Public Safety Spectrum Trust

1101 K Street, NW, Suite 8100
Washington, DC 20005
www.psst.org

VIA ELECTRONIC DELIVERY

August 6, 2010

Admiral James Arden Barnett, Jr.
Chief, Public Safety & Homeland Security Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229
State of New York

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,[1] the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the State of New York. The PSST and the State of New York have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

Chief Harlin R. McEwen
Chairman
Public Safety Spectrum Trust Corporation
(607) 227-1664
chiefhrm@pubsaf.com

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau
Dr. Melodie Mayberry-Stewart, Chief Information Officer/Dir. of the Office for Technology

[1] *Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Order, 25 FCC Rcd 5145 (2010).

State of New York

LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement ("Lease" or "Agreement") is entered into by the Public Safety Spectrum Trust Corporation ("PSST" or "Lessor"), which is licensed by the Federal Communications Commission ("FCC") to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the "Leased Spectrum"), and the State of New York ("Lessee") (each a "Party," and, collectively, "the Parties"). This Lease is subject to the FCC's May 12, 2010 Order, FCC 10-79 ("FCC Order"). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC's rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies.

1. Agreement.

a. Conditioned on first obtaining the consent of the Chief of the Public Safety and Homeland Security Bureau of the FCC (the "Bureau") to the creation of this Lease , Lessor hereby grants to Lessee the exclusive right to use the Leased Spectrum within Lessee's jurisdiction during the term of this Agreement and in accordance with the provisions hereof. It is the intent of the Parties that this Agreement create a long term *de facto* transfer spectrum leasing arrangement within the meaning (and subject to the requirements) of 47 C.F.R. Section 1.9030.

b. The PSST retains all rights and obligations under its FCC license and as a spectrum lessor, as specified in the Communications Laws (as defined in section 5 of this Agreement), and as subject to the terms of this Agreement. Lessee is subject to the rights and obligations under this Agreement and the Communications Laws. Consistent with FCC rules governing long term *de facto* transfer spectrum leases, Lessee is primarily responsible for complying with the FCC Order and the Communications Laws, including all FCC filing requirements related to the Leased Spectrum, and Lessor retains de jure control of its spectrum license.

c. Lessee shall be responsible to relocate, at its own expense, the operations of any incumbent 700 MHz narrowband licensee in the Lessee's area of operation, from the Leased Spectrum to the appropriate public safety narrowband spectrum. Alternatively, Lessee agrees to protect such incumbent narrowband operations, either through appropriate engineering measures or geographic exclusion of the narrowband system's footprint, and to obtain the consent of the incumbent as to its proposed method of protection. Lessee shall also account for narrowband operations in adjacent regions that occur outside of the consolidated narrowband channels, and take all measures necessary to protect such operations from interference.

d. Lessee's network shall be fully interoperable with any other regional public safety deployments permitted by a waiver granted by the FCC pursuant to the FCC Order, and with any future nationwide or regional public safety broadband networks, including adherence to any technical requirements adopted by the FCC's Emergency Response Interoperability Center ("ERIC"), the Bureau, or the FCC, and shall be consistent with other nationally coordinated technical standards and operating requirements that the ERIC, Bureau, or FCC may impose from time to time.

i. Lessee must make its network available to all public safety entities eligible under Section 337 of the Communications Act within its jurisdiction.

ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.

iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.

iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.

v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.

vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.

e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.

f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.

g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.

h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

2. Scope of Spectrum Usage Rights.

a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.

b. The geographic area of operation within the Lessee's jurisdiction shall be the State of New York.

3. Term and Renewal.

a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

4. Termination.

a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.

b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

5. Compliance with FCC Rules, Other Applicable Law and Requirements of This Agreement.

a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).

b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.

c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.

d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).

e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.

f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

6. Representations and Warranties.

Each of the Lessor and the Lessee severally represents and warrants to the other:

a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.

b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.

c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.

d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

7. Miscellaneous.

a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.

b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.

c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..

d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.

e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.

f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

8. Effective Date. The Parties shall submit for approval an executed copy of this Agreement to the Chief of the Bureau. The Effective Date of this Agreement is the date that the Chief of the Bureau consents to the creation of this Agreement (as specified in section 1).

9. Notices

Lessor

Public Safety Spectrum Trust Corporation
Harlin R. McEwen, Chairman of the Board
1101 K St., Suite 8100, Washington, DC 20005
(607) 227-1664
Email: chiefhrm@pubsaf.com

Lessee:

The State of New York
Dr. Melodie Mayberry-Stewart
New York State Chief Information Officer/ Director of the Office for Technology
State Capitol, Empire State Plaza
P.O. Box 2062
Albany, NY 12220
(518) 402-2976
Email: melodie.mayberry.stewart@cio.ny.gov

Bureau:

Federal Communications Commission
David Furth, Deputy Bureau Chief
Public Safety and Homeland Security Bureau
445 12th St. SW
Washington, DC 20554
(202) 418-1300
Email: david.furth@fcc.gov.

In WITNESS WHEREOF, the Parties have executed this Agreement as of the date approval is provided by the Chief of the Bureau.

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By: Harlin R. McEwen

Name: Harlin R. McEwen

Title: Chairman

Dated: July 13, 2010

LESSEE

By: Melodie Mayberry-Stewart

Name: Dr. Melodie Mayberry-Stewart

Title: New York State Chief Information Officer/ Director of the Office for Technology

Dated: August 4, 2010