

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Mobility II LLC)	ULS File No. 50010CLTC08
)	
NE Colorado Cellular, Inc.)	ULS File No. 0000230425
)	
NE Colorado Cellular, Inc.)	ULS File No. 0005530465
)	
NE Colorado Cellular, Inc.)	ULS File No. 0005530495
)	
Sagir, Inc.)	ULS File No. 0000212826
)	
Three LLC)	ULS File No. 0003439497
)	
Sagir, Inc.)	ULS File No. 0000416477

**JOINT REQUEST FOR WAIVER, APPROVAL OF SETTLEMENT AGREEMENT,
DISMISSAL OF PLEADINGS AND CERTAIN APPLICATIONS, AND GRANT OF
APPLICATIONS**

AT&T Mobility II LLC (together with New Cingular Wireless PCS, LLC, “AT&T”), NE Colorado Cellular, Inc. (“NECC”), Sagir, Inc. (“Sagir”), and Three LLC (“Three”) (collectively, the “Joint Parties”), by their respective counsel, and pursuant to 1.3, 1.925 and 1.935 of the Commission’s Rules, 47 C.F.R. §§ 1.3, 1.925, and 1.935, hereby submit this Joint Request for Waiver, Approval of Settlement Agreement, Dismissal of Pleadings and Certain Applications, and Grant of Applications (the “Joint Request”) in connection with the various above-captioned applications. The Joint Parties have mutually agreed, subject to Commission approval, to resolve their differences pursuant to the Settlement Agreement (“Settlement Agreement”) a copy of which is attached hereto as Attachment 1.

I. BACKGROUND

The issues addressed by the Settlement Agreement date back nearly twelve years. On August 31, 2000, Sagir filed an application (the “Sagir Renewal Application”) to renew its

cellular license, Call Sign KNKN383 (the “Sagir License”), which covers the Nebraska 1 – Sioux Cellular Market Area (“CMA”).¹ On September 29, 2000, NECC filed a competing application (the “NECC Competing Application”) that was mutually exclusive with the Sagir Renewal Application.² NECC also filed a Petition to Deny the Sagir Renewal Application.³ The Commission noted this dispute in its 2010 Notice of Proposed Rulemaking and Order regarding wireless renewal applications, stating that it would hold in abeyance the applications and pleadings in connection with these applications until the conclusion of its rulemaking, and that it would dismiss all pending mutually exclusive applications and related correspondence if it adopted the rules proposed in the NPRM.⁴

On April 3, 2001, Sagir filed an application with the FCC for authorization for a *pro forma* transfer of control of Sagir (“Sagir *Pro Forma* Transfer Application”) which was granted by the FCC on April 4, 2001.⁵ On April 17, 2001, NECC filed a Petition for Reconsideration of the Sagir *Pro Forma* Transfer Application.

On May 16, 2008 and May 20, 2008, Sagir, Three, and AT&T filed a set of applications for consent to a *pro forma* assignment of the Sagir License from Sagir to Three and a substantive transfer of control of Three to AT&T Mobility II LLC (the “Transfer Applications”).⁶ NECC

¹ ULS File No. 0000212826.

² ULS File No. 0000230425.

³ N.E. Colorado Cellular, Inc. Petition to Deny (filed Mar. 21, 2001) at 8-25.

⁴ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 – Filing Freeze on Competing Renewal Applications*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996, ¶ 100 (2010).

⁵ ULS File No. 000416477.

⁶ See ULS File Nos. 0003439497 and 50010CLTC08.

filed a Petition to Deny the Transfer Applications on June 18, 2008.⁷ The Sagir Renewal Application, NECC Competing Application, and Transfer Applications all remain pending before the Commission.

The Joint Parties have agreed to settle the mutual exclusivity and related controversies among the applications. The terms of the settlement are contained in the attached Settlement Agreement, and the parties seek withdrawal of pleadings and certain of the above-captioned applications pursuant to Section 1.935 of the Commission's rules, as well as the waiver of certain requirements of Section 1.935 of the Commission's rules.

