

**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 |) | |
| |) | |

**CONSOLIDATED REPLY TO OPPOSITIONS
THE CONSORTIUM FOR PUBLIC EDUCATION AND
THE ROMAN CATHOLIC DIOCESE OF ERIE, PENNSYLVANIA**

By: Rudolph J. Geist
RJGLaw LLC
7910 Woodmont Avenue
Suite 405
Bethesda, MD 20814
(240) 821-9850
rgeist@rjglawllc.com

February 25, 2013

Table of Contents

| | |
|--|-----------|
| Table of Contents | i |
| Summary | ii |
| All EBS/BRS Should be Included in the Commission’s Spectrum Screen | 3 |
| Substantial New Spectrum Aggregation Requires Public Interest Analysis..... | 12 |
| Clearwire Form of Lease and EBS Leasing Practices Violate Commission Rules | 16 |
| Clearwire’s Leasing Practices Abuse Market Power and Raise Character Qualification Issues | 17 |
| Clearwire Educational Usage Obligations Compliance Should be Investigated..... | 23 |
| Foreign Control of EBS is Impermissible..... | 27 |
| Approval of the Transaction Conflicts With State Laws Governing Nonprofit Assets..... | 28 |
| Conclusion..... | 31 |

ATTACHMENT A – National EBS Contiguous Footprints

ATTACHMENT B – Clearwire 2.5 GHz Concentration in Commercially Deployed Major Metropolitan Areas

ATTACHMENT C – Clearwire Form of Lease

Summary

No party opposing the Petition to Deny filed by the EBS Licensees in this proceeding has demonstrated any reason the relief requested in the petition and the EBS Licensees comments in this proceeding should be dismissed or denied.

The Sprint parties claim the Commission should not subject any additional 2.5 GHz spectrum to the Commission's spectrum screen and should not perform any further public interest analysis of Clearwire-Sprint's spectrum aggregation since the Commission's 2008 approval of their 2.5 GHz spectrum merger in Clearwire. Sprint's continued claims that no additional 2.5 GHz spectrum should be included in the Commission's spectrum screen for the same, now inapplicable, reasons have no merit – particularly considering Clearwire-Sprint's proven commercial deployment and use of 100% of the 2.5 GHz spectrum for mobile broadband. Sprint's claim there is no reason for an additional public interest review of the unprecedented prime spectrum aggregation proposed in this transaction are disingenuous at best, considering after the November 2008 approval of the Sprint-Clearwire 2.5 GHz combination, Clearwire acquired new BRS spectrum in at least 42 new BTAs (in Auction 86), which based on Commission policies mandates a public interest review in this proceeding, and has acquired in its commercially deployed markets alone over 5 billion MHz of new EBS spectrum under long term leases.

The Commission should include all 194 MHz of 2.5 GHz spectrum in its spectrum screen, and establish a new 30% maximum Initial Screen to trigger a detailed public interest analysis in any market where the combined Sprint-Clearwire spectrum exceeds the new threshold. Considering the very substantial new aggregation of spectrum by Sprint-Clearwire

that should be subjected to the spectrum screen and detailed public interest analysis, the Commission must apply its case-by-case spectrum analysis to this transaction.

Multiple national and local EBS licensees opposed the EBS Licensees Petition concerning Clearwire's compliance with the Commission's EBS leasing and educational usage rules and policies. NEBSA and the local EBS licensees that filed oppositions, all represented in this proceeding by the same law firm that represents Softbank Corp., the proposed transferee in this proceeding, uniformly indicated that they complied with substantial service and certified compliance with educational use of EBS spectrum – although the EBS Licensees Petition did not claim they failed to comply with substantial service. Neither Clearwire (which remained silent on the issue and did not file an opposition), Sprint, nor any of local EBS licensees filing oppositions provided any details regarding specific educational use of Clearwire accounts over their EBS spectrum, but they did indicate the Commission should accept their substantial service certifications as the end of the issue. However, as the EBS Licensees have demonstrated, the public interest requires the Commission to investigate as part of this proceeding Clearwire's compliance with educational use requirements on behalf of EBS licensees, before the proposed transaction may be approved. This should include the request for data proposed in the EBS Licensees Petition.

The local EBS licensees also claimed Clearwire's leasing practices comply with Commission leasing rules, and that their leases were entered into pursuant to good faith negotiations. However, the form of EBS lease discussed in the EBS Licensees Petition, which the local EBS licensees do not deny is their form of lease and the form used by others, does raise questions regarding whether the EBS licensee subject to the lease is, in practice, actually “reserving” the requisite minimal educational capacity. In addition to carefully reviewing the

form of lease under consideration for compliance with its rules, the Commission should request the summary of all educational lease terms proposed in the EBS Licensees Petition.

