the funding amounts sought) were not clearly erroneous.³⁰

²⁴ Licensee litigation costs before the Commission, including those associated with the ALJ hearing process, are not recoverable from Sprint. See *Improving Public Safety Communications in the 800 MHz Band*, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467, 10485-87, ¶¶ 47-50 (2007).

²⁵ Sprint AFR at 3-6.

²⁶ *Id.* at 4.

²⁷ *Id.* at 4-5.

²⁸ Washoe Opposition at 4-5

²⁹ *Washoe Order*, 22 FCC Rcd 11861 at ¶ 4.

³⁰ Seeking to buttress its contention that the Bureau gave excessive deference to Washoe, Sprint cites to a single sentence in the *Washoe Order* in which the Bureau stated that it would not "substitute [its] judgment for that of the licensee" on a cost issue relating to testing of equipment. Sprint AFR at 4, citing *Washoe Order*, 22 FCC Rcd at ¶ 39. However, this example does not support Sprint's position. In that instance, Washoe contended that the proposed testing would allow for discovery and resolution of systemic problems before system-wide rebanding began, while Sprint argued that the testing was unnecessary. Based on the record before it, the Bureau found that the proposed testing was "prudent" under the circumstances. *Washoe Order*, 22 FCC Rcd 11869 at ¶ 39.

12. Sprint also stresses that on a number of issues, the Bureau found in Washoe's favor even though the TA mediator had recommended finding in favor of Sprint.³¹ This ignores the fact that under the procedures established by the Commission for deciding rebanding disputes, the Bureau's review is *de novo* and no deference to the mediator's recommendations is required.³² We also note that the mediator issued its recommendations prior to the Commission's adoption of the *Rebanding Cost Clarification Order*.³³ In that *Order*, the Commission clarified that the term "minimum necessary" cost does not mean the absolute lowest cost under any circumstances, but the "minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner."³⁴ 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.³⁵ We find that the Bureau's application of this standard in evaluating the facts in the record and determining whether Washoe had met its burden of proof was not clearly erroneous.

C. Evaluation of the Record

13. Sprint specifically challenges the Bureau's approval of Washoe's claim for the MCM inventory tracking software and certain project management costs, and objects to the decision to allow Washoe to provide additional documentation in support of its drive testing request. As described below, we find that certain elements of the Bureau's decision on these issues can be affirmed as a matter of law.

1. MCM Software

14. Sprint challenges the Bureau's approval of Washoe's request for \$54,800 to purchase MCM management and tracking software, arguing that this approval conflicts with a prior Bureau ruling, that the overwhelming evidence in the record requires a finding that adequate, lower cost alternatives are available, and that the Bureau improperly ruled that Washoe could rely on its prior experience in evaluating software alternatives for rebanding purposes. As a matter of law, none of these arguments warrants reversal of the Bureau's decision.

15. On Sprint's argument that the Bureau's approval of the MCM software conflicts with *City of Boston*, we agree with the Bureau that the two cases are distinguishable. In *City of Boston*, the Bureau found that Boston had failed to justify its proposed use of MCM software, based on the high cost of the software package proposed in that case, the lack of complexity of the Boston system, the fact that the software would provide non-rebanding benefits, and the lack of evidence that Boston had considered lower-cost alternatives.³⁶ Sprint contends that the *City of Boston* decision compels similar rejection of Washoe's proposed use of MCM software.³⁷ However, the Bureau correctly observed that its decision in the *Boston* case was based on the facts in the record before it and did not preclude other licensees from

³¹ Sprint AFR at 3-4.

³² See Wireless Telecommunications Bureau Announces Procedures for *De Novo* Review in the 800 MHz Public Safety Proceeding, *Public Notice*, 21 FCC Rcd 758 (WTB 2006).

³³ See Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

³⁴ *Id.*, 22 FCC Rcd at 9820 ¶ 6.

³⁵ *Id.*

³⁶ *City of Boston*, 22 FCC Rcd at 14665-70 ¶¶ 17-30.

³⁷ Sprint AFR at 5.

presenting distinguishable facts that would lead to a different result.³⁸ In *Washoe*, the Bureau found that the version of the MCM software in question was significantly less costly than the Boston version, and that Washoe's system was larger and more complex than the Boston system.³⁹ The Bureau also found that Washoe, unlike Boston, adequately considered less costly alternatives and reasonably rejected them. Based on all of these factors, we conclude that the Bureau had sufficient basis to distinguish *Washoe* from *City of Boston*, and we uphold the Bureau's decision in this regard.