II. DISCUSSION

The Joint Parties have agreed to resolve their disputes pursuant to the Settlement Agreement and, pursuant to Sections 1.3, 1.925, and 1.935 of the Commission's rules, seek: (1) the Commission's approval of the Settlement Agreement, (2) grant of the Sagir Renewal Application and Transfer Applications, (3) grant of two separate FCC applications seeking assignment of spectrum from AT&T to NECC,⁸ and (4) subject to such approvals, dismissal of the NECC Competing Application, its Petitions to Deny the Sagir Renewal Application and Transfer Applications, and its Petition for Reconsideration of the Sagir *Pro Forma* Transfer Application. None of the Joint Parties nor their principals has paid or received, or will pay or receive, any consideration in exchange for the dismissal of applications or pleadings other than as set forth in the Settlement Agreement. Also appended hereto as Attachment 2 are certifications made under penalty of perjury from each of the Joint Parties to that effect.

⁷ NE Colorado Cellular, Inc. Petition to Deny (filed June 18, 2008).

⁸ See ULS File Nos. 0005530465 and 0005530495.

The relief requested by the Joint Parties is plainly in the public interest. The Commission has found that waivers of Section 1.935 of its rules and acceptance of settlement agreements such as the one attached are “in the public interest because it would permit the resolution of a long-standing . . . dispute.”⁹ The dispute at the center of this proceeding has been ongoing for nearly twelve years. Resolving these matters through private negotiations serves the public interest by conserving Commission resources and enabling AT&T and Sagir to consummate their proposed transaction, which will result in numerous public interest benefits. To the extent any of the Joint Parties will receive monetary or nonmonetary consideration under the Settlement Agreement to withdraw pleadings and/or applications, the Joint Parties respectfully request a waiver of Section 1.935 of the Commission’s rules, which limits the consideration a party may receive in exchange for an agreement to withdraw a competing application or adversary pleading.¹⁰

The Commission may waive its rules “for good cause shown” in cases where “[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest” or where “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹¹ The instant case plainly meets this standard and, indeed, the Commission has previously waived portions of Section 1.935 where doing so would facilitate the resolution of long-standing disputed licensing proceedings. The Commission has previously stated that Section 1.935 “reflects a balancing of our efforts to discourage the filing of

⁹ *Settlement Agreement and Request for Waiver of Section 1.935 of the Commission’s Rules*, Order, 22 FCC Rcd 4027, ¶ 12 (2007) (“*New Mexico Settlement Order*”).

¹⁰ 47 C.F.R. § 1.935.

¹¹ 47 C.F.R. §§ 1.3; 1.925(a)(3).

speculative applications and pleadings designed solely to extract money from applicants, while still providing some incentive for legitimate petitioners and applicants to withdraw from proceedings and thus expedite service to the public.”¹² Here, NECC filed pleadings and applications with no expectation of profiting from its filings, and all of the Joint Parties have advocated their respective positions in good faith. For this reason, grant of the proposed waiver “would therefore serve the underlying purpose of the rule because it does not reward improper speculation or encourage the filing of abusive pleadings.”¹³

The Commission has also found that waiver of Section 1.935 is appropriate where such waiver would enable the settlement of long-standing proceedings, as in the case here. Indeed, in 1999 the Wireless Telecommunications Bureau issued a limited waiver during a settlement window allowing parties to resolve contested licensing proceedings, some of which were more than five years old, without limitation on the consideration promised, paid, or received.¹⁴ More recently, the Commission granted a waiver of Section 1.935 to parties to a contested cellular licensing proceeding on the basis that the parties “filed their initial applications more than five years ago” and that “a waiver would serve the public interest in the instant case by removing the uncertainty surrounding the applications at issue.”¹⁵ Here, the contested proceeding is much

¹² *New Mexico Settlement Order* at ¶ 11, quoting *In re Applications of Algreg Cellular Engineering For Facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 307, Alabama 1 – Franklin*, Memorandum Opinion and Order and Order on Reconsideration, 18 Communications Reg. 301 (1999).