In response to the local EBS licensees' claims that Clearwire leases were entered into pursuant to good faith negotiations, the EBS Licensees provide examples where Clearwire has not engaged in good faith in pursuit and negotiation of EBS leases. These examples include: 1) Clearwire's monopsony abuse of market power shortly after the Commission approved the combination of Sprint and Clearwire's 2.5 GHz assets in respect to its below market bid proposed to the School Board of Broward County, Florida (for lease of the B and G group EBS channels, Miami-Ft. Lauderdale, FL), which the School Board publicly acknowledged was the result of the lack of competition in the market after the Sprint-Clearwire combination; and 2) Clearwire's intentional concealment of higher per subscriber (and revenue share) lease payments owed to certain EBS licensees while Clearwire pursued new, lower value fixed payment, long term leases, from those licensees.

In response to Sprint's claims that EBS license grants and leases are not assets held in trust by nonprofits, thereby not triggering state nonprofit corporation laws concerning the disposition and diversion of nonprofit assets, the EBS Licensees demonstrate that assets granted to nonprofits are held by nonprofits in trust to their beneficiaries and the public, including EBS license and lease assets. Therefore, the Commission must be careful not to inadvertently preempt any state nonprofit corporation laws and should conduct a careful, state by state examination of these laws to insure any transfers of EBS lease assets in this proceeding do not violate any state laws, constituting an unauthorized involuntary transfer of assets.

The EBS Licensees request the Commission consider the potential transfer of the U.S. educational spectrum to foreign control raised in this proceeding an "exceptional circumstance"

that requires the Commission perform a detailed public interest analysis and does not allow for a presumption in favor of entry by Softbank Corp. into the U.S. telecommunications market.

The EBS Licensees reiterate the proposed transaction should be denied, or conditioned on spectrum divestitures to ensure a new competitive market for EBS spectrum in the interests of EBS licensees and all wireless operators in need of additional mobile broadband spectrum.

**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 |) | |

CONSOLIDATED REPLY TO OPPOSITIONS

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”), by the undersigned counsel, hereby submit their consolidated reply to the Oppositions filed by various parties discussed below, in the above-captioned proceeding.¹

The EBS Licensees have standing in this proceeding because their EBS licenses are subject to the above-referenced transfer of control, and approval of this transaction, among other potential harms, would transfer market power in the EBS spectrum leasing market from Clearwire to Softbank Corp., thereby conferring the ability of the post transaction foreign controlled Softbank to engage in continued abuse of monopsony power in the EBS spectrum

¹ The EBS Licensees are hereby consolidating their responses to all oppositions filed against their Petition to Deny, filed January 28, 2013 (“EBS Licensees Petition”), in this proceeding.

leasing market, which will further harm the ability of the EBS Licensees (and other similarly situated EBS licensees) to obtain competitive, market based payment and other terms for the lease of their EBS spectrum.² Denial of the application, or a condition of spectrum divestiture, would facilitate a competitive market for EBS spectrum where Clearwire would be required to divest spectrum (whether pursuant to Commission order or based on Clearwire's well documented near insolvent current financial status), thereby creating a new competitive market for EBS spectrum.³

All EBS/BRS Should be Included in the Commission's Spectrum Screen

Sprint claims in its joint opposition the Commission should not modify or apply its spectrum screen in its review of this transaction.⁴ Sprint's arguments are disingenuous at best, and do not provide any basis for the Commission to eliminate its requisite public interest spectrum screen (and aggregation) review from this proceeding.

To the contrary, the Commission should include all 194 MHz of 2.5 GHz spectrum in its spectrum screen as part of the Commission's mandatory public interest review of the massive, unprecedented spectrum aggregation that will result from approval of the transaction subject to

² The EBS Licensees Petition, and this Consolidated Reply, are supported by detailed citation to facts of which the Commission may take official notice and that are either attached to the pleadings, are available to the Commission through its own databases or through public sources based on the citations provided, or that are available to the Commission upon request to the relevant party.

³ It is notable that not a single EBS licensee filed comments in the above referenced transaction supporting approval of the proposed transaction, including in any of the oppositions filed by EBS licensees in the proceeding. This is in very stark contrast to the overwhelming support from the EBS community of the 2008 Sprint-Clearwire 2.5 GHz merger transaction, which included over 30 separate supporting comments representing hundreds of EBS licenses across the U.S. See generally comments of EBS licensees in re WT Docket 08-94, filed July 23-August 5, 2008.

⁴ See Joint Opposition to Petitions to Deny and Reply to Comments, filed by Sprint Nextel Corporation and Softbank Corp., February 12, 2013, at pp. 28-32 ("Sprint Opposition"). Sprint even claims "the record has not revealed any likelihood of potential competitive harm." *Id.* at page 2. However, as will be further demonstrated below, and as was described in the EBS Licensees Petition, approval of this transaction would, at minimum, create a very substantial likelihood of potential competitive harm to the market for EBS spectrum.

