

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

In the Matter of)	
Applications of Sprint Nextel Corporation,)	
Transferor)	IB Docket No. 12-343
)	
SoftBank Corp., and Starburst II, Inc.,)	
Transferees)	
)	
Joint Applications for Consent to Transfer of)	
Control of Licenses, Leases, and)	
Authorizations; and Petition for Declaratory)	
Ruling under Section 310(b)(4) of the)	
Communications Act of 1934, as amended)	
IB Docket No. 12-343)	

**PETITION TO DENY OF
THE CONSORTIUM FOR PUBLIC EDUCATION AND
THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA**

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SUMMARY

The Consortium for Public Education, and The Roman Catholic Diocese of Erie, Pennsylvania, which hold EBS authorizations subject to the Transfer of Control Application (“Application”) pending in the above-captioned proceeding (collectively, the “EBS Licensees”), hereby submit their Petition to Deny the Application, and request the Commission either deny the Application, or, at minimum, condition any grant of the Application on the divestiture of Clearwire’s EBS holdings to U.S. controlled entities.

Grant of the Application would give a foreign company control of an impermissible amount of U.S. spectral resources that executives of one applicant have stated are not needed. Most disconcerting, grant of the Application would allow a foreign company to control the U.S. EBS spectrum that is reserved for the promotion of U.S. educational, nonprofit and religious institutions and their missions, thereby further minimizing the potential the EBS spectrum will be developed for the purposes and promises envisioned by the Commission and these stakeholders.

Clearwire has failed to be an acceptable steward of the EBS spectrum, and has not ensured compliance with the Commission’s educational reservation and usage rules and policies. Clearwire has abused the market power granted by the Commission as part of the 2008 approval of the Sprint-Clearwire 2.5 GHz merger transaction, and has used its market power to leverage EBS licensees into long term leases for their spectrum that minimize to the barest extent possible, any educational usage rights, while at the same time offending the Commission’s EBS minimum educational reservation rules.

The Commission should not allow Clearwire to now simply “pass the buck” onto a foreign controlled entity for its non-compliance. The Application should therefore be denied or conditioned on divestiture of the EBS spectrum as further discussed herein.

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PETITION TO DENY

The Consortium for Public Education (“CFPE”), licensee of Educational Broadband Service (“EBS”) Station WNC484, Pittsburgh, PA, and The Roman Catholic Diocese of Erie, Pennsylvania, and its affiliated educational institutions (“Erie Diocese”), licensees of EBS Stations WND524, WND525, WND526, WND527, WND528, Erie, PA and WND589, State College, PA (together with CFPE, “the EBS Licensees”), hereby submit their Petition to Deny the Joint Applications for Consent to Transfer of Control (“Application”), filed on December 20, 2012, by Softbank Corp. (“SoftBank”), its indirect U.S. subsidiary Starburst II, Inc., and Sprint Nextel Corporation (“Sprint” and, together with SoftBank and Starburst II, the “Applicants”).¹

¹ This petition is timely filed in accordance with the pleading schedule established by the Commission in its Public Notice DA 12-2090, released December 27, 2012.

I. Introduction

Commission approval of the Application would permit by far the single largest transfer of U.S. spectrum assets to foreign control in history. More disconcerting, approval of the transaction would result in an unprecedented, and simply unacceptable from any policy and public interest standpoint, transfer to foreign control of the only U.S. wireless spectrum allocated exclusively to educational institutions. Notably, the Application is devoid of any commitments to education.

The Commission should either deny the Application, or, at minimum, condition any approval of the Application on the divestiture by Clearwire of all its EBS spectrum leases and holdings to U.S. controlled entities. This is necessary to ensure EBS is preserved for the benefit of U.S. educational, non-profit and religious institutions, and their constituents, communities, and governing bodies, and in order to stop the complete annihilation of the purposes and promise of EBS that the Commission spent decades protecting and promoting.

The EBS Licensees represent a cross section of nonprofit, educational, quasi-governmental and religious organizations which hold authorizations for EBS spectrum affected by this proceeding.²

The Consortium for Public Education, founded in 1985, is a Pennsylvania nonprofit charitable organization. CFPE works to ensure that every child, in every community, receives a high-quality public education. CFPE pursues resources for its partner school districts and encourages community and business involvement in the critical task of educating children. CFPE concentrates on creating the conditions for change that will result in smarter schools and

² The EBS Licensees have standing to file this Petition to Deny because they are current holders of EBS spectrum authorizations subject to the requested transfer of control in this proceeding.

communities, better positioned to face the future. At the heart of this effort is a firm belief that public education is fundamental to a democratic and civil society, that public schools belong to the entire community, and that all community members benefit from successful public schools.

The Roman Catholic Diocese of Erie, Pennsylvania, is a Diocese composed of thirteen counties of Northwestern Pennsylvania, including 117 parishes and 18 missions. Serving the needs of Catholic education in 13 counties of northwestern Pennsylvania, the Diocese, its parishes and institutions, educate 8,494 students in elementary, middle and high schools, and its religious education programs involve 11,750 children and youth.

As bona-fide nonprofit and religious charitable educational institutions with strong educational missions, the EBS Licensees submit this Petition to Deny as they will be directly and negatively impacted by a grant of the Application.

II. The Commission Should Not Permit a Level of Concentration of U.S. Wireless Spectrum in a Foreign Entity that Will Result from Approval of the Application

Clearwire and Sprint together under foreign control by Softbank would control an eye-popping average of 215 MHz of spectrum in the top 100 U.S. markets.³ This is nearly as much spectrum as is held by AT&T and Verizon put together, and many times more than any other single U.S. carrier.⁴ Approval of the Application would therefore result in the Commission allowing the largest spectrum holdings of a single wireless carrier operating in the U.S. to be under foreign control. Such result is against the interest of all other U.S. wireless competitors, every one of which is in great need of additional spectrum to support its network in the

³ See Clearwire Presentation to Goldman Sachs 21st Annual Communacopia Conference, presented September 19, 2012, at Slide 5 (available at <http://corporate.clearwire.com/events.cfm>) (illustrating Clearwire holds over 160 MHz and Sprint 55 MHz in the top 100 markets) (“Clearwire Presentation”).

⁴ Id.

foreseeable future. As the Federal agency with oversight of the U.S. wireless industry and spectral resources, the Commission owes a duty and obligation to U.S. wireless carriers, first and foremost, to make available and ensure adequate spectrum resources exist for U.S. companies. Approval of the application would be a dereliction of these duties and contrary to U.S. interests.

The public interest further requires the denial of the transfer of control because Clearwire/Sprint simply does not require the amount of spectrum that would be consolidated into one company as a result of approval of this transaction. Clearwire's CFO, Hope Cochran and CEO, Erik Prusch, have both recently publicly stated during Clearwire's Q3 2012 earnings conference call that Clearwire's "excess spectrum" is "what we don't need in our current business plan."⁵ Clearwire's current business plan requires 20 MHz blocks (carriers) of spectrum.⁶ Thus, the capacity Clearwire already said it does not need in its current business plan (e.g., at least 100 MHz of excess capacity) to deploy TDD-LTE for the benefit of Sprint, combined with Sprint's vast spectrum holdings, still would provide a theoretically combined Sprint-Clearwire with more than ample spectrum to fulfill their current and future spectrum needs.⁷

⁵ <http://corporate.clearwire.com/events.cfm> (Archived Q3 2012 Clearwire Corporation Earnings Call, October 25, 2012, at minute 36:00) .

⁶ See Clearwire Presentation. If Clearwire implements a theoretical maximum three 20 MHz carriers per cell site (3 x 20), its current business plans to deploy a TDD-LTE network it claims provides the highest capacity network in the industry, would leave Clearwire with over 100 MHz of excess spectrum capacity in the Top 100 markets. Id. On a comparative basis, the spectrum Clearwire considers its "excess spectrum capacity" is roughly equivalent to its EBS spectrum holdings in the largest 100 markets. It is axiomatic that Clearwire has put into use on its WiMAX systems some minimal portion of each EBS spectrum license for substantial service compliance purposes so it may claim all the spectrum is currently in use –although Clearwire did not actually require that spectrum on its network.

⁷ The spectrum Clearwire has actually put into use on its current WiMAX network that is deployed in limited U.S. markets (using 3 x 10 MHz carriers per base station), which is a very small percent of the total spectrum it controls in those markets (let alone nationally), has been dedicated to a non-standard network technology (WiMAX) that is incompatible with that of major carriers (now also including Sprint), provides no potential for roaming, is being abandoned by Sprint as it aggressively transitions its WiMAX wholesale subscribers to its own LTE network, and will shut down as soon as YE 2015, such that the limited spectrum currently used on the WiMAX network can be

Allowing this amount of unneeded spectrum – and particularly the EBS spectrum – to be concentrated under the control of a foreign corporation would not only be contrary to the public interest where U.S. operators are desperately in need of additional spectrum, but would be tantamount to Commission consent to spectrum warehousing by Softbank for what could only be the express purpose of harming the interests of U.S. wireless companies and gaining market power in the U.S. spectrum market, and particularly in the 2.5 GHz spectrum where Clearwire already has market power and has abused that market power to control the U.S. educational spectrum market.⁸

III. Transfer of EBS Spectrum to Foreign Control is Unthinkable and Against the Public Interest, Particularly Where EBS Spectrum Obligations Have Not Been Met by Clearwire-Sprint

The FCC has always acted to preserve EBS for educational use and to protect this valuable educational treasure for the benefit of U.S. education, nonprofit and religious institutions.⁹ In the EBS/BRS R&O, the Commission believed the rules changes to EBS in that proceeding “will further the educational objectives that led to the establishment of ITFS.”¹⁰

In the more than eight years since the Commission released the EBS/BRS R&O, EBS spectrum capacity has gone from being held by multiple competitors in the marketplace, to being

repurposed by Clearwire and/or Sprint/Softbank for use on a standards based LTE network or otherwise be subject to divestiture.

⁸ The Commission would not permit such a transfer of public safety spectrum whatsoever, and would place under very strict scrutiny any such proposed transfer of spectrum licensed to U.S. industrial providers of critical infrastructure, and state and local governments – which are as critically important to U.S. interests as EBS spectrum.

⁹ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, paras. 152, 159 (released July 29, 2004) (“EBS/BRS R&O”).

¹⁰ *Id.*

almost entirely consolidated into one company, Clearwire, pursuant to long term *de facto* leases (which are effectively the financial equivalent of an ownership interest in the EBS spectrum from the lessee's standpoint). The Commission has allowed this consolidation during this period and has largely (if not completely) discontinued its watchdog role over operator EBS leasing practices, seemingly under the belief this would progress the promise of EBS.

During this period, Clearwire-Sprint had ample opportunity to demonstrate the promise of EBS (to the Commission and the public) and encourage, promote and ensure its broad scale development for educational usage, consistent with Commission policies and requirements. However, the exact opposite has occurred. Clearwire has stifled development and educational usage of EBS spectrum, likely in an effort to minimize costs and preserve resources to the benefit of other corporate interests, and because Clearwire simply did not require any of the EBS spectrum for its WiMAX business plan and, as was stated by its executives, does not need excess capacity for its future plans.