¹³ *New Mexico Settlement Order* at ¶ 11. See also *In the Matter of Zephyr Tele-Link*, Order, 15 FCC Rcd 4247, ¶ 3 n. 12 (2000) (declining to apply “the rule against ‘greenmail’ in this case, as there is nothing in the history of this proceeding to indicate that AALA’s Petition to Deny Zephyr’s application in the Oklahoma 4 – Nowata RSA was submitted for the purpose of extracting a settlement payment from Zephyr”).

¹⁴ *Wireless Telecommunications Bureau Waives Limitations on Payments in Settlement Agreements Among Parties in Contested Cases*, Public Notice, DA 99-745 (1999).

¹⁵ *New Mexico Settlement Order* at ¶ 12.

longer – nearly twelve years old – and as a result of the uncertainty surrounding the renewal of the Sagir License, the license’s transfer to AT&T has languished for more than four years. More recently, the FCC has also approved settlement agreements terminating contested renewals in the Wireless Communications Service implicating the same issues at stake in these proceedings—the settlements “[r]educ[e] . . . uncertainty will further the public interest by removing an obstacle to the significant capital investment needed to deploy valuable, next-generation broadband services to the American public.”¹⁶ While AT&T has been providing cellular service in this market under the terms of a spectrum manager lease, grant of the requested relief would enable AT&T to fully control the entirety of the underlying spectrum and enhance the services it provides to the public.

Thus, it is clear that grant of the Settlement Agreement and waiver of Section 1.935 would enable numerous public interest benefits, and that none of Section 1.935’s concerns regarding payments in excess of expenses exist in this case. In light of the factual circumstances of this case, the Commission should, consistent with its own precedent, promote the resolution of this long-standing dispute by accepting the Settlement Agreement, granting the Transfer Applications and Sagir Renewal Application, granting the assignments from AT&T to NECC, dismissing the NECC Competing Application and associated NECC petitions to deny, and granting necessary waivers of Section 1.935 of the rules.

¹⁶ Wireless Telecommunications Bureau Approves Settlement Agreement and Dismisses Competing Renewal Applications, *FCC Public Notice*, WT Docket No. 10-112, DA 12-164 (rel. Oct. 15, 2012); *see also* Wireless Telecommunications Bureau Grants Limited Waiver To Facilitate Resolution of Competing Renewal Applications, Public Notice, DA 12-1407, 2012 WL 3715808 (rel. Aug. 28, 2012) (waiving “the limitation on the consideration that may be offered or accepted for resolution of the competing renewal applications”).

III. CONCLUSION

In view of the foregoing, the Joint Parties respectfully request grant of the relief requested herein, and submit that this action by the Commission would serve the public interest, convenience, and necessity.

New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its: Manager

AT&T Mobility II LLC
By: AT&T Mobility Corporation
Its: Manager

/s/
By: Michael P. Goggin, Ass't Sec'y

/s/
By: Michael P. Goggin, Ass't Sec'y

Sagir, Inc.

**NE Colorado Cellular, Inc. d/b/a Viaero
Wireless**

/s/
By: Janet Fitzpatrick Moran, Its Counsel

/s/
By: David A. LaFuria, Its Counsel

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the “Agreement”) is hereby entered into on October 19, 2012 (the “Effective Date”), by and among AT&T Mobility II LLC, a Delaware limited liability company (“AT&T”), New Cingular Wireless PCS, LLC, a Delaware limited liability company (“New Cingular”), Sagir, Inc., a Florida corporation (“Sagir”), and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, a Colorado corporation (“Viaero”). This Agreement may refer to AT&T, New Cingular, Sagir and Viaero individually as a “Party” or collectively as the “Parties.”