this proceeding.⁵ Assuming this inclusion, a new threshold requirement of no greater than 30% of the total spectrum to be included in the Initial Screen should be applicable in this proceeding to identify and trigger a detailed public interest analysis and review of spectrum in any market where the combined spectrum holdings of Sprint-Clearwire exceed the maximum 30% threshold. Such new threshold should reflect a policy in the public interest that there currently exist (and should continue to exist) at least 4 viable national mobile wireless competitors in the U.S. (and in many local markets there are more), each of which should have the theoretical ability to access no greater than 30% of the spectrum available for mobile broadband deployment in a market (assuming all 194 MHz of 2.5 GHz spectrum is subjected to the screen).⁶

This transaction provides the Commission an opportunity, in revision and application of its spectrum screen in this case, to completely rebalance the competitive U.S. wireless marketplace in the 2.5 GHz spectrum (and with respect to the overall landscape concerning all mobile wireless bands), and level the playing field to promote and facilitate robust wireless competition and access to spectrum among all local, regional and national wireless operators. The Commission should not approve the proposed transaction in this proceeding and allow a foreign entity to control by far the largest single block of prime mobile broadband spectrum in the U.S., at the cost of equal access to spectrum for all other U.S. controlled wireless operators, and without first including all 2.5 GHz spectrum in its spectrum screen review and performing a rigorous and comprehensive public interest analysis of the proposed spectrum aggregation.

⁵ No EBS licensee or EBS industry representative filing an opposition or comment in this proceeding commented in respect to the Comments of Verizon Wireless, filed January 28, 2013, requesting inclusion of all 2.5 GHz spectrum, including EBS, in the Commission's spectrum screen review in this proceeding.

⁶ Where the entire 2.5GHz band is included in the spectrum screen, an Initial Screen at the maximum 30% level would not conflict with any of the Commission's recent spectrum aggregation/transfer approvals.

Contrary to Sprint's assertions in its consolidated Opposition in this proceeding⁷, there have been major changes in Clearwire's EBS and BRS spectrum portfolio and its use of the entire 2.5 GHz band since the Commission's November 2008 approval of the combination of Sprint and Clearwire's 2.5 GHz spectrum assets,⁸ including widespread mobile broadband and telephony use over EBS (including the EBS mid-band segment ("MBS") and associated guardband), BRS1, and the BRS MBS (and associated guardband). Clearwire's substantial service filings for its BRS spectrum and EBS lessors make this clear.⁹ Even one EBS licensee commenter (and Clearwire EBS lessor) named its business of providing wholesale accounts over the Clearwire network, "Mobile Citizen," seemingly to reflect the nature of the new mobile services being provided over EBS.¹⁰

As proven by Sprint and Clearwire in their actual deployment and widespread use of the 2.5 GHz band for mobile broadband and telephony in the U.S. wireless market, and as acknowledged by their substantial service filings, EBS/BRS is not subject to regulatory, propagation and legacy licensing issues as Sprint asserts.¹¹ In any event, the Commission's 2004 Report and Order in WT Docket 03-66 comprehensively addressed all these issues and created

⁷ Sprint Opposition at pp. 29-30.

⁸ See *In re Sprint Nextel Corporation and Clearwire Corporation*, Memorandum Opinion and Order, WT Docket 08-94, released November 7, 2008 ("Sprint-Clearwire MO&O").

⁹ The substantial service filings also indicate that: "Clearwire offers several ways to connect to its service including personal Wi-Fi hotspots such as the iSpot, Clear Spot 4G and Clear Spot 4G+, USB modems and performance docks, a dual-mode 4G/3G USB modem, home modems with built-in Wi-Fi, and other mobile devices like 4G enabled laptops. There are also dozens of 4G-ready laptops and netbooks available from leading manufacturers including Dell, Fujitsu, Lenovo, Samsung, and Toshiba. In addition, Sprint offers 4G enabled handsets that operate on the Clearwire 4G network."

¹⁰ See Comments on Petition to Deny, filed by EBS Licensees, Chicago Instructional Technology Foundation, Denver Area Educational Telecommunications Consortium, Instructional Telecommunications Foundation, Portland Regional Educational Telecommunications Corporation, and Twin Cities Schools' Telecommunications Group, February 12, 2013, at page 2 ("Mobile Citizen EBS Comments").

¹¹ Sprint Opposition at 30.

the efficient and effective new regulatory framework for the 2.5 GHz band that has allowed Clearwire and Sprint to deploy a 4G mobile broadband network on the spectrum.¹² It was Sprint that largely led efforts in the 2.5 GHz industry to draft the initial proposed rules for consideration and promoted those rule changes, and Sprint participated in every phase of that proceeding.¹³ Sprint cannot now, in this or any proceeding relating to the Commission's spectrum screen, claim the very rules and transitioned spectrum band Sprint helped facilitate and develop to modernize and provide for deployment of mobile broadband on 2.5 GHz spectrum, are in any manner counterproductive to current classification and use of 2.5 GHz spectrum for mobile broadband and telephony.

With respect to any 2.5 GHz spectrum the Commission elected not to include in the spectrum screen as part of the Sprint-Clearwire MO&O (e.g., BRS1, EBS, BRS MBS, and J&K guardband), the Clearwire deployment