16. In its application for review, Sprint argues that the Bureau ignored "overwhelming" evidence that lower-cost alternatives to the MCM software were available to Washoe, such as using Excel spreadsheets to track inventory.⁴⁰ Sprint also argues that the Bureau erred in finding that Washoe had adequately considered these alternatives, instead relying on Washoe's "unsupported claim" that the MCM software was superior.⁴¹ We conclude, as a matter of law, that neither the Bureau's consideration of the record evidence, nor its findings on the adequacy of Washoe's consideration of alternative tracking software, are clearly erroneous. At the outset, we note that the Bureau did not ignore any material evidence referenced by Sprint. For example, the Bureau acknowledged that in the mediation, Sprint had proposed other software packages such as Excel as alternatives.⁴² Moreover, we note that the Bureau placed heavy reliance on Washoe's experience in using, prior to rebanding, an earlier version of MCM's software after considering other alternatives, including Excel, and concluded that Washoe was entitled to rely on this prior experience in evaluating software alternatives for rebanding purposes.⁴³ We do not find the Bureau's reliance on Washoe's prior experience to constitute error as Sprint contends. The requirement that licensees consider alternatives does not compel them to ignore relevant prior experience. To proceed as Sprint proposes would require Washoe to either accept Sprint's judgment as to which software is best for managing inventory or to spend significant time and resources evaluating and re-evaluating multiple software packages, notwithstanding its prior experience.⁴⁴

2. Project Management Tasks

17. In the *Washoe Order*, the Bureau evaluated disputes over compensation for twelve specific project management tasks.⁴⁵ The Bureau found that the most of the estimated costs were

³⁸ *City of Boston, Massachusetts and Sprint Nextel, Order*, 22 FCC Rcd 2361, 2364-64 ¶ 7 (PSHSB 2007) (*Boston Reconsideration Order*).

³⁹ *Washoe Order*, 22 FCC Rcd 11865-66 at ¶¶ 22-24

⁴⁰ Sprint AFR at 6.

⁴¹ *Id.* at 6-7.

⁴² *Washoe Order*, 22 FCC Rcd 11864 at ¶ 20, Washoe Opposition at 7-8.

⁴³ *Washoe Order*, 22 FCC Rcd 11863, 65-66 at ¶¶ 17, 24, Washoe Opposition at 7-8.

⁴⁴ To be clear, we note that in making this finding, we are simply determining that, as a matter of law, Washoe's prior experience in using the MCM software after evaluating other alternatives could support a determination on the current record that the claim for the MCM software here was reasonable. That determination, however, still leaves Sprint with the opportunity to present to an ALJ evidence that challenges, on a *de novo* factual level, the claim of reasonableness. In other words, while this ruling of law would require the ALJ to give at least some weight to Washoe's prior experience in using the software as probative evidence of the reasonableness of the claim (assuming Washoe presents the argument at hearing), the ALJ would, in conducting the *de novo* hearing, be entitled to gauge (on a *de novo* basis) the significance of that experience and then weigh that significance against whatever facts Sprint presents at hearing in support of its position.

⁴⁵ *Washoe Order*, 22 FCC Rcd 11867-71 at ¶¶ 30-49.

recoverable, but directed Washoe to seek ways to reduce actual expenditures.⁴⁶ Sprint argues that the Bureau's findings with respect to these tasks are unsupported by the record because the Bureau neglected to examine evidence presented by Sprint and that Washoe failed to meet its burden of proof for these costs.⁴⁷ As a matter of law, we find that this argument does not warrant reversal of the Bureau's decision because Sprint fails to present any specific claims of error with respect to any of the twelve tasks. Instead, Sprint merely makes a general assertion that the Bureau erred,⁴⁸ notwithstanding the fact that the Bureau addressed each of the twelve issues in detail with specific references to Sprint and Washoe's submissions in the record.⁴⁹ Such vague allegations fail to provide the specificity required to support an application for review.⁵⁰ Accordingly, we uphold the Bureau's order on these issues.

3. Drive Testing

18. Sprint challenges the Bureau's approval of Washoe's request for \$38,000 for drive testing because the approval was based on evidence that, according to Sprint, should have been rejected on the basis of its untimely submission. For the following reasons, we affirm, as a matter of law, the Bureau's decision to consider this evidence.