WHEREAS, on May 6, 1991, the Federal Communications Commission (“FCC”) granted Sagir the 850 MHz A Block cellular license in the Nebraska 1 - Sioux Cellular Market Area (CMA533) (the “Market”) with Call Sign KNKN383 (the “Sagir License”), which Sagir License was set to expire on May 6, 2001 and on August 31, 2000, Sagir filed a renewal application for the Sagir License (the “2000 Renewal Application”) and on March 19, 2001, Viaero filed a Petition with the FCC asking it to deny Sagir’s 2000 Renewal Application (the “Petition to Deny the 2000 Renewal Application”);

WHEREAS, on September 29, 2000, Viaero filed an application with the FCC for authorization of a new cellular radiotelephone service station in the Market (the “Competing Application”) and on March 19, 2001, Sagir filed a Petition with the FCC asking it to dismiss or deny Viaero’s Competing Application (the “Petition to Deny the Competing Application”);

WHEREAS, on April 3, 2001, Sagir filed an application with the FCC for authorization for a *pro forma* transfer of control of Sagir (the “Sagir Pro Forma Transfer Application”) which was granted by the FCC on April 4, 2001;

WHEREAS, on April 17, 2001, Viaero filed a Petition for reconsideration of the grant of the Sagir *Pro Forma* Transfer Application (the “Petition for Reconsideration of the Sagir Pro Forma Application”) and a motion to consolidate (the “Motion to Consolidate”) with the 2000 Renewal Application;

WHEREAS, on November 30, 2007, AT&T and Sagir entered into that certain Agreement for Purchase and Sale of Assets (the “Asset Purchase Agreement”) pursuant to which Sagir agreed, subject to obtaining the FCC’s consent to the transactions contemplated thereby, to assign and transfer the Sagir License to AT&T;

WHEREAS, in May 2008, Sagir filed the necessary applications with the FCC seeking the FCC’s consent and approval to the transfer and assignment of the Sagir License from Sagir to AT&T (the “2008 Assignment Application”);

WHEREAS, in June 2008, Viaero filed a Petition with the FCC asking the FCC to deny the 2008 Assignment Application (the “Petition to Deny the 2008 Assignment Application” and, together with the Competing Application, the Petition to Deny the 2000 Renewal Application, the Petition for Reconsideration of the Sagir *Pro Forma* Transfer Application and the Motion to Consolidate, collectively the “Viaero Petitions”);

WHEREAS, as of the Effective Date, the FCC has not ruled on the Renewal Application, the 2008 Assignment Application, or any of the Viaero Petitions;

WHEREAS, the Parties now wish to settle any and all claims and disputes between all of the Parties relating to the Sagir License and the Viaero Petitions (regardless of whether such claim or dispute is specifically enumerated above) in accordance with the terms and on the conditions set forth herein so that the FCC will dismiss the Viaero Petitions and grant the Renewal Application and 2008 Assignment Application;

WHEREAS, concurrently herewith, (a) AT&T and Viaero have entered into a License Purchase Agreement (the "License Purchase Agreement") pursuant to which AT&T has agreed to sell certain spectrum in the Omaha, NE BTA (BTA332) (the "Omaha Spectrum") to Viaero and (b) AT&T and Sagir have entered into that certain First Amendment to the Purchase Agreement (the "First Amendment"); and

WHEREAS, the Parties acknowledge that they make this Agreement without any admission of wrongdoing, liability, fault or truth of any allegations made.

NOW, THEREFORE, in consideration of the recitals and of the mutual covenants, conditions and agreements set forth herein and in the License Purchase Agreement and the First Amendment and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I. SETTLEMENT AND RELEASE

Section 1.1 Settlement. In full and final settlement of all claims, liabilities, obligations, demands and causes of action that were asserted, have been asserted, or could have been asserted by Viaero against Sagir and/or AT&T (or any of their respective affiliated and related corporations, firms, associations, partnerships, and entities, their successors or assigns, and the current and former owners, shareholders, directors, officers, employees, agents, attorneys, representatives, and insurers of said corporations) relating to the Sagir License, and in exchange for the mutual covenants and agreements contained herein and in the License Purchase Agreement and First Amendment, the Parties hereby agree to the following:

(a) New Cingular shall assign, transfer, convey and deliver to Viaero on the Closing Date (as defined herein) all of New Cingular's right, title and interest in and to ten (10) MHz of PCS spectrum covering the Grand Island-Kearney, NE BTA (BTA167) as more fully described on Exhibit A attached hereto (the "Grand Island Spectrum").