A. Clearwire has Failed to Comply with Commission Educational Use Obligations

The proof that Clearwire has done virtually nothing to comply with bare minimum educational use obligations for EBS spectrum is in how EBS is being used – (or more appropriately, not being used) - in Clearwire deployed markets. Exhibit 1 hereto contains a list of all EBS licenses leased to Clearwire in 20 Clearwire commercially deployed major markets.¹¹ These markets in aggregate include over 50 million people in the Clearwire covered service area (representing 16% of the U.S. population based on 2010 census data). Assuming the substantial service filings prepared by Clearwire for the licensees are an accurate representation of actual market performance, of these 127 licenses, 96 substantial service exhibits reveal there is no

¹¹ This sample appears representative of all Clearwire deployed markets with respect to educational usage.

educational usage.¹² Of the 31 substantial service exhibits that indicate some educational usage, 7 indicate video only usage by the EBS licensee, and only 24 indicate very limited educational usage of Clearwire devices.¹³

The following table summarizes the total educational use on EBS spectrum in these markets as reported in Clearwire’s substantial service filings for the EBS licenses under lease to Clearwire in the markets:

Market	Total Number of CLWR Educational Accounts/Devices in Use	CLWR Reported Covered Pops*	Total Estimated Subscribers**	% Educational Usage Subscribers
Boston	0	3,688,609	221,317	0.000000%
Atlanta	0	4,083,688	245,021	0.000000%
San Francisco	0	2,510,272	150,616	0.000000%
San Jose	0	2,499,699	149,982	0.000000%
Richmond	0	954,807	57,288	0.000000%
Sacramento	2	1,739,864	104,392	0.001916%
Raleigh	5	1,301,353	78,081	0.006404%
Cincinnati	5	1,598,099	95,886	0.005215%
Dallas	7	3,925,576	235,535	0.002972%
Houston	10	5,061,651	303,699	0.003293%
Las Vegas	10	1,781,923	106,915	0.009353%
Seattle	12	3,302,385	198,143	0.006056%
Orlando	16	1,682,094	100,926	0.015853%
Nashville	16	1,130,698	67,842	0.023584%
Fort Worth	22	1,812,948	108,777	0.020225%
Kansas City	24	1,523,831	91,430	0.026250%
Portland	26	1,927,604	115,656	0.022480%
Baltimore	29	2,263,957	135,837	0.021349%
Tampa	43	2,013,129	120,788	0.035600%
Philadelphia	65	5,338,963	320,338	0.020291%
TOTALS	292	50,141,150	3,008,469	0.009706%
*From EBS substantial service filings for market				
** Assumes 6% penetration of covered pops incl. w wholesale subscribers				

¹² Where there is any educational use of the applicable EBS channels, the Clearwire substantial service filings describe in detail that educational use.

¹³ All Clearwire’s EBS substantial service filings indicate the “educational usage may be on channels associated with the License or on other EBS or BRS channels associated with the system”. Thus, it may be assumed that any educational usage accounts actually specified as in use in any substantial service filings of an EBS license in a specific geographic service area (“GSA”)/market are also intended by Clearwire to constitute educational usage compliance respecting the other EBS licenses in the market whose substantial service filings do not indicate any educational use. Although it appears this is intended by Clearwire as some type of channel shifting of the educational use requirements, there is still no reported educational usage as required by Section 27.1214(b)(2).

This analysis and the data at Exhibit 1 demonstrates that notwithstanding Clearwire commercially deployed WiMAX services in most of these markets over two years ago (and in some cases over three years ago), and commercially deployed pre-WiMAX services in many of these markets years before they re-deployed WiMAX services, the reality is that Clearwire's provision of services/capacity for educational usage is practically non-existent (an average of less than one hundredth of one percent of customers in these 20 markets and zero educational use customers in 5 markets) – notwithstanding Commission requirements on the part of Clearwire as lessee of the EBS spectrum to comply with FCC rules, including minimum educational usage requirements for EBS spectrum.¹⁴ Based on this data, it does not appear Clearwire has complied with Commission educational usage obligations for the EBS spectrum it leases, let alone the Commission's intent and vision for educational usage of EBS to promote the educational missions of U.S. educational, nonprofit and religious institutions.¹⁵

B. Clearwire EBS Leases Violate Minimum Educational Reservation Requirements and Frustrate the Ability of EBS Licensees to Implement Educational Usage

While Clearwire has primary obligations to comply with the FCC rules applicable to EBS as lessee of the EBS spectrum, including ensuring EBS is being used for educational purposes,

¹⁴ 47 CFR 1.9030 (b); 47 C.F.R. 27.12003(b)-(c); 47 C.F.R 27.1214(b)(1); *see also* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration*, WT Docket No. 03-66, paras. 243, 273 (released April 27, 2006) ("EBS/BRS Order on Reconsideration"). As lessee of the EBS spectrum, Clearwire has primary obligations to ensure compliance with FCC Rules for EBS spectrum, a requirement that is paramount over EBS license specific rules.

¹⁵ Clearwire has not requested any waiver of the Commission's rules relating to any of its obligations as the lessee of EBS spectrum to ensure compliance with the Commission's educational use and educational reservation rules, and the Application is thereby defective and should be dismissed for that reason. Even if Clearwire does request such a waiver, any such waiver should be denied based on Clearwire's failure to meet even the barest minimal compliance of these obligations.

which it has not, Clearwire's EBS leases also make Clearwire responsible as to its EBS lessors for the provision of educational usage over EBS.

Attached as Exhibit 2 is one Clearwire form of lease entered into with the School Board of Pinellas County Florida, around May 2010, for EBS Stations WLX226 and WLX227, Tampa Florida ("Clearwire Lease"), which is publicly available at the School Board's meeting minutes website.¹⁶ The Clearwire Lease, which upon information and belief, is consistent with dozens (if not hundreds) of Clearwire leases of the same or similar form, is instructive regarding why there exists the barest possible educational use of EBS spectrum even in Clearwire's oldest deployed markets.

First, the Clearwire Lease generally appears to contemplate that Clearwire has the right to deploy a wireless system over 100% of the spectrum associated with WLX226 and WLX227, including the capacity that is to be reserved for educational use, but that the EBS licensee may utilize certain minimal capacity on the system for educational use.¹⁷ Section 5 of the Clearwire Lease, and specifically subparagraphs 5(b)-(c), govern the terms pursuant to which Clearwire makes available educational use capacity. A reading of these subparagraphs together suggests Clearwire is fully in control of how educational use capacity is made available on the system,

¹⁶<http://pinellasschool.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1074&MinutesItemID=6911&MinutesID=1074&FileFormat=doc&Format=Minutes&MediaFileFormat=wmv>

¹⁷ This type of arrangement may not be consistent with the letter and spirit of the Section 27.1214(b)(1) mandate that the licensee may not lease 5% of its capacity that must be reserved for educational uses consistent with Section 27.1203(b)-(c), because the licensee is in effect, leasing 100% of the capacity of its channels for commercial use with the seeming expectation that Clearwire will actually make available to the licensee the minimal educational use capacity on their system or Clearwire will provide the minimal educational usage over the capacity that is to be reserved for educational use. In effect, Clearwire is leasing 100% of the capacity and there is no 5% reservation.

how that FCC mandated minimum capacity is to be determined, but that, if it wishes to deploy any facilities to use the capacity, licensee must give Clearwire half a year's prior notice.¹⁸

The subparagraphs also indicate the licensee may elect to use the Clearwire system for educational use of the spectrum and that it may select Clearwire products and services made available pursuant to the monthly service credits described at Section 7 of the Clearwire Lease. However, a review of Section 7(a) demonstrates the licensee is limited to a minimal monthly service credit amount for educational use.¹⁹ In the Clearwire Lease, this amount during the first year was \$1,000 per month, use it or lose it.²⁰ At an approximate retail value of \$50 per account, this credit would yield a grand total of only 20 monthly accounts to be used by the licensee, Pinellas County Schools, for educational use,²¹ notwithstanding it is the 7th largest school district in the State of Florida and the 26th largest in the United States, with 17,000 staff, 104,000 pre-K through 12th-grade students, 11,833 students in adult education centers, and 7,236 students attending Pinellas Technical Education Centers.²² With only 20 accounts to which it is entitled under the Clearwire Lease (that the licensee must buy) for its purported 5% capacity reservation, the school district does not have available even a fraction of a fraction of the capacity or accounts it needs to serve its school district, let alone for any other educational or nonprofit

¹⁸ This latter provision may be wholly inapplicable in respect of Clearwire's apparent and actual deployment and use of 100% of the spectrum capacity of the EBS channels on their Tampa system, making it impossible for the licensee to deploy anything on its spectrum – notwithstanding that would likely be technically impossible from an engineering standpoint.

¹⁹ The service credits are simply a veil for Clearwire's lease of 100% of the spectrum capacity of the license in violation of Section 27.1214(b)(1) of the Commission Rules.

²⁰ The service credit, as described at Schedule 2(a) of the Tampa Lease, increases 3% per year over the 30 year term, such that by year 10, the credit increases to \$1,304.77 per month.

²¹ Confirming this analysis, the Substantial Service filings for WLX226 and WLX227 indicate the licensee has 20 Clearwire accounts in use to serve its educational needs.

²² See <https://www.pcsb.org/>

purposes in the Tampa, Florida metropolitan area served by Clearwire. Educational use of 20 accounts on the Clearwire Tampa system does not constitute the minimum educational capacity reservation required, nor does it appear sufficient to allow compliance with educational use requirement for these licenses.

The Clearwire Lease frustrates the EBS licensee's ability to provide educational use over the reserved capacity. First, Clearwire's lease of 100% of the EBS channel capacity as used on its system makes it technically impossible and impractical for the licensee to deploy any of its own facilities on the channels. Second, Clearwire's restrictions and limitations on the licensee's potential use of the educational reserved capacity make it both impractical and impossible for the licensee to implement and adequately use the educational capacity. Very few EBS licensees would dedicate the time, resources and staff to developing programs around development of educational services over EBS (or the Clearwire system) where the licensee is entitled to only 20 or 25 (or even 50) accounts as dictated by Clearwire in the Clearwire Lease.²³

By using the market power it has achieved as a result of obtaining Commission authority to consolidate all the EBS (and BRS) spectrum, Clearwire has dictated lease terms (as in the Clearwire Lease) to EBS licensees and their attorneys that, among other abuses, minimize to the least possible extent Clearwire's obligations to make educational capacity available for educational usage over EBS spectrum.²⁴ In doing so, whether consistent with Commission rules

²³ Consequently, these lease provisions appear contrary to the public interest and violate Commission rules regarding minimal educational reservations and educational use requirements, and therefore the Commission should take necessary measures to invalidate them.

²⁴ Prior to Clearwire's announcement of the merger of their 2.5GHz assets and operations with Sprint in 2008, there was an extremely robust and competitive market for EBS spectrum leasing, where licensees and their counsel were able to negotiate favorable terms with respect to educational capacity reservation and use. Upon information and belief, after that combination, Clearwire established limits on educational capacity reservation and pricing caps for EBS leases (which are substantially less favorable than existed when there was a competitive market), while at the same time EBS licensees had the impending substantial service deadline looming that Clearwire used to leverage

and policies concerning EBS leasing and educational usage, Clearwire has implicitly taken on the obligation as lessee of the EBS spectrum to ensure FCC compliance with these requirements. However, the above cited substantial service data suggests Clearwire has not complied with these obligations under its EBS leases or the Commission's Rules.

Notwithstanding what appears a complete failure on its part, unless Clearwire can clearly demonstrate that it has not only performed (or ensured the performance of) bare minimum compliance with educational use requirements for EBS, but that it has substantially exceeded those obligations and has implemented the vision the Commission and other stakeholders have for the non-cash related benefits and promise of EBS spectrum to promote the missions of U.S. educational, nonprofit and religious institutions, the Commission simply should not, in good conscience, and with the important public interest in consideration, allow Clearwire to simply "pass the buck" of this extremely important U.S. interest onto a foreign company as the Application now requests.

C. The Commission Should Require Clearwire Provide Data Relating to Compliance with EBS Educational Usage and Leasing Requirements

To aid in what appears must be a mandatory review of Clearwire's efforts to ensure compliance with EBS educational usage requirements as a critical consideration of this

many new lease negotiations and renegotiations on Clearwire's terms. A review of ULS lease activity in Clearwire deployed markets since that time demonstrates the substantial new leasing activity resulting after the Clearwire-Sprint combination. As an example of Clearwire's use of market power after the combination with Sprint's 2.5GHz operations, the Clearwire Lease discussed herein pays the licensee only \$0.11 per MHz pop (net present value over 30 years, including a \$631,395 upfront payment, excluding service credits) for its Tampa, FL spectrum, and allows use of only 20 accounts (that must be paid for by the licensee through a \$1,000 service credit). Prior to approval of the Clearwire-Sprint 2.5GHz combination, and as an example of a lease Clearwire entered into when there was a competitive market, in September 2007, Clearwire entered into a lease with Beebe Public Schools, for its Little Rock, AR (a market less than 1/3 the size of Tampa, FL) EBS license, WLX956, that paid \$0.30 per MHz pop (on a net present value basis over 30 years, including a \$2,000,000 upfront payment, excluding service credits) for the spectrum, plus \$3,000 in service credit payments. *See* Beebe County School District, June 30, 2008, Auditor's Report, at page 17, note 11, at arklegaudit.gov/showfile.php?t=webaudit&fid=EDSD39708.

proceeding, the Commission should immediately request that Clearwire provide detailed data regarding the educational usage over its network. This data should include, at minimum, the following current information for each educational usage account on its network to enable the Commission and parties to this proceeding the ability to evaluate and comment on the information: 1. GSA Market, 2. Associated EBS/BRS Call Sign, 3. Customer Name and Address, 4. Clearwire (or Sprint) Equipment/Device in Service, 5. Date Service Initiated, 6. Current Status of Account (Active, etc.), 7. Account Type (Uplink/Downlink Capacity), and 8. Average Weekly Account Usage for prior 26 weeks (in hours actively logged in and Megabytes used).²⁵ As part of this data collection, the Commission should also require Clearwire to provide the total average weekly Terabytes of available data on its network per GSA Market, and the total percentage of actual educational usage on its network in each GSA Market over the prior 26 weeks in hours logged in and Gigabytes. The ability to validate the actual percentage of educational account usage on Clearwire's network is the only way to measure and evaluate Clearwire's compliance with educational use requirements.