19. In its Statement of Position filed with the Bureau, Washoe sought \$38,000 for drive testing to verify the system's coverage before and after rebanding.⁵¹ The Bureau concluded that because Washoe operates a simulcast system, it could be entitled to drive testing under the TA's guidelines.⁵² However, the Bureau found that Washoe failed to provide sufficient detail regarding its drive testing proposal to allow either Sprint or the Bureau to adequately evaluate the reasonableness of the proposed \$38,000 cost.⁵³ The Bureau stated that it would consider Washoe's drive testing claim if Washoe could provide specific documentation in support of the claim within seven days of release of the *Washoe Order*.⁵⁴ Sprint contends that the Bureau should have dismissed Washoe's claim as untimely because Washoe had not raised the claim in mediation. Sprint contends that allowing Washoe to supplement the record under these circumstances enables licensees to ignore their obligation to raise issues in a timely manner and undermines the mediation process.⁵⁵

20. We find that the Bureau acted within its discretion in allowing Washoe to provide supplemental information. Although parties generally may not raise issues on *de novo* review that were not raised in mediation, the record in this case indicated that Washoe had the type of system that was recommended for drive testing under the TA's guidelines. Under these circumstances, the Bureau concluded that the public interest in ensuring adequate testing of the Washoe system outweighed

⁴⁶ *Id.*, 22 FCC Rcd 11867 at ¶ 34.

⁴⁷ Sprint AFR at 8-9.

⁴⁸ *Id.*

⁴⁹ *Washoe Order*, 22 FCC Rcd 11867-71 at ¶¶ 30-49.

⁵⁰ See Red Hot Radio, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6737, 6744-45 ¶ 16 (2004); 47 C.F.R. § 1.115(b).

⁵¹ *Washoe Order*, 22 FCC Rcd 11866 at ¶ 25.

⁵² *Id.*, 22 FCC Rcd 11866-67 at ¶ 29.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Sprint AFR at 9.

procedural concerns regarding the lateness of Washoe's request. We see no reason to overturn the Bureau's judgment on this issue.

D. Cost Issues

21. Washoe seeks reimbursement from Sprint for the costs of opposing Sprint's application for review. We deny the request.

22. In its opposition to Sprint's application for review, Washoe seeks a determination that any litigation costs it has incurred opposing the application are recoverable from Sprint.⁵⁶ Washoe argues that it has incurred these costs solely due to Sprint's decision to appeal the *Washoe Order*, and contends that Sprint is using the appeals process to increase the licensee's costs in order to force settlement on Sprint's terms.⁵⁷ Sprint responds that the application for review proceeding is not the appropriate forum for addressing this issue, because Washoe has also filed a petition for reconsideration of the Commission's decision in the *800 MHz Second Memorandum Opinion and Order* that costs of litigation before the Commission are not recoverable rebanding costs.⁵⁸

23. We agree with Sprint that this application for review proceeding is not the appropriate proceeding for addressing the litigation cost issue. The issue has been separately raised by Washoe and other parties in petitions for reconsideration of the *800 MHz Second Memorandum Opinion and Order*, and we will address it in response to those petitions. Thus, we deny Washoe's request to address the issue further in this application for review proceeding. We also find no evidence that Sprint filed this application for review in order to drive up Washoe's litigation costs. However, we caution all parties that filing rebanding appeals for the purpose of delay, driving up litigation costs, or forcing concessions from another party is an abuse of the Commission's processes and will not be tolerated.

IV. ORDERING CLAUSE

24. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 5(c), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303, and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review, filed August 2, 2007, by Sprint Nextel Corporation IS DENIED to the extent set forth herein, and otherwise DISMISSED.

25. IT IS ORDERED that pursuant to Sections 4(i), 5(c), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303, and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Opposition to Application for Review, filed August 17, 207, by the County of Washoe, Nevada IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁶ Washoe Opposition at 8.

⁵⁷ *Id.* at 2, 8.

⁵⁸ Sprint Reply at 2, *citing* Petition for Partial Reconsideration of Washoe County, *et al.*, filed August 20, 2007 and Improving Public Safety Communications in the 800 MHz Band, *Second Memorandum Opinion and Order*, 22 FCC Rcd (2007).