(b) Viaero, for itself and all other persons who might claim by or through or under Viaero, hereby fully and finally releases and relinquishes any and all claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses, and expenses whatsoever, under any municipal, local, state, or federal law, common or statutory, known or unknown, it may have to the Sagir License or the right to the spectrum under the Sagir License and quit claims all such rights in favor of Sagir and AT&T. Viaero shall not file, resume or supplement any Viaero Petition or

any other Litigation against Sagir or AT&T in connection with the Sagir License or the matters set forth in the Viaero Petitions following the Effective Date.

(c) No later than ten (10) business days after the Effective Date, Viaero shall take all necessary steps and make all necessary filings under the FCC Rules to fully withdraw and dismiss with prejudice the Viaero Petitions and all other actions, applications, claims, petitions, objections and other challenges pending before the FCC or any other Governmental Authority related to or affecting the Sagir License (the “Dismissal Applications”). In connection therewith, Viaero, Sagir and AT&T shall file the “Joint Request for Waiver, Approval of Settlement Agreement, Dismissal of Pleadings and Certain Applications, and Grant of Applications” attached here as Exhibit B with the FCC to request a waiver of Section 1.935(a)(1) of the FCC Rules.

Section 1.2 No Admission of Wrongdoing or Liability. The Parties specifically agree that this Agreement is entered into solely for the purpose of settling any and all claims between the Parties. It is understood and agreed that this settlement is the compromise of disputed claims and is not to be construed as an admission of liability or wrongdoing on the part of any Party hereto.

ARTICLE II. FCC CONSENT; CLOSING

Section 2.1 FCC Consent. Concurrently with the filing of the Dismissal Applications, the Parties shall file all necessary applications and notices required to seek the FCC’s consent to the transfer and assignment of the Grand Island Spectrum and the Omaha Spectrum to Viaero, including the FCC Form 603 applications (or other appropriate forms) (the “FCC Assignment Applications”). In the event that any information in the FCC Assignment Applications or any such supplemental information furnished in connection therewith is deemed confidential by any Party, the Parties shall use their reasonable best efforts to maintain the confidentiality of the same, and the Parties shall seek FCC authorization to withhold such information from public view.

Section 2.2 Closing Date; Closing: The “Closing Date” shall be as soon as reasonably practicable following (a) the FCC’s consent by Final Order to (i) the Dismissal Applications, (ii) the FCC Assignment Applications seeking the transfer of the Omaha Spectrum and the Grand Island Spectrum to Viaero, and (iii) the 2008 Assignment Application seeking the transfer of the Sagir License to AT&T and (b) the satisfaction of the other closing conditions set forth in the Asset Purchase Agreement and the License Purchase Agreement. On the Closing Date, the Parties shall simultaneously consummate the transactions contemplated by the Asset Purchase Agreement and the License Purchase Agreement and New Cingular shall transfer the Grand Island Spectrum to Viaero pursuant to an instrument of assignment and assumption in substantially the form of Exhibit C attached hereto (the “Assignment Agreement”); provided, however, that New Cingular’s obligation to transfer the Grand Island Spectrum to Viaero shall be expressly subject to and conditioned upon the closing of the Asset Purchase Agreement. In connection with the transfer of the Grand Island Spectrum to Viaero, prior to the Closing Date New Cingular and Viaero shall cooperate to make all filings necessary with the FCC to modify the current spectrum lease pursuant to which New Cingular is leasing certain spectrum to Viaero

in the Grand Island-Kearney, NE BTA (BTA167) to remove the Grand Island Spectrum from the spectrum covered by such lease. On the Closing Date, no Party hereto shall be in breach of or default under the terms and conditions of this Agreement.