The Commission should also require Clearwire to provide detailed data for each EBS lease of which they are lessee concerning the terms for making educational reserved capacity available to the lessor and the amount of the express educational reservation, including, at minimum, a summary of the following for each lease: 1. Net Percent of Educational Reservation, 2. Maximum Number of Cost Free Accounts Available to Lessor in Lease (No Charge or Lease Credit), 3. Type of Accounts Available (Including Bandwidth Limits), 4. Equipment/Device Availability to EBS Licensee (and cost); 5. Licensee Rights to Deploy Own Facilities Over

²⁵ All of this data should be easily and readily accessible by Clearwire and should not be any burden for Clearwire to produce, and even if not, Clearwire should be required to produce the data as part of the review process of the Application considering the questions regarding its compliance with educational usage requirements.

Channels, and 6. Licensee Spectrum Recapture Rights.²⁶ Finally, once Clearwire provides this data, the Commission should allow interested parties to this proceeding an additional opportunity to review and comment on the data.

As suggested, if it is ultimately determined Clearwire has not met its responsibilities to education as the sole holder of nearly all EBS spectrum rights in the United States, the Commission should not simply allow Clearwire to transfer these obligations to a foreign company that likely has absolutely no motive to develop EBS spectrum for the purposes for which it was created or to promote its broad scale educational use.²⁷ Even if the Commission determines Clearwire has met the EBS educational use obligations, it is against U.S. interests to allow control of the U.S. educational spectrum to a foreign company with no commitment or ties to the hundreds of government, educational, nonprofit and religious institutions to which EBS is licensed. It is very likely that if a purely profit driven foreign company such as Softbank gets control of the EBS spectrum, there will be even less benefit for U.S. education than the less than minimum benefit Clearwire has thus far conferred. To be certain, the Application makes no mention of what commitments or public interest benefits will flow to U.S. educational, nonprofit and religious institutions if the Application is granted.

²⁶ The Commission has previously made clear that copies of EBS leases must be made available for inspection by the Commission upon request in the case of concerns about their contents and where abusive practices may exist. *See* EBS/BRS Order on Reconsideration, paras. 251-253. Here, it is being proposed that only a summary of the educational reservation and educational use terms of the leases be made available for inspection. However, if it is determined that such summary of the terms does not provide a full and accurate representation of the contents, the Commission should require Clearwire make available all leases in unredacted form so that the Commission and interested parties to this proceeding can consider whether they comply with the educational use and educational reservation rules.

²⁷ The Commission may not allow a licensee to simply sell its licenses (or leases) in order to avoid having to fulfill its FCC obligations and pass on compliance to another party. *See* *Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 794 (D.C. Cir. 1964) (holding that the Commission may not allow an unqualified licensee to avoid accountability by selling its stations).

D. Grant of the Application May Conflict with State Nonprofit Corporation Laws

Transfer of control of EBS spectrum capacity to foreign ownership may also create Federal law (and possibly international law) conflicts with the missions and laws of state governments, and their oversight of state and local educational, nonprofit, and religious institutions that hold authorizations for EBS spectrum, as well as their direct beneficiaries, including, their members, constituents and the public.

A grant of the application may constitute an unauthorized transfer of the assets of state and local governments, and the educational and nonprofit entities over which they have jurisdiction and oversight, to a non-U.S. company. Many state nonprofit corporation codes expressly prohibit diversion of nonprofit, charitable assets from their intended purposes.²⁸ Transfer of control of the capacity of EBS licenses (valuable intangible assets held by EBS licensees) to a for-profit foreign corporation is not even remotely a purpose ever envisioned by nonprofit holders of EBS licenses.²⁹ State nonprofit corporation codes also govern specific procedures for nonprofits to transfer control of assets through leases and otherwise.³⁰ While the Commission has not previously considered potential conflicts of its rules with state nonprofit corporations laws as part of the EBS spectrum leasing rules and Secondary Spectrum Markets

²⁸ See, e.g., 15 Pa. C.S. § 5547(b), which states: "[p]roperty committed to charitable purposes shall not ... be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa.C.S. Ch. 61 (relating to estates) specifying the disposition of the property." See also Michigan Nonprofit Corporation Act, MCL 450.2301(5), and Minnesota Statutes 317A.671

²⁹ Entering into a 30 year long term *de facto* lease, which is the financial equivalent to conferring an ownership interest in the spectrum to the lessee, may rise to the level under some state nonprofit codes as a prohibited diversion of nonprofit assets, triggering violations of state law. Involuntary transfer (from the EBS licensee standpoint) of these assets to a foreign company presents an even stronger case for a violation of state nonprofit corporation laws.

³⁰ These state nonprofit code provisions may also be applicable where the capacity of an EBS license as an intangible asset constitutes substantially all of the assets of the nonprofit, and therefore the involuntary transfer of those assets by an EBS licensee to a foreign corporation may trigger violation of state nonprofit corporation laws and interfere with state jurisdiction over nonprofit EBS licensees.

rules in regard to transfers of control of EBS spectrum and long term leasing of EBS spectrum, it should now be fully considered in this proceeding, which involves the potential transfer to a foreign company of very substantial intangible spectrum assets granted to state governed institutions subject to state nonprofit corporations laws.³¹ It appears the Commission may be allowing a broad involuntary transfer (from the EBS licensee standpoint) of intangible EBS capacity assets to a foreign company in violation of state laws if the Application is approved.

IV. The Application Should be Denied or a Divestiture of EBS Spectrum Ordered

For the reasons described herein, the Commission should deny the Application. At minimum, however, any approval should be conditioned on the divestiture by Clearwire of all its EBS spectrum leases to U.S. controlled entities.³² If Clearwire is unable to secure qualified buyers for any of its EBS spectrum assets within a reasonable time frame of the imposition of such condition (for example, within 60 days thereafter), the Commission should either: 1) allow Clearwire to opt out of any affected EBS leases upon reasonable notice to lessors (for example, at least 90 days prior notice), thereby making that EBS spectrum capacity immediately available to be pursued for lease by other interest parties, or 2) issue a declaratory ruling that all affected Clearwire lease holdings are terminated by operation of law upon a date certain, and thereupon conduct (or order Clearwire to conduct) an excess EBS capacity incentive spectrum auction in which the affected EBS spectrum capacity/leases may be pursued by other parties pursuant to a

³¹ Although EBS spectrum authorizations do not give an EBS licensee an ownership interest in the spectrum, the license to use the spectrum (with an expectancy of renewal) is an intangible asset held by the EBS licensee, and is therefore intangible property contemplated under state nonprofit corporations laws. For a good analysis, *see e.g.*, http://www.utcourts.gov/courts/dist/tax/docs/verizon_v_property_tax_divison.pdf

³² This is fully in line with the 100 MHz per market of excess spectrum Clearwire has indicated it does not need.

competitive bidding process.³³ In either of the latter scenarios, the Commission could require that any new lessee of the specific EBS capacity acquired reimburse Clearwire for its upfront capital investment in the particular EBS spectrum,³⁴ out of the proceeds to be paid to the EBS licensee pursuant to such new spectrum lease (considering the lessor has already received that upfront payment from Clearwire).³⁵

V. Conclusion

For the foregoing reasons, the Commission should deny the Application, or, at minimum, condition any approval on the divestiture by Clearwire of all its EBS spectrum holdings to U.S. controlled entities.

Respectfully submitted,

By: 

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³³ Such an auction could potentially be conducted in conjunction with awarding EBS whitespace to incumbent licensees such that all EBS licensees could seek competitive bids for the lease of EBS BTAs or other rational geographic licensed territories, and this type of auction would ensure EBS licensees will have an opportunity to maximize the benefits of their licensed EBS capacity in a competitive market.

³⁴ According to Clearwire's Q3 2012 Form 10Q, filed with the Securities and Exchange Commission on October 26, 2012, at note 6 to Consolidated Financial Statements, Clearwire's total capital investment in spectrum leases is \$1.36 billion.

³⁵ This would make Clearwire whole for giving up its EBS spectrum and ensure the relevant EBS licensees do not benefit from any unjust enrichment at Clearwire's expense, however, Clearwire should not be entitled to any other compensation/proceeds for such new leases. This would also create a new competitive market for EBS spectrum that is not frustrated by a single buyer with market power.

EXHIBIT 1

Call sign	Major GSA Market	EBS Channels	CLWR Deployed	Pre-WiMax Deployment Date	WiMax Deployment Date	WiMax pops covered	CLWR Accounts
KVI65	Atlanta, GA	A1,A2,A3,A4	Yes		Jun-09	4,083,688	
WHR755	Atlanta, GA	B1,B2,B3,B4	Yes		Jun-09	4,083,688	
WNC560	Atlanta, GA	C1,C2,C3,C4	Yes		Jun-09	4,083,688	
WNC804	Atlanta, GA	D1,D2,D3,D4	Yes		Jun-09	4,083,688	
WNC561	Atlanta, GA	G1,G2,G3,G4	Yes		Jun-09	4,083,688	
WNC708	Baltimore, MD	A1,A2,A3,A4	Yes		Jun-10	2,263,957	
WHR807	Baltimore, MD	B1,B2,B3,B4	Yes		Jun-10	2,263,957	
WLX789	Baltimore, MD	C1,C2,C3,C4	Yes		Jun-10	2,263,957	
WHR917	Baltimore, MD	D1,D2,D3,D4	Yes		Jun-10	2,263,957	
WLX790	Baltimore, MD	G1,G2	Yes		Jun-10	2,263,957	6
WLX787	Baltimore, MD	G3,G4	Yes		Jun-10	2,263,957	23
KQT47	Boston, MA	A1,A2	Yes		Sep-10	3,688,609	
WQCU376	Boston, MA	A3,A4	Yes		Sep-10	3,688,609	
KYP23	Boston, MA	B1,B2,B3,B4	Yes		Sep-10	3,688,609	
WND255	Boston, MA	B1,B2,B3,B4	Yes		Sep-10	3,688,609	
WHR758	Boston, MA	C1	Yes		Sep-10	3,688,609	
WBB421	Boston, MA	C2,C3,C4	Yes		Sep-10	3,688,609	
KVQ24	Boston, MA	D1,D2,D3,D4	Yes		Sep-10	3,688,609	
WND258	Boston, MA	D1,D2,D3,D4	Yes		Sep-10	3,688,609	
KLC85	Boston, MA	G1,G2,G3,G4	Yes		Sep-10	3,688,609	
KHX47	Cincinnati, OH	A1,A2	Yes		Dec-10	1,598,099	
WHR662	Cincinnati, OH	A3,A4	Yes		Dec-10	1,598,099	
WND313	Cincinnati, OH	B1,B2,B3,B4	Yes		Dec-10	1,598,099	
WHR584	Cincinnati, OH	C1,C2,C3,C4	Yes		Dec-10	1,598,099	
WLX805	Cincinnati, OH	D1,D2,D3,D4	Yes		Dec-10	1,598,099	
WLX435	Cincinnati, OH	G1,G2,G3,G4	Yes		Dec-10	1,598,099	5
WNC582	Dallas, TX	A1,A2	Yes		Nov-09	3,925,576	
WHR882	Dallas, TX	A3,A4	Yes		Nov-09	3,925,576	
WEF69	Dallas, TX	B1,B2,B3,B4	Yes		Nov-09	3,925,576	
WNC836	Dallas, TX	C1,C2,C3,C4	Yes		Nov-09	3,925,576	7
WND242	Dallas, TX	D1,D2,D3	Yes		Nov-09	3,925,576	
WLX843	Dallas, TX	D4	Yes		Nov-09	3,925,576	
WHR830	Dallas, TX	G1,G2,G3	Yes		Nov-09	3,925,576	
WHR831	Dallas, TX	G4	Yes		Nov-09	3,925,576	
WHR506	Fort Worth, TX	A1,A2,A3,A4	Yes		Nov-09	1,812,948	
WLX649	Fort Worth, TX	B1,B2,B3,B4	Yes		Nov-09	1,812,948	
WHR883	Fort Worth, TX	C1,C2,C3,C4	Yes		Nov-09	1,812,948	16
WNC990	Fort Worth, TX	C3,C4	Yes		Nov-09	1,812,948	
WHR881	Fort Worth, TX	D1,D2,D3,D4	Yes		Nov-09	1,812,948	
WNC823	Fort Worth, TX	G1,G2,G3,G4	Yes		Nov-09	1,812,948	6
WHR492	Houston, TX	A1,A2,A3,A4	Yes		Mar-10	5,061,651	
WAU31	Houston, TX	B1,B2,B3,B4	Yes		Mar-10	5,061,651	
WHQ281	Houston, TX	C1,C2,C3,C4	Yes		Mar-10	5,061,651	
KRZ68	Houston, TX	D1,D2,D3,D4	Yes		Mar-10	5,061,651	
WNC208	Houston, TX	G1,G2,G3,G4	Yes		Mar-10	5,061,651	10
WHR531	Kansas City, MO	A1,A2,A3,A4	Yes		Jun-10	1,523,831	
WLX709	Kansas City, MO	B1,B2,B3,B4	Yes		Jun-10	1,523,831	5
WHR511	Kansas City, MO	C1,C2,C3,C4	Yes		Jun-10	1,523,831	
WHR523	Kansas City, MO	D1,D2,D3,D4	Yes		Jun-10	1,523,831	19
WLX575	Kansas City, MO	G1,G2,G3,G4	Yes		Jun-10	1,523,831	
WNC851	Las Vegas, NV	A1,A2,A3,A4	Yes		Jul-09	1,781,923	
WLX370	Las Vegas, NV	B1,B2,B3,B4	Yes		Jul-09	1,781,923	5
KZH32	Las Vegas, NV	C1,C2,C3,C4	Yes		Jul-09	1,781,923	
WLX803	Las Vegas, NV	D1,D2,D3,D4	Yes		Jul-09	1,781,923	5
KZH33	Las Vegas, NV	E3,E4,F3,F4	Yes		Jul-09	1,781,923	