ARTICLE III. MUTUAL GENERAL RELEASE

Section 3.1 Mutual General Release. Except as expressly set forth in Section 3.2, in exchange for the consideration described in this Agreement, the License Purchase Agreement and the First Amendment and subject to satisfaction of the terms and conditions contained herein, each Party hereto, for itself its directors, officers, employees, agents, attorneys, sureties, insurers, representatives, affiliates, members, managers, shareholders, principals, attorneys, predecessors, successors and assigns, and all other persons who might claim by or through or under such Party (collectively, the “Releasors”), hereby fully and finally releases and discharges each other Party hereto, as well as such Party’s respective directors, officers, employees, agents, attorneys, sureties, insurers, representatives, affiliates, subsidiaries, members, managers, shareholders, principals, attorneys, successors and assigns (collectively, the “Releasees”) from any and all claims, causes of action, petitions, allegations, protests, obligations, demands, damages, defenses, suits, charges, debts, liabilities, losses, controversies, costs, attorney’s fees and expenses of whatever kind or nature, whether legal or equitable, known or unknown, from the beginning of time through the Closing Date, that such Releasor has asserted, could have asserted, or may assert in the future against any Releasee in connection with the subject matter of this Agreement, including but not limited to participating, or encouraging any other party to participate, directly or indirectly, in any Litigation challenging the qualifications of the Releasees to hold FCC licenses generally based on allegations made in any of the legal proceedings set forth in the Recitals (the “Release”).

Section 3.2 Covenant Not to Sue. Each Party hereto covenants not to resume or supplement any Litigation previously filed by such Party or to sue or otherwise participate in any Litigation against any of the Releasees based upon any of the claims released in Section 3.1 hereof.

Section 3.3 No Release of Certain Claims. Notwithstanding the provisions of Sections 3.1 and 3.2, the Parties agree that (a) neither AT&T nor Sagir has waived or released any claims that arise out of or relate to the Asset Purchase Agreement or their rights to enforce the obligations thereunder; (b) neither New Cingular nor Viaero has waived or released any claims that arise out of or relate to the License Purchase Agreement or their rights to enforce the obligations thereunder; and (c) no Party has waived or released any right to enforce the terms of this Agreement. The Parties agree that they retain all such claims and may participate in legal action related thereto.

ARTICLE IV. CONFIDENTIALITY

Section 4.1 Confidentiality and Non-Disclosure: Each Party hereby agrees that, from the Effective Date, it will keep this Agreement, as well as the facts underlying it and all of the terms hereof and matters described herein, strictly confidential and will not disclose any such

terms or matters to any other person or entity. A Party may, however, disclose all or part of such information if (a) they obtain the express written consent of all Parties as to the portion to be disclosed; or (b) it is reasonably necessary to disclose the information at issue to a Party's affiliates, attorneys, accountants and other representatives, provided that they agree to comply with the provisions of this Section 4.1. To the extent any Party is required by applicable law or by any Governmental Authority to disclose to any third party any term hereof, such Party shall provide to all other Parties, at least five (5) business days prior to such required disclosure, notice for the purpose of giving the other Parties the opportunity to object or to seek other relief from the disclosure of such confidential information and such disclosing party shall cooperate to seek such protective relief from disclosure.

ARTICLE V. TERMINATION

Section 5.1 Termination. This Agreement may be terminated by written notice given to the other Parties as follows:

- (a) at any time by the mutual written consent of all of the Parties;
- (b) by any Party, in the event any other Party, (in each case, the "Breaching Party"), has materially breached its representations, warranties, covenants or other agreements contained in this Agreement and the Breaching Party has failed to cure such breach within thirty (30) days from the date of the Breaching Party's receipt of the notice specified above, and such terminating party is not in breach or default in any material respect of its obligations, representations or warranties contained in this Agreement;
- (c) by any Party, if the Closing Date shall not have occurred within eighteen (18) months of the Effective Date (the "Termination Date"); *provided*, that, the Party seeking to exercise such right is not then in material breach of any of its obligations under this Agreement; and *provided further*, that, if the Closing Date has not occurred by the Termination Date due to the failure of the FCC to rule on the Dismissal Applications, the FCC Assignment Applications or the 2008 Assignment Application then the Termination Date shall automatically be extended for an additional six (6) months; or
- (d) by any Party, if the FCC has denied by Final Order the Dismissal Applications, the FCC Assignment Applications or the 2008 Assignment Application.