EXHIBIT 1

Call sign	Major GSA Market	EBS Channels	CLWR Deployed	Pre-WiMax Deployment Date	WiMax Deployment Date	WiMax pops covered	CLWR Accounts
WLX694	Las Vegas, NV	G1,G2,G3,G4	Yes		Jul-09	1,781,923	
WLX371	Nashville, TN	A1,A2,A3,A4	Yes	Sep-07	Sep-10	1,130,698	
WLX978	Nashville, TN	B1,B2,B3,B4	Yes	Sep-07	Sep-10	1,130,698	
WLX563	Nashville, TN	C1,C2,C3,C4	Yes	Sep-07	Sep-10	1,130,698	6
WLX684	Nashville, TN	D1,D2,D3,D4	Yes	Sep-07	Sep-10	1,130,698	10
WLX295	Nashville, TN	G1,G2,G3,G4	Yes	Sep-07	Sep-10	1,130,698	
WHR536	Orlando, FL	A1,A2,A3,A4	Yes		Sep-10	1,682,094	
WLX362	Orlando, FL	B1,B2,B3,B4	Yes		Sep-10	1,682,094	10
WHR493	Orlando, FL	C1,C2,C3,C4	Yes		Sep-10	1,682,094	
WLX309	Orlando, FL	D1,D2,D3,D4	Yes		Sep-10	1,682,094	
WLX773	Orlando, FL	G1,G2,G3,G4	Yes		Sep-10	1,682,094	6
WLX824	Philadelphia, PA	A3,A4	Yes		Nov-10	5,338,963	55
WLX578	Philadelphia, PA	B1,B2	Yes		Nov-10	5,338,963	
WLX566	Philadelphia, PA	B3,B4	Yes		Nov-10	5,338,963	
WLX822	Philadelphia, PA	C1,C2	Yes		Nov-10	5,338,963	
WLX825	Philadelphia, PA	C3,C4	Yes		Nov-10	5,338,963	10
WLX823	Philadelphia, PA	D1,D2,D3,D4	Yes		Nov-10	5,338,963	
WHR527	Philadelphia, PA	G1,G2,G3,G4	Yes		Nov-10	5,338,963	
WHR543	Portland, OR	A1,A2,A3,A4	Yes		Jan-09	1,927,604	
WHR746	Portland, OR	B1,B2	Yes		Jan-09	1,927,604	
WLX237	Portland, OR	B3,B4	Yes		Jan-09	1,927,604	
WHR522	Portland, OR	C1,C2,C3,C4	Yes		Jan-09	1,927,604	
WLX681	Portland, OR	D1,D2,D3,D4	Yes		Jan-09	1,927,604	6
WHR515	Portland, OR	G1,G2,G3,G4	Yes		Jan-09	1,927,604	20
WLX436	Raleigh, NC	A1,A2,A3,A4	Yes	Dec-06	Nov-09	1,301,353	
WHR697	Raleigh, NC	B1,B2,B3,B4	Yes	Dec-06	Nov-09	1,301,353	
WHR619	Raleigh, NC	C1,C2,C3,C4	Yes	Dec-06	Nov-09	1,301,353	
WQCQ718	Raleigh, NC	D1,D2,D3,D4	Yes	Dec-06	Nov-09	1,301,353	5
WHR590	Raleigh, NC	E1,E2,E3,E4	Yes	Dec-06	Nov-09	1,301,353	
WQCI587	Raleigh, NC	G1,G2,G3,G4	Yes	Dec-06	Nov-09	1,301,353	
WNC491	Richmond, VA	B1,B2,B3,B4	Yes	Jun-07	Jul-10	954,807	
WNC638	Richmond, VA	C1,C2	Yes	Jun-07	Jul-10	954,807	
WNC648	Richmond, VA	C3,C4	Yes	Jun-07	Jul-10	954,807	
WHG238	Richmond, VA	D1,D2	Yes	Jun-07	Jul-10	954,807	
WHR972	Richmond, VA	D1,D2	Yes	Jun-07	Jul-10	954,807	
WNC489	Richmond, VA	D3,D4	Yes	Jun-07	Jul-10	954,807	
WNC486	Richmond, VA	G1,G2	Yes	Jun-07	Jul-10	954,807	
WHF243	Richmond, VA	G1,G2	Yes	Jun-07	Jul-10	954,807	
WNC686	Richmond, VA	G3,G4	Yes	Jun-07	Jul-10	954,807	
WHG370	Sacramento, CA	A1,A2,A3,A4	Yes		Nov-10	1,739,864	
WSA40	Sacramento, CA	B1,B2,B3,B4	Yes		Nov-10	1,739,864	
WHR512	Sacramento, CA	C1,C2,C3,C4	Yes		Nov-10	1,739,864	
WLX720	Sacramento, CA	D1,D2,D3	Yes		Nov-10	1,739,864	2
WLX735	Sacramento, CA	D4	Yes		Nov-10	1,739,864	
WHR772	Sacramento, CA	G1,G2,G3,G4	Yes		Nov-10	1,739,864	
WHG348	San Francisco, CA	A3,A4	Yes		Jan-11	2,510,272	
KZB23	San Francisco, CA	B1,B2,B3,B4	Yes		Jan-11	2,510,272	
KZB22	San Francisco, CA	C1,C2,C3,C4	Yes		Jan-11	2,510,272	
WNC824	San Francisco, CA	D1,D2,D3	Yes		Jan-11	2,510,272	
WHR466	San Jose, CA	A1,A2,A3,A4	Yes		Jan-11	2,499,699	
WHG338	San Jose, CA	B1,B2,B3,B4	Yes		Jan-11	2,499,699	
WHR467	San Jose, CA	C1,C2,C3,C4	Yes		Jan-11	2,499,699	
KZB24	San Jose, CA	D1,D2,D3,D4	Yes		Jan-11	2,499,699	
KZB25	San Jose, CA	D1,D2,D3,D4	Yes		Jan-11	2,499,699	
KGG38	San Jose, CA	E1,E2,E3,E4	Yes		Jan-11	2,499,699	

EXHIBIT 1

Call sign	Major GSA Market	EBS Channels	CLWR Deployed	Pre-WiMax Deployment Date	WiMax Deployment Date	WiMax pops covered	CLWR Accounts
WHR460	San Jose, CA	G1,G2,G3,G4	Yes		Jan-11	2,499,699	
WNTA285	San Jose, CA	H3	Yes		Jan-11	2,499,699	
WHR528	Seattle, WA	A1,A2,A3,A4	Yes	Dec-06	Nov-09	3,302,385	
WHR622	Seattle, WA	B1,B2,B3,B4	Yes	Dec-06	Nov-09	3,302,385	
WNC381	Seattle, WA	C1,C2,C3,C4	Yes	Dec-06	Nov-09	3,302,385	
WLX726	Seattle, WA	D1,D2,D3,D4	Yes	Dec-06	Nov-09	3,302,385	
WHT657	Seattle, WA	F1,F2,F3,F4	Yes	Dec-06	Nov-09	3,302,385	12
WLX227	Tampa, FL	A1,A4	Yes		Nov-10	2,013,129	20
WFW689	Tampa, FL	A2,A3	Yes		Nov-10	2,013,129	
WNC859	Tampa, FL	B1,B2,B3,B4	Yes		Nov-10	2,013,129	
WHF223	Tampa, FL	B1,B2,B3,B4	Yes		Nov-10	2,013,129	
WHR518	Tampa, FL	C1,C2,C3,C4	Yes		Nov-10	2,013,129	23
WLX226	Tampa, FL	D1,D4	Yes		Nov-10	2,013,129	
WGV752	Tampa, FL	D2,D3	Yes		Nov-10	2,013,129	
WNC860	Tampa, FL	G1,G2,G3,G4	Yes		Nov-10	2,013,129	
KD54001	Tampa, FL	G1,G2,G3,G4	Yes		Nov-10	2,013,129	
WHB828	Tampa, FL	G1,G2,G3,G4	Yes		Nov-10	2,013,129	
						50,141,150	292

EXHIBIT 2

EDUCATIONAL BROADBAND SERVICE LONG-TERM *DE FACTO* LEASE AGREEMENT

THIS Educational Broadband Service (“EBS”) Long-Term *De Facto* Lease Agreement (the “**Agreement**”) is entered into as of the date of signature of the last party to sign this Agreement (the “**Effective Date**”), by and between School Board of Pinellas County Florida, a Florida public school district (the “**Licensee**”) and Clearwire Spectrum Holdings III LLC, a Nevada limited liability company (“**Clearwire**”) (each sometimes referred to as “**Party**” and collectively as “**Parties**”).

WHEREAS the Federal Communications Commission (“**FCC**”) has authorized Licensee to operate on the EBS channels A1 and A4, and D1 and D4 (each a “**Channel**” and collectively, together with any associated guardband or J or K channels that may be granted, the “**Channels**”) under the call signs WLX227 and WLX226 (each a “**License**” and collectively the “**Licenses**”) in the Tampa, Florida market (the “**Market**”);

WHEREAS, Licensee and Sprint (Bay Area), LLC (as successor-in-interest to Sprint (Bay Area) Inc.), an affiliate of Clearwire (“**Clearwire Affiliate**”), are parties to that certain Amended and Restated ITFS Excess Capacity Lease Agreement dated as of December 31, 2001 pursuant to which Clearwire Affiliate leases from Licensee the Excess Capacity on the Channels (the “**Original Lease**”);

WHEREAS, the Parties desire to replace the Original Lease in its entirety with this Agreement; and

WHEREAS the Parties have agreed to enter into this Agreement for Licensee to lease to Clearwire the capacity on the Channels which, pursuant to the rules, regulations and policies of the FCC (the “**FCC Rules**”), can be made available for commercial use, in accordance with the terms and conditions below, and subject to FCC approval;

THEN, in consideration of the promises and covenants set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is acknowledged by the Parties’ signatures, the Parties agree as follows:

1. LEASE TERM AND RENEWAL

(a) **Initial Term and Extension.** Subject to Subsection 1(c) and/or the earlier termination of this Agreement in accordance with Section 11, the initial term will begin on the date of issuance by the FCC of a public notice announcing the grant of the FCC Long Term Lease Application (as hereinafter defined) filed by the Parties with respect to this Agreement pursuant to Section 9 of this Agreement (the “**Commencement Date**”), and will end with respect to each License on the date that the then-current term of such License expires (the “**Initial Term**”).

(b) **Renewal.** Subject to Subsection 1(c) and/or the earlier termination of this Agreement in accordance with Section 11, this Agreement will renew with respect to each License for successive terms on the date that such License is renewed by the FCC (“**Renewal Date**”) and expire when such renewed License expires (each, a “**Renewal Term**”); provided that the final Renewal Term will conclude thirty (30) years after the Commencement Date, for a maximum Agreement duration of thirty (30) years. The Renewal Terms will occur automatically unless Clearwire notifies the Licensee in writing at least twelve (12) months prior to the end of the Initial Term or any Renewal Term that it declines to renew the Agreement. The terms and conditions of this Agreement apply to each Renewal Term. The Initial Term and all Renewal Terms are collectively referred to herein as the “**Term**”.

(c) **Renewal of License and Extension of Agreement.** If any License expires during the Initial Term and/or any Renewal Term, then this Agreement will also expire at such time with respect to the expired License unless the expired License is renewed and FCC authorization for this Agreement is extended. Licensee and Clearwire will cooperate to timely file a renewal application for the Licenses, in conjunction with a request for an extension of the then-applicable Initial Term or Renewal Term of this Agreement, to the date that is ten (10) years from the beginning of such Initial Term or Renewal Term, except that in the case of the final Renewal Term, to the

date that is thirty (30) years after the Commencement Date. This Agreement will continue to apply with respect to each License unless the FCC denies by Final Order any application for renewal of such License or extension of the Term for such License. “**Final Order**” means an order issued by the FCC that is in full force and effect and as to which (i) no timely filed petition for reconsideration, application for review or appeal is pending and (ii) the time for the filing of any such petition, application or appeal has passed.

2. COMPENSATION

(a) **Monthly Fee.** Beginning within ten (10) business days of the Commencement Date, and on the first day of each month thereafter throughout the Term, Clearwire will pay Licensee a monthly fee as specified in the attached Schedule 2(a) (the “Monthly Fee”) for use of the capacity of the Channels in excess of Licensee’s Reserved Capacity (as defined in Subsection 5(b) below) (the “**Excess Capacity**”). The Monthly Fee due for any partial calendar month, at the commencement of the Initial Term or expiration of the Term, will be prorated accordingly. Clearwire’s obligation to pay the Monthly Fee is subject to Licensee delivering to Clearwire a completed IRS Form W-9 (attached hereto as Exhibit A).

(b) **Adjustment to Monthly Fee.** The Monthly Fee will be reduced or increased on a pro rata basis during the Term of this Agreement in the event that: (i) the amount of Clearwire Capacity (as defined in Subsection 5(a) below) increases or decreases from the amount of Clearwire Capacity available as of the Effective Date, or (ii) there is a change in the size or location of the Geographic Service Area (“**GSA**”) for any Channel as compared to the GSA that exists as of the Effective Date. For the purpose of the foregoing, the pro-ration of the Monthly Fee with respect to increases or decreases in Clearwire’s Capacity will be based on the number of megahertz (“**MHz**”) of capacity made available to Clearwire as a result of such increase or decrease as compared to the number of MHz of capacity contemplated to be made available to Clearwire under this Agreement. The pro-ration of the Monthly Fee with respect to any change in the size or location of the GSA with respect to any amount of capacity will be based on the number of MHz per population made available to Clearwire as a result of such change as compared to the MHz per population contemplated to be made available under this Agreement (relying on the GSA map attached hereto as Exhibit B). In making either calculation, however, the J and K channels associated with the Channels following the Transition (as hereinafter defined) will not be considered to be unavailable to Clearwire as a result of any determination by Clearwire that such J and K channel capacity is not, at any given time, configurable or usable in a manner that is commercially useful to Clearwire, and the reduction in size of EBS lower or upper band channels from 6MHz to 5.5 MHz following the Transition will not be considered as a decrease in Clearwire’s Capacity.

(c) **Prepaid Fee.** Within ten (10) business days of the date upon which the FCC grant of the FCC Long Term Lease Application becomes a Final Order, Clearwire will pay to Licensee the amount of Six Hundred Thirty-One Thousand Three Hundred Ninety-Five and 23/100 Dollars (\$631,395.23) (the “**Prepaid Fee**”). The Prepaid Fee will be made in two separate simultaneous payments: one payable to Licensee in the amount of Five Hundred Sixty Thousand Twenty Nine and 63/100 Dollars (\$560,029.63) and one payable to Dow Lohnes PLLC in the amount of Seventy One Thousand Three Hundred Sixty Five and 60/100 Dollars (\$71,365.60). Clearwire’s obligation to pay the Prepaid Fee is subject to each of Licensee and Dow Lohnes PLLC delivering to Clearwire (i) a completed IRS Form W-9 (attached hereto as Exhibit A) and (ii) payment instructions in a form reasonably acceptable to Clearwire.

(d) **Refund of Prepaid Fee.** If this Agreement is terminated by reason of uncured default by Licensee during the first five (5) years of the Agreement, all or a portion of the Prepaid Fee will be refunded to Clearwire (“**Refund**”). The amount of the Refund will be equal to the Prepaid Fee distributed equally over five (5) years and adjusted on a pro rata basis to account for the remaining time between the date of the termination and the expiration of five (5) years following the Commencement Date. There will be no Refund if the termination occurs after the first day of the sixth (6th) year of the Agreement.

(e) **Payment Receipt Address.** Monthly Fee payments under this Agreement will be made to the following address, which may be changed by Licensee from time to time upon notice to Clearwire pursuant to this Agreement:

School Board of Pinellas County Florida
301 4th Street S.W.
Largo, FL 33770-2942
Attn: David Cook

3. EXCLUSIVITY AND RIGHT OF FIRST REFUSAL

(a) **Exclusivity.** During the Term, Licensee will not negotiate or contract with any third party to lease, sell, assign, transfer or use any of the capacity of the Channels or any option therefor. The foregoing notwithstanding, during the last six (6) months of the final Renewal Term, and during the Initial Term or any other Renewal Term following Clearwire's notice to Licensee that it has elected not to renew the Agreement, in accordance with Subsection 1(b), if any, Licensee may negotiate and contract with any third party with respect to any period following the end of this Agreement, so long as Licensee complies with the ROFR set forth in Subsection 3(b). Furthermore, nothing in this Agreement will be deemed to prohibit Licensee from utilizing Licensee's Reserved Capacity consistent with Section 5(c) or from negotiating and entering into any assignment of the License or transfer of control transaction that Licensee may undertake pursuant to Section 10.

(b) **Right of First Refusal ("ROFR").** During the Term and for the twenty-four (24) months following the expiration or termination of this Agreement (unless this Agreement is terminated as a result of Clearwire's default), and except with respect to any utilization of Licensee's Reserved Capacity consistent with Section 5(c), or any assignment of any of the Licenses or transfer of control transaction that Licensee may undertake without Clearwire's prior written consent pursuant to Section 10, Clearwire or Clearwire's designee will have a ROFR with respect to any and all bona fide offers, of any kind, received by Licensee to acquire any of the Licenses (if FCC Rules allow it and the Licensee desires to sell), lease or otherwise use any of the capacity on the Channels (or any part thereof) in any other manner, or to acquire an option to acquire, lease or otherwise use any of the capacity on the Channels (or any part thereof) from a third party which offer Licensee otherwise intends to accept. Licensee will notify Clearwire in writing of any such bona fide offer, including the terms of the offer, within thirty (30) days following Licensee's determination to accept the offer. Clearwire will notify Licensee within thirty (30) days following receipt of such notification if it is exercising its ROFR. In the event that Clearwire fails to exercise its ROFR, Licensee will have ninety (90) days from the expiration of Clearwire's thirty (30) day response period to enter into an agreement with the offeror on the same terms and conditions as were offered to Clearwire. If, within the ninety (90) day period, Licensee does not enter into a binding agreement with the offeror on the same terms and conditions as were offered to Clearwire, then Clearwire's ROFR will remain in effect pursuant to the terms stated in this Subsection. If, within the ninety (90) day period, Licensee enters into a binding agreement with the offeror on the same terms and conditions as were offered to Clearwire, then Clearwire's ROFR will terminate; provided, however, that should Licensee's agreement with the offeror be terminated within twenty-four (24) months after the expiration or termination of this Agreement, Clearwire's ROFR will be reinstated for the remainder of the twenty-four (24) month period or for a period of one hundred eighty (180) days, whichever is longer. The terms of any agreement between Clearwire (or its designee) and Licensee resulting from the exercise of Clearwire's ROFR will be ratified in a separate agreement. All materials exchanged under this ROFR are subject to the non-disclosure provisions of Section 14 of this Agreement.

(c) **Form of Consideration and Determination of Value.** Subject to, and without limiting Clearwire's rights described in Subsection 3(b), if the whole or any part of the consideration of the third party offer is in a form other than cash, then Clearwire may meet such non-cash consideration using cash, comparable non-cash consideration, or both in its acceptance notice. If Licensee does not accept Clearwire's offer of a cash substitute for the non-cash consideration, then Licensee must notify Clearwire in writing of Licensee's estimate of a fair cash substitute within fifteen (15) days after Licensee's receipt of Clearwire's acceptance notice. Licensee's failure to notify Clearwire of its estimate of a fair cash substitute within the prescribed fifteen (15) day period shall be deemed an acceptance of Clearwire's cash-substitute offer. If Licensee rejects Clearwire's cash-substitute offer, then Clearwire will have ten (10) days from receipt of Licensee's rejection to notify Licensee of its election to (i) adopt Licensee's stated cash value, or (ii) submit the valuation issue for determination by binding arbitration. In any case where the right to arbitrate is invoked, Clearwire's ROFR will remain open until thirty (30) days after Clearwire is notified of the arbitrators' decision, during which time Clearwire may revise its acceptance notice to adopt the arbitrators' findings or waive its ROFR with respect to the third party offer, provided that Licensee and third party execute a contract to implement the third-party offer within ninety (90) days of the end of Clearwire's thirty (30) day

time period to consider the arbitration decision. Licensee's failure to accept the third-party offer restores this ROFR.

(d) Right to Participate. Except in the event this Agreement terminates as a result of Clearwire's default, if Licensee decides to consider, issue or solicit bids, proposals or offers for the sale (if permitted by the FCC), assignment, transfer or use of any part or the whole of the Channels at any time before eighteen (18) months after the end of this Agreement, then Licensee will provide Clearwire with an opportunity no less favorable in timing or substance than the opportunity provided to any other entity: (i) to receive and/or submit bids, proposals and offers for the Channels; (ii) to receive information with respect to such bids, proposals, offers and counters thereto; (iii) to discuss any of the same with Licensee; (iv) to counter any such bids, proposals or offers; and (v) to be provided with copies (to the extent allowed by law) of all open bids, proposals, offers, counter-bids and counter-offers promptly after they are received by Licensee. This right to participate does not limit in any manner, and is in addition to, the ROFR set forth in Subsection 3(b).

4. FREQUENCY BAND TRANSITION

The FCC expects that most EBS and BRS licensees will transition their spectrum to a new spectrum plan pursuant to Sections 27.1230 through 27.1235 of the FCC's Rules within the time period specified by the FCC Rules (the "Transition"). Licensee and Clearwire acknowledge that the Transition involving the Channels has been completed and that Licensee has reached agreement with the entity initiating and/or overseeing the Transition of the Channels (the "Proponent") in connection with the Transition that satisfies Licensee's rights and interests in the transition of video services.

5. CAPACITY REQUIREMENTS AND USES

(a) Clearwire Capacity. Upon consent by the FCC to Clearwire's leasing of the Excess Capacity on the Channels, Clearwire will have the exclusive right to use all of the capacity under the Channels other than Licensee's Reserved Capacity ("Clearwire Capacity").

(b) Licensee's Reserved Capacity. The term "Licensee's Reserved Capacity" shall mean the capacity on the Channels that is required to be set aside for Licensee's use pursuant to FCC Rules, as the same may change from time to time. Consistent with FCC Rules, and as designated by Clearwire from time to time, Licensee's Reserved Capacity may be shifted or loaded on any Channel and/or other EBS or BRS channels that Clearwire controls in the Market, or portion thereof. If, in accordance with the foregoing sentence, Clearwire elects to shift or load Licensee's Reserved Capacity on any channels other than the Channels, then Clearwire shall ensure the authorized GSA(s) of the channel(s) to which the Licensee's Reserved Capacity is shifted or loaded substantially overlaps the GSA for the Channels. To the extent that Licensee's Reserved Capacity is determined as a percentage or portion of the digital capacity on the Channels, such capacity will be determined by Clearwire in accordance with the processes generally used by it to determine capacity use.