ARTICLE VI. MISCELLANEOUS

Section 6.1 Representations and Warranties.

- (a) Each Party hereto hereby represents and warrants to the other Parties hereto as follows:
 - (i) Such Party is duly formed and organized, validly existing and in good standing under the laws of the state of its formation or organization.

(ii) The execution, delivery and performance by such Party of this Agreement have been duly and validly authorized and approved by all necessary action on the part of such Party.

(iii) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(b) Viaero hereby represents and warrants to the other Parties hereto as follows:

(i) Viaero is the sole and lawful owner of all right, title and interest in and to every claim it has made to the Sagir License or pursuant to any Viaero Petition and that the releases contained in this Agreement are valid and enforceable and have not been transferred or encumbered, voluntarily or involuntarily, purportedly or in fact, in whole or part, to any person or entity; and

(ii) Except for the Viaero Petitions, Viaero has not filed any Litigation with any Governmental Authority against Sagir, AT&T or New Cingular pertaining to the subject matter of this Agreement or otherwise, and knows of no such claims, charges, suits or actions.

(c) Sagir hereby represents and warrants to the other Parties hereto as follows:

(i) Sagir is the sole and lawful owner of all right, title and interest in and to every claim it has made relating to the subject matter of this Agreement and that the releases contained in this Agreement are valid and enforceable and have not been transferred or encumbered, voluntarily or involuntarily, purportedly or in fact, in whole or part, to any person or entity; and

(ii) Except for filings made in relation to the Sagir License, Sagir has not filed any Litigation with any Governmental Authority against Viaero pertaining to the subject matter of this Agreement or otherwise, and knows of no such claims, charges, suits or actions.

(d) The person signing this Agreement on behalf of each Party warrants that he has the full authority to enter into this Agreement on behalf of such Party and to fully bind that Party to the terms of this Agreement.

Section 6.2 Definitions. The following terms when used herein shall have the meanings assigned to them below:

(a) “FCC Rules” shall mean Title 47 of the Code of Federal Regulations, as amended, FCC policies and published FCC decisions.

(b) “Final Order” shall mean an action, decision or order by a Governmental Authority as to which (a) no request for a stay or similar request or decision is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by applicable law, it has passed; (b) no petition for rehearing or reconsideration of the action is pending before such Governmental Authority, and the time for filing any such petition has passed; (c) such

Governmental Authority does not have the action or decision under reconsideration on its own motion and the time for such reconsideration has passed; and (d) no appeal to a court, or request for stay by a court, of such Governmental Authority's action is pending or in effect, including other administrative or judicial review, and, any deadline for filing any such appeal or request as designated by applicable law, has passed.

(c) "Governmental Authority" shall mean any federal, state, local, municipal or foreign governmental authority or instrumentality, including any court, legislature, tribunal, arbitrator, mediator, administrative or regulatory agency, department, bureau, commission (including any state public utilities commission) or board.

(d) "Litigation" shall mean any action, cause of action, lawsuit, arbitration, mediation, claim, crossclaim, counterclaim, complaint, criminal prosecution, governmental or other examination, investigation, inquiry, audit, hearing, administrative or other proceeding by or before any Governmental Authority.

Section 6.3 Entire Agreement: This Agreement, the Asset Purchase Agreement, as amended by the First Amendment, and the License Purchase Agreement contain the entire understanding of the Parties with respect to this matter. There are no oral or written agreements, representations, warranties, covenants, understandings or inducements of any kind between the Parties regarding this matter that are not contained in this Agreement, the Asset Purchase Agreement, as amended by the First Amendment, and the License Purchase Agreement.

Section 6.4 Amendments: No modification or waiver of any part of this Agreement is binding unless it is in writing and signed by an authorized representative of each of the Parties.

Section 6.5 Advice of Counsel: Each Party acknowledges and agrees that independent and competent legal counsel has represented them in connection with the negotiations and advice regarding all terms of this Agreement.