(c) Use of Capacity. Clearwire may use Clearwire Capacity in any manner and for any purpose that is lawful, in analog, digital or any other format, including those that may be authorized in the future by the FCC. Clearwire will use the Clearwire Capacity in compliance with FCC Rules and all other laws and regulations applicable to Clearwire's use of the Clearwire Capacity. Licensee may use Licensee's Reserved Capacity for any purpose that furthers the educational mission of an accredited school, college or university, including to satisfy the minimum educational use requirements for EBS channels pursuant to FCC Rules. Licensee may also rely on the use of Clearwire's products and services made available pursuant to Section 7 to satisfy such requirements. Licensee will not use Licensee's Reserved Capacity in any manner that would interfere with Clearwire's use or planned use of Clearwire Capacity or any other BRS or EBS spectrum, or violate FCC Rules, including rules relating to the prevention of interference to adjacent channels and markets. Licensee will provide Clearwire at least one hundred eighty (180) days advance notice prior to deployment of any facilities which use Licensee's Reserved Capacity. Licensee will promptly provide Clearwire with all engineering and other information requested by Clearwire concerning Licensee's planned use of Licensee's Reserved Capacity.

(d) Section 27.1214(e) Amendments. Pursuant to Section 27.1214(e) of the FCC's rules, on the date that is fifteen (15) years after the Effective Date and every five (5) years thereafter, Licensee will have a

period of sixty (60) days to request a review of its minimum educational use requirements, at which time the Parties will negotiate in good faith an amendment to this Agreement that accommodates any *bona fide* changes in educational needs, technology and other relevant factors affecting Licensee's Reserved Capacity requirements. Notwithstanding the foregoing, the following will apply to any such amendment: (i) with respect to Licensee and any Permitted End Users (defined below) for whom Clearwire has provided Internet Access Equipment (as defined in Subsection 7(b) below), Clearwire will make available any equipment, services or software upgrades that Clearwire makes generally available to Clearwire's retail customers subscribing to the same tier of service in the Market over BRS or EBS facilities; (ii) to the extent such amendment materially increases Clearwire's monthly costs either to operate its leased capacity or to meet Licensee's changed educational use requirements, the amendment may provide that such costs will be offset by a reduction in Clearwire's Monthly Fee for the remainder of the Term, a refund in an amount to be agreed upon by both Parties, or both; (iii) Clearwire may accommodate changes in Licensee's Reserved Capacity through any reasonable means available so as to avoid disruption to the advanced wireless services provided by Clearwire; and (iv) Clearwire will not be required to accommodate changes in Licensee's Reserved Capacity in a manner that has a negative economic impact on Clearwire or Clearwire's commercial operations under the Agreement.

(e) **Channel Swapping; Costs.** With the consent of Licensee, which consent will not be unreasonably withheld, conditioned, or delayed, Clearwire may require Licensee to enter into agreements to swap some or all of its Channels for other channels in the Market (the "**Swapped Channels**"), and in connection therewith file any necessary FCC applications to accomplish the swap, so long as there is no material difference in the operational capability or value of the Swapped Channels as compared to Licensee's previous Channels taking into account such factors as the GSA and the population therein. It is understood and agreed, however, that Licensee will not be required to consent to any channel swap of an Upper Band Channel or Lower Band Channel for a Middle Band Segment Channel (as defined below), or to any swap under which the Swapped Channels provide less contiguous spectrum licensed to Licensee than Licensee's previous Channels. Clearwire agrees to bear all costs and expenses associated with the implementation of channel swapping, including the reasonable out of pocket costs of Licensee's engineering consultants and attorneys.

(f) **Use of Middle Band Segment Channel.** Consistent with FCC Rules regarding channel loading, the Parties agree that after the Channels are subject to a Transition, and the FCC grants Licensee a Channel in the Middle Band Segment (the "**Middle Band Segment Channel**"), Clearwire may choose, at its option, to load all of Licensee's Reserved Capacity onto the Middle Band Segment Channel, with any remaining Excess Capacity on such Channel to be leased to Clearwire. Licensee agrees, at Clearwire's option, that the Middle Band Segment Channel may be used for low power advanced wireless services, provided such use is permitted under FCC Rules and provided such use does not result in interference to Licensee's Middle Band Segment Channel, or interference to other channels in the Middle Band Segment.

6. EQUIPMENT

(a) **Operation and Maintenance of Equipment.** Until the date that is ninety (90) days prior to commercial launch of Clearwire's wireless system in the Market (the "**Wireless System**"), Licensee may operate the transmission equipment currently in place for the Channels (the "**EBS Equipment**") at each transmission facility. If Licensee chooses to operate the EBS Equipment, Licensee will perform maintenance it deems appropriate on all such equipment at its own expense, subject to Clearwire's ultimate control as de facto transferee of the Channels. If Licensee chooses not to operate the EBS Equipment, then Clearwire may, as permitted by FCC Rules, cease all operations on the Channels and dismantle the EBS Equipment.

(b) **Dedicated Equipment Purchase Option.** In the event this Agreement expires or is terminated for any reason other than a default by Licensee, Licensee will have the option, upon giving notice to Clearwire within thirty (30) days of such expiration or termination, to purchase or to lease at Clearwire's option that portion of the transmission equipment (not including any tower rights) then in operation that is dedicated solely to transmission of Licensee's Reserved Capacity on the Channels (the "**Dedicated Equipment**"), or comparable equipment. The price for such equipment will be equal to the fair market value of the Dedicated Equipment at the time of Licensee's notice or, if comparable equipment is provided, Clearwire's cost in obtaining such equipment.

(c) **Shared Equipment Purchase or Lease Option.** In the event this Agreement expires or is terminated for any reason other than a default by Licensee, Licensee will have the option upon giving notice to Clearwire within thirty (30) days of such expiration or termination to purchase or lease at Clearwire's option any equipment owned by Clearwire and used in connection with the transmission of Licensee's Reserved Capacity on the Channels that is not Dedicated Equipment, or comparable equipment (not including any tower rights) (the "Shared Equipment"), at a price equal to the Shared Equipment's fair market value for such purchase or lease as applicable.

(d) **Post-Transition Operation of Equipment on the Channels.** Clearwire will construct, operate and maintain facilities for the Channels that provide transmission capability sufficient to satisfy minimum build-out or performance requirements applicable to EBS Channels under standards prevailing at any given time under FCC Rules.

7. **ADVANCED WIRELESS SERVICES FOR PERMITTED END USERS.**

(a) **Service Credits.** After commercial launch by Clearwire of its wireless services in the Market, Licensee may request at no cost to Licensee, via submission of an Order Form (as defined below), wireless broadband services and associated Internet Access Equipment, if any, for Permitted End Users that are located within Clearwire's then-serviceable area of the Wireless System. Clearwire will approve Licensee's Order Form, provided that such Order Form is consistent with the terms of this Agreement as well as the terms of use and service described in subsection (c) below. Such wireless services will be specified by Licensee and will be among Clearwire's standard retail service offerings in the Market with a value not to exceed the amounts per month set forth on the attached Schedule 2(a) ("Service Credits"). Any unused Service Credits may not be transferred, credited to a subsequent month or redeemed for cash and will expire on the last day of the month in which they are made available. Licensee must comply with all laws and obtain any necessary governmental permits or approvals, and third party approvals, which are necessary in order for Licensee to accept the wireless services and Internet Access Equipment for its Permitted End Users.

(b) **Definitions.** "Order Form" has the meaning set forth in the terms of service referenced in Subsection 7(c) below. "Internet Access Equipment" means the customer premises Internet access equipment package made generally available to Clearwire's retail customers in the Market, at the time Clearwire receives Licensee's Order Form, who subscribe to the same tier of wireless service over BRS or EBS capacity. "Permitted End Users" means Licensee itself and any educational institution or not-for-profit organization or site in the Market with whom Licensee is working in furtherance of its educational goals.

(c) **Terms of Use.** Licensee's ordering and use of the wireless services and Internet Access Equipment by Permitted End Users, will be governed by the acceptable use policy and terms of service, and such other policies of general applicability which apply to such services, which are subject to amendment and may be found at <http://www.clearwire.com> or such other URL as may be designated; provided, however, that financial terms contained in the terms of service will not apply to such services to Licensee or Permitted End Users that are provided free of charge pursuant to this Section 7. In addition to the foregoing policies, Clearwire may specify from time to time, in its sole discretion, reasonable procedures for the activation, addition, deletion or substitution of services to Licensee and Permitted End Users.

(d) **Equipment and Software.** For Licensee and any Permitted End Users for whom Clearwire has provided wireless services and/or Internet Access Equipment, Clearwire will make available any equipment, services or software upgrades that Clearwire makes generally available to Clearwire's retail customers subscribing to the same tier of service in the Market over BRS or EBS facilities. In the event that any equipment upgrade involves replacement of equipment, the replaced equipment will be returned to Clearwire or its designee and title to the replacement equipment will transfer to Licensee or its designee.

(e) **Title.** All equipment provided by Clearwire to Licensee as part of Internet Access Equipment for Permitted End Users will be the property of Licensee or its designee(s), free and clear of all liens and encumbrances, when paid in full (if any payment is required). Licensee will own, and be solely responsible for the maintenance and operation of, all Internet Access Equipment installed at Licensee's locations and receive sites, including the sites of its Permitted End Users.

8. INTERFERENCE CONSENTS

Licensee will enter into interference consents with third parties relating to the Channels (“**Interference Consents**”), as Clearwire reasonably requests and without any additional compensation, provided that such Interference Consents do not result in a reasonably foreseeable material degradation in the value of the Channels; and provided further that Interference Consents that involve fair and reciprocal rights and limitations for and on the operation of Licensee’s facilities and the facilities of the other party in connection with system coordination inside GSAs and at GSA boundaries will not be deemed to cause material degradation in value. Clearwire will negotiate and draft the Interference Consents and make any consideration payments due to third parties under the Interference Consents. Licensee will not enter into or issue any Interference Consents without Clearwire’s prior written consent.

9. APPLICATIONS, COSTS AND FEES

(a) **FCC Long Term Lease Application.** If not already on file, within five (5) business days of the Effective Date, Licensee shall either (i) file the FCC Form 602 Ownership Disclosure Information for the Wireless Telecommunications Services (the “**Ownership Report**”) with the FCC and deliver to Clearwire evidence of such filing or (ii) complete the Ownership Report and authorize Clearwire to file such Ownership Report with the FCC. Provided that the Licensee has either filed the Ownership Report with the FCC or has delivered the completed Ownership Report to Clearwire and authorized Clearwire to file such report with the FCC, within ten (10) business days following the Effective Date and prior to consummating the transfer of *de facto* control of the Channels, the Parties agree to cooperate as required to prepare and file with the FCC all forms and related exhibits, certifications and other documents necessary to obtain the FCC’s consent to this Agreement and satisfy the FCC’s requirements for long term *de facto* lease approval as set forth in 47 C.F.R. § 1.9030(e) (“**FCC Long Term Lease Application**”). Each Party covenants and agrees that it will fully cooperate with the other, and do all things reasonably necessary to timely submit, prosecute and defend the FCC Long Term Lease Application, including responding to any petitions for reconsideration or FCC reconsiderations of the grant of the FCC Long Term Lease Application, and will promptly file or provide the other Party with all other information which is required to be provided to the FCC in furtherance of the transactions contemplated by this Agreement. The Parties will disclose in the FCC Long Term Lease Application the automatic extension of the Term upon the renewal of the Licenses. The Parties further covenant and agree to include a request in any License renewal application, or separately request, as necessary, an extension of the lease approval for the renewal term of the License (or until the end of the final Renewal Term of this Agreement, if shorter), if this Agreement contemplates renewal of this Agreement for or during any part of such License renewal term. To the extent Licensee is required to file this Agreement with the FCC, the Licensee shall first notify and consult with Clearwire, and will to the extent permitted by the FCC redact all information from the Agreement which Clearwire reasonably designates as confidential including, but not limited to, all payment information.

(b) **Application Preparation.** In addition to the obligations in Section 9(a), Clearwire will prepare and submit all applications, amendments, petitions, requests for waivers, and other documents necessary for the proper operation of Clearwire Capacity and permitted to be submitted by Clearwire under FCC Rules. Licensee, with assistance from Clearwire, will prepare and submit all lawful applications, amendments, petitions, requests for waivers, and other documents necessary for the modification, maintenance and renewal of the Licenses or reasonably requested by Clearwire that may only be filed by Licensee under FCC Rules. The Parties will cooperate in the preparation and submission of all lawful applications, amendments, petitions, requests for waivers, and other documents necessary to secure any FCC approval, consent or other action required to effectuate this Agreement.