Section 6.6 Further Assurances: Each Party agrees to execute such other documents and instruments that may be reasonably necessary or advisable to give effect to the terms of this Agreement.

Section 6.7 Successors. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, legal representatives, successors and assigns of the Parties.

Section 6.8 Equitable Remedies. Any breach of this Agreement may result in irreparable damage to the Parties for which the Parties will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, each Party acknowledges and agrees that the other Parties may immediately seek enforcement of this Agreement by means of specific performance or injunction, without any requirement to post a bond or other security.

Section 6.9 Governing Law: This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to the conflict of laws provisions thereof.

Section 6.10 Submission to Jurisdiction; Consent to Service of Process: The Parties agree that the courts of the State of New York, sitting in New York County, and the United States District Court for the Southern District of New York, and any appellate courts from any thereof shall have exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and any and all Litigation related to the foregoing shall be filed and maintained only in such courts. The Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of such courts the resolution of any such claim or dispute. The Parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in any court specified in this Section 6.9, or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 6.11 WAIVER OF JURY TRIAL: THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT EITHER MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS SET FORTH IN THIS SECTION 6.11.

Section 6.12 Indemnification and Attorneys' Fees: Each Party hereto shall indemnify and hold harmless each other Party hereto from and against any breach of any representation, warranty of covenant of such Party contained in this Agreement. In any action to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover his or its reasonable attorneys' fees and costs of Litigation, in addition to all other remedies available at law or in equity.

Section 6.13 Invalidity: If any Governmental Authority rules that any portion of this Agreement is invalid or unenforceable, then the invalid portion will be severed from the Agreement and the remainder of this Agreement will remain in full force and effect.

Section 6.14 Construction of Agreement: The Parties acknowledge and agree that they had the opportunity to negotiate terms, conditions and modifications to the language of this Agreement. Accordingly, each Party agrees that in any dispute regarding the interpretation or construction of this Agreement, no presumption will operate in favor of or against any Party by virtue of his or its role in drafting or not drafting the terms and conditions of this Agreement. Whenever the words "include", "includes", or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation" and/or "but not limited to", and the word "or" is not exclusive as used in this Agreement.

Section 6.15 Waiver: A Party's failure to enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision. A Party's waiver of any breach of this Agreement shall not act as a waiver of any other breach.

Section 6.16 Third Party Beneficiaries. The Parties hereby acknowledge and agree that the Releasees are intended and express third party beneficiaries to this Agreement and shall be entitled to enforce the Release set forth in Section 3.1 of this Agreement as if they were a party hereto.

Section 6.17 Counterparts and Signatures: The Parties may execute this Agreement in several counterparts and all counterparts executed shall constitute the agreement of the Parties, even if they do not sign the original or same counterpart. A counterpart may be delivered by fax or e-mail transmission and when received shall be deemed to be an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its: Manager

AT&T Mobility II LLC
By: AT&T Mobility Corporation
Its: Manager



By: Rick L. Moore
Name: Senior VP – Corporate Development

By: Rick L. Moore
Name: Senior VP – Corporate Development

Sagir, Inc.

**N.E. Colorado Cellular, Inc. d/b/a Viaero
Wireless**

By:
Name:

By:
Name:

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By:
Name:

CONSTANTINE J. RIGAS

[Signature Page to Settlement Agreement]

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Its: Manager

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By: AT&T Mobility Corporation
Its: Manager

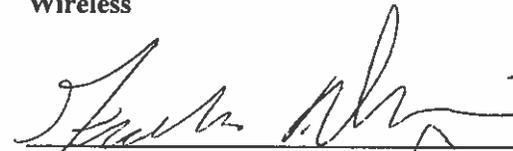
By: Rick L. Moore
Name: Senior VP – Corporate Development

By: Rick L. Moore
Name: Senior VP – Corporate Development

Sagir, Inc.

**N.E. Colorado Cellular, Inc. d/b/a Viaero
Wireless**

By:
Name:



By: F. DiRico
Name: President