(c) **Application Costs.** Clearwire will, at its own expense, prepare all applications, notices, certificates, exhibits, consent agreements, approvals or authorizations that Clearwire submits to the FCC or seeks to have Licensee submit to the FCC pursuant to the Agreement. Clearwire will also promptly pay or reimburse Licensee for its reasonable, documented out-of-pocket costs for renewal of the Licenses and any other filings requested or required of Licensee by the FCC to hold the Licenses and provide Clearwire Capacity to Clearwire, and in connection with activities undertaken by Licensee in response to any request by Clearwire under this Agreement; provided, however, that Licensee shall not seek reimbursement for any cost or expense in excess of \$500 unless such cost or expense is approved by Clearwire, which approval shall not be unreasonably withheld. In addition, Clearwire will pay any FCC filing fees associated with the Licenses.

(d) **Regulatory Fees/Transition Reimbursements.** Clearwire will pay any federal regulatory fees associated with the Licenses upon receipt of notice from the FCC that such fees are due, or upon receipt of at least thirty (30) days advance written notice from Licensee that such fees are due in the event that notice is sent to Licensee. Clearwire will also pay any Transition reimbursements required by FCC Rules to be paid to the Proponent.

10. TRANSFERS OR ASSIGNMENTS

Subject to Subsections 16(f)-(g), neither Clearwire nor Licensee may assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Parties agree as follows:

(a) Clearwire may, without the prior consent of Licensee: (i) assign any of its rights under this Agreement as collateral; or (ii) sell, assign, sublease, delegate or transfer this Agreement or any of its rights or obligations hereunder to any affiliate of Clearwire or any entity that acquires or otherwise merges with Clearwire or its affiliates, or to any entity with the capability to perform the obligations of Clearwire hereunder.

(b) Licensee may, without the prior consent of Clearwire transfer control or assign the Licenses for the Channels and this Agreement to any public institution or agency or to any bona fide local private educational institution with students actually enrolled in local classroom instruction (except for any such public or private educational institution that is an Affiliate of a national EBS licensee), subject to such transferee's or assignee's agreement to be bound by the terms of this Agreement. For purposes of the foregoing sentence, "Affiliate" means, with respect to any national EBS licensee, any other person or entity that, directly or indirectly, alone or through one or more intermediaries, controls, is controlled by or is under common control with such national EBS licensee. For purposes of this definition, "control" means the power to direct or cause the direction of the management and policies of a person or entity, directly or indirectly, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

(c) Each Party shall also be entitled, without the consent of the other Party, to undertake a pro forma assignment or transfer of this Agreement.

11. TERMINATION OF AGREEMENT

(a) This Agreement will automatically terminate with respect to any License or affected Channel(s) upon the earlier of: (i) a FCC Final Order denying any application for approval of this Agreement including any extensions of the Term thereof; (ii) the loss or expiration without renewal of the License; (iii) an FCC Final Order revoking, terminating or canceling the License; or (iv) Clearwire's acquisition of the License or some of the Channels pursuant to an agreement between Clearwire and Licensee.

(b) This Agreement may be terminated by either Party upon material breach of the other Party, provided that the breaching Party shall be provided with written notice by the non-breaching Party of the alleged grounds for the breach and allowed a thirty (30) day period for cure following such notice; provided, however, that in the event of a breach other than a failure to make payments due under this Agreement, if the breaching Party proceeds with reasonable diligence during such thirty (30) day period and is unable, because of circumstances beyond its control or because of the nature of the breach, to cure the breach within such applicable time period, the time for cure shall be extended, but in no event beyond one hundred eighty (180) days after receipt of written notice from the non-breaching Party. Notwithstanding the foregoing, in the event that an FCC order that is effective and not stayed requires termination of this Agreement, this Agreement may be terminated by either Party within the time frame for notice and termination required by the FCC.

(c) Licensee may terminate this Agreement pursuant to Subsection 16(b).

(d) Either Party may terminate this Agreement if an FCC Final Order approving the FCC Long Term Lease Application has not occurred within twelve (12) months following the Effective Date.

(e) The Parties will notify the FCC of the termination of this Agreement with respect to any License or any of the Channels within ten (10) calendar days following the termination.

(f) Except as expressly set forth in this Agreement, upon the expiration or termination of this Agreement, each Party will pay its own fees and expenses related to this Agreement and the transactions contemplated herein, and the Parties will have no further liability to each other except by reason of any breach of this Agreement occurring prior to the date of expiration or termination. Any termination or expiration of this Agreement, regardless of cause, will not release either Licensee or Clearwire from any liability arising from any breach or violation by that Party of the terms of this Agreement prior to the expiration or termination. The general and procedural provisions of this Agreement, which may be relevant to enforcing the obligations or duties of the Parties, as well as any other provisions that by their terms obligate either Party following expiration or termination, will survive the expiration or termination of this Agreement until the obligations or duties are performed or discharged in full.

12. REVENUES AND EXPENSES

Each Party will pay its own expenses incident to any amendments or modifications to the Agreement, including, but not limited to, all fees and expenses of their respective legal counsel and any engineering and accounting expenses. Clearwire is entitled to one hundred percent (100%) of the revenue generated from the use of the Clearwire Capacity.

13. COMPETITION

Licensee agrees that it will not, during the Term of this Agreement, use Licensee's Reserved Capacity to compete with Clearwire and/or its affiliates in any business activity or business or service offering in the GSA of the Channels. Nothing in this section prohibits Licensee from (i) leasing the capacity of the Channels to a third party after the termination or expiration of this Agreement if (X) the capacity is being used solely to undertake noncommercial activities advancing Licensee's educational purposes or (Y) Licensee has complied with the ROFR provisions in Section 3(b), (ii) using the Service Credits, or any Internet Access Equipment acquired thereby, to provide educational services to itself or other schools, colleges, universities or other governmental or nonprofit entities for purposes of satisfying the Licensee's minimum educational use requirements for EBS channels under FCC Rules, or (iii) leasing other EBS channels licensed to Licensee or other spectrum to any other party for any purpose.

14. CONFIDENTIALITY AND NON-DISCLOSURE

(a) **Confidentiality of the Terms of this Agreement.** The terms of this Agreement that are not otherwise required to be disclosed to the FCC in support of the lease applications or notices submitted to the FCC will be kept strictly confidential by the Parties and their agents, which confidentiality obligation will survive the termination or expiration of this Agreement for a period of two (2) years. The Parties may make disclosures as required by law (including as required or appropriate to be disclosed by Clearwire pursuant to the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or The Nasdaq Stock Market, Inc., including the related regulations and marketplace rules), and to employees, shareholders, agents, attorneys and accountants (collectively, "Agents") as required to perform obligations under the Agreement, provided, however, that the Parties will cause all Agents to honor the provisions of this Section. In addition, Clearwire may disclose this Agreement to its affiliates, strategic partners, actual or potential investors, lenders, acquirers, merger partners, and others whom Clearwire deems in good faith to have a need to know such information for purposes of pursuing a transaction or business relationship with Clearwire, so long as Clearwire secures an enforceable obligation from such third party to limit the use and disclosure of this Agreement as provided herein. The Parties will submit a confidentiality request to the FCC in the event the FCC seeks from the Parties a copy of this Agreement or any other confidential information regarding its terms.

(b) **Non-Disclosure of Shared Information.** As used herein, the term "Information" shall mean all non-public information disclosed hereunder, whether written or oral, that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. The term Information does not include information which: (i) has been or becomes

published or is now, or in the future, in the public domain without breach of this Agreement or breach of a similar agreement by a third party; (ii) prior to disclosure hereunder, is property within the legitimate possession of the receiving Party which can be verified by independent evidence; (iii) subsequent to disclosure hereunder, is lawfully received from a third party having rights therein without restriction of the third party's or the receiving Party's rights to disseminate the information and without notice of any restriction against its further disclosure; or (iv) is independently developed by the receiving Party through persons who have not had, either directly or indirectly, access to or knowledge of such Information which can be verified by independent evidence. During the Initial Term or any Renewal Term of this Agreement, the Parties may be supplying and/or disclosing to each other Information relating to the business of the other Party. The Information will, during the Initial Term and any Renewal Term of this Agreement, and for a period of three (3) years after the termination or expiration of the Agreement, be kept confidential by the Parties and not used for any purpose other than implementing the terms of this Agreement. The receiving Party will be responsible for any improper use of the Information by it or any of its Agents. Without the prior written consent of the disclosing Party, the receiving Party will not disclose to any entity or person the Information, or the fact that the Information has been made available to it, except for disclosures required by law, including Information as required or appropriate to be disclosed by Clearwire pursuant to the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or The Nasdaq Stock Market, Inc., including the related regulations and marketplace rules. Each person to whom Information is disclosed must be advised of its confidential nature and must agree to abide by the terms of this Subsection.

(c) **Compliance with Florida Public Records Law.** Licensee's obligations under this Section 14 are subject and subordinate to Licensee's obligations under, and compliance with, Florida's Public Records Act, Sec. 119.01 *et seq.* Fla. Stat.

15. ASSUMPTION OF LIABILITIES

Neither Party is assuming or will be responsible for any of the other's liabilities or obligations (including but not limited to customer obligations) except as required by the FCC and this Agreement.

16. FCC-MANDATED LEASING ARRANGEMENT OBLIGATIONS

(a) Licensee and Clearwire are familiar with the FCC Rules affecting spectrum leasing and the provision of EBS, the Communications Act of 1934, as amended ("**Communications Act**"), the Code of Federal Regulations, and all other applicable FCC Rules, and agree to comply with all such laws and regulations.

(b) Clearwire assumes primary responsibility for complying with the Communications Act, and any FCC Rules that apply to the Channels and Licenses, and the Agreement may be revoked, cancelled or terminated, in accordance with Section 11, by Licensee or by the FCC if Clearwire fails to comply with applicable laws and regulations.

(c) Neither Licensee nor Clearwire will represent itself as the legal representative of the other before the FCC or any party, but will cooperate with each other with respect to FCC matters concerning the Licenses and the Channels.

(d) If any License is revoked, cancelled, terminated or otherwise ceases to be in effect, Clearwire has no continuing authority or right to use the leased spectrum unless otherwise authorized by the FCC.

(e) The Agreement is not an assignment, sale or transfer of any License itself.

(f) The Agreement will not be assigned to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the FCC Rules.

(g) Licensee will not consent to an assignment of a spectrum leasing arrangement unless such assignment complies with applicable FCC Rules.

(h) Licensee and Clearwire must each retain a copy of the Agreement and make it available upon request by the FCC, in accordance with the confidentiality provisions in Section 14.

17. LICENSEE'S AUTHORIZATIONS

Licensee will use its best efforts to maintain in full force and effect through the Term the Licenses and any associated authorizations for the Channels, and will remain eligible under the FCC Rules to provide the Clearwire Capacity. Licensee will use best efforts to renew the Licenses, and will not commit any act, engage in any activity, or fail to take any action that could reasonably be expected to cause the FCC to impair, revoke, cancel, suspend or refuse to renew any of the Licenses.

18. REPRESENTATIONS AND WARRANTIES

(a) **Mutual Representations and Warranties.** Each Party represents and warrants to the other that: (i) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms; and (iv) its execution of and performance under this Agreement will not violate any applicable existing regulations, FCC Rules, statutes or court orders of any local, state or federal government agency, court or body, or any of its existing contractual obligations.

(b) **Licensee's Representations and Warranties.** Further, Licensee represents and warrants to Clearwire that: (i) each of the Licenses is in effect, (ii) Licensee's operations and activities pursuant to the Licenses, if any, are being conducted in material compliance with all FCC Rules, (iii) no person other than Licensee has any right, title or interest in or claims to any of the Licenses, and (iv) there is no proceeding now pending or to the knowledge of Licensee, threatened against the Licensee before any local, state or federal regulatory body with respect to any of the Licenses, or any acts or omissions by Licensee or its agents, as of the Effective Date, that could have a material, adverse effect on any of the Licenses.

19. [INTENTIONALLY DELETED]

20. MISCELLANEOUS

(a) **Cooperation.** The Parties will take such further action and execute such further assurances, documents and certificates as either Party may reasonably request to effectuate the purposes of this Agreement.

(b) **Notices.** Any notice required to be given by one Party to the other under this Agreement will be delivered using a reliable national express overnight delivery service and will be effective upon receipt. All notices will be delivered to Licensee and Clearwire at the mailing addresses specified at the end of this Agreement. Either Party may change its addresses for receipt of notice or payment by giving notice of such change to the other Party as provided in this Section.

(c) **Force Majeure.** Neither Party will be liable for any nonperformance under this Agreement due to causes beyond its reasonable control that could not have been reasonably anticipated by the non-performing Party and that cannot be reasonably avoided or overcome; provided that the non-performing Party gives the other Party prompt written notice of such cause, and in any event, within fifteen (15) calendar days of its discovery.

(d) **Independent Parties.** None of the provisions of this Agreement will be deemed to constitute a partnership, joint venture, or any other such relationship between the Parties, and neither Party will have any authority to bind the other in any manner. Neither Party will have or hold itself out as having any right, authority or agency to act on behalf of the other Party in any capacity or in any manner, except as may be specifically authorized in this Agreement.

(e) **Specific Performance.** Licensee acknowledges that the Licenses and Channels subject to this Agreement are unique and the loss to Clearwire due to Licensee's failure to perform this Agreement could not be easily measured with damages. Clearwire will be entitled to injunctive relief and specific enforcement of this Agreement in a court of equity without proof of specific monetary damages, but without waiving any right thereto, in the event of breach of this Agreement by Licensee.

(f) **Applicable Law and Venue.** The validity, construction and performance of this Agreement will be governed by and construed in accordance with the laws of the State of Florida, without regard to the principles of conflict of laws. Each Party hereto irrevocably consents to the exclusive jurisdiction and venue of the Circuit Court for Pinellas County, Florida, or the Federal District Court of the Middle District of Florida, Tampa Division, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of Florida for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue or process.

(g) **Attorneys' Fees.** If any action shall be brought on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Agreement, the prevailing Party will be entitled to recover from the other its reasonable attorneys' fees and costs, as determined by the court hearing the action.

(h) **Severability.** If any provision of this Agreement is found to be illegal, invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, unless continued enforcement of the provisions frustrates the intent of the Parties.

(i) **No Waiver.** No delay or failure by either Party in exercising any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right. Failure to enforce any right under this Agreement will not be deemed a waiver of future enforcement of that or any other right.

(j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument. Original signatures transmitted by facsimile will be effective to create such counterparts.

(k) **Headings.** The headings and captions used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

(l) **Construction.** The Parties and their respective counsel have negotiated this Agreement. This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of the Agreement or otherwise.

(m) **Complete Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter addressed, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, between the Parties or any of their affiliates regarding this subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of each of the Parties. Each of Licensee, Clearwire, and Clearwire Affiliate agree that, effective as of the Commencement Date, this Agreement shall supersede and replace the Original Lease. Neither Licensee, nor Clearwire, nor Clearwire Affiliate shall have any further obligations under the Original Lease and each of Licensee, Clearwire and Clearwire Affiliate hereby releases each of the other parties from any and all claims, known or unknown, that such party has or may have arising out of or related to the Original Lease.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement each as of the date written below its signature hereto.

AGREED TO:

CLEARWIRE SPECTRUM HOLDINGS III LLC

**SCHOOL BOARD OF PINELLAS COUNTY
FLORIDA**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Notice Address for Clearwire:

Notice address for Licensee:

Clearwire Spectrum Holdings III LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Hope Cochran, Vice President
Fax: (425) 216-7776

School Board of Pinellas County Florida
301 4th Street S.W.
Largo, FL 33770-2942
Attn: David Cook
Fax: 727-588-6437

With a copy to:

With a copy to:

Clearwire Spectrum Holdings III LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Legal Department
Fax: (425) 216-7776

Dow Lohnes PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036-6802
Attn: Todd D. Gray
Fax: (202) 776-4571

Approved as to form:



Office of General Counsel

Solely for the purposes of agreeing to and acknowledging Section 20(m) regarding the termination of the Original Lease.

SPRINT (BAY AREA), LLC

By: Clearwire XOHM LLC
Its: Manager

By: Clearwire Communications LLC
Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 2(a)

Monthly Fee and Monthly Service Credit Schedule

	Monthly Fee	Monthly Service Credit
Year 1	\$ 29,296.74	\$ 1,000.00
Year 2	\$ 30,175.64	\$ 1,030.00
Year 3	\$ 31,080.91	\$ 1,060.90
Year 4	\$ 32,013.34	\$ 1,092.73
Year 5	\$ 32,973.74	\$ 1,125.51
Year 6	\$ 33,962.95	\$ 1,159.27
Year 7	\$ 34,981.84	\$ 1,194.05
Year 8	\$ 36,031.29	\$ 1,229.87
Year 9	\$ 37,112.23	\$ 1,266.77
Year 10	\$ 38,225.60	\$ 1,304.77
Year 11	\$ 39,372.37	\$ 1,343.92
Year 12	\$ 40,553.54	\$ 1,384.23
Year 13	\$ 41,770.15	\$ 1,425.76
Year 14	\$ 43,023.25	\$ 1,468.53
Year 15	\$ 44,313.95	\$ 1,512.59
Year 16	\$ 45,643.37	\$ 1,557.97
Year 17	\$ 47,012.67	\$ 1,604.71
Year 18	\$ 48,423.05	\$ 1,652.85
Year 19	\$ 49,875.74	\$ 1,702.43
Year 20	\$ 51,372.01	\$ 1,753.51
Year 21	\$ 52,913.17	\$ 1,806.11
Year 22	\$ 54,500.57	\$ 1,860.29
Year 23	\$ 56,135.58	\$ 1,916.10
Year 24	\$ 57,819.65	\$ 1,973.59
Year 25	\$ 59,554.24	\$ 2,032.79
Year 26	\$ 61,340.87	\$ 2,093.78
Year 27	\$ 63,181.09	\$ 2,156.59
Year 28	\$ 65,076.53	\$ 2,221.29
Year 29	\$ 67,028.82	\$ 2,287.93
Year 30	\$ 69,039.69	\$ 2,356.57

EXHIBIT A
IRS Form W-9

EXHIBIT B

WLX226 and WLX227 GSA Maps



EDX SignalPro™: WLX226 GSA map

- WLX226 Clearwater, FL D1/4 GSA
- WLX226 Clearwater, FL D1/4 PSA
- WHR736 Riverview, FL D1-4 PSA
- WLX724 Bradenton, FL D1-4 PSA
- WLX270 Lakeland, FL D1-4 PSA
- WNC980 Venice, FL D1-4 PSA

Notes

People/ Housing Units totals
 2005 U.S. Census estimates data:
 Within WLX226 GSA ch. D1/4: 1,929,062/ 940,643



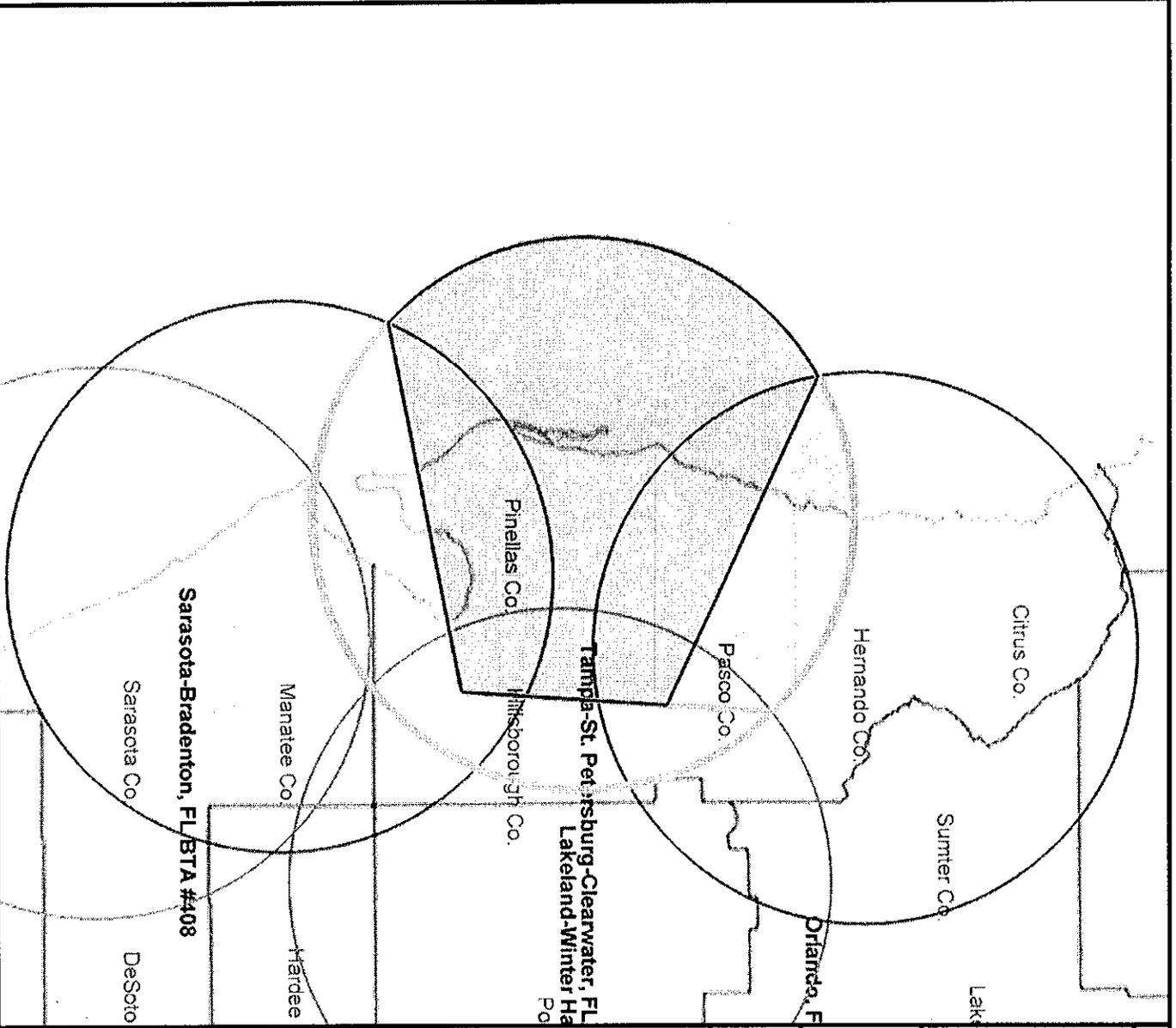
KESSELER AND GEHMAN

ASSOCIATES, INC.
 TELECOMMUNICATIONS CONSULTING ENGINEERS
 507 N.W. 60th Street, Suite C, Gainesville, Florida 32607
 Jeffrey C. Gehman (jg@kegsta.biz) Phone 352-332-3157

GSA Map & Population Counts

20100208
 WLX226 Clearwater, FL D1/4

Exhibit 1



EDX SignalPro™: WILX227 GSA map

- _____ WILX227 St. Petersburg, FL A1 GSA
- _____ WILX227 St. Petersburg, FL A4 GSA
- _____ WILX227 St. Petersburg, FL A1/4 PSA
- _____ WHR838 Bradenton, FL A1-4 PSA
- _____ WHR749 Brooksville, FL A1 PSA
- _____ WILX275 Lakeland, FL A1-4 PSA
- _____ WNC778 Venice, FL A1-4 PSA

Notes

People/ Housing Units totals
 2005 U.S. Census estimates data:
 Within WILX227 GSA ch. A1: 2,055,023/ 994,927
 Within WILX227 GSA ch. A4: 2,212,080/ 1,063,044



KESSLER AND GEHMAN
 ASSOCIATES, INC.
 TELECOMMUNICATIONS CONSULTING ENGINEERS
 507 N.W. 60th Street, Suite C, Gainesville, Florida 32607
 Jeffrey C. Gehman (jef@kgg.biz) Phone 352-332-3157

GSA Map & Population Counts

WILX227 St. Petersburg, FL A1/4

Exhibit 1

20100208

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January 2013 a copy of the foregoing *Petition to Deny* was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via First Class and electronic mail:

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CLEARWIRE SPECTRUM
HOLDINGS LLC
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Washington, DC 20005
(202) 330-4011
nadja.sodoswallace@clearwire.com

Brandon Sazue
CROW CREEK SIOUX TRIBE
P.O. Box 50
Fort Thompson, South Dakota 57339
(605) 245-2221
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Norman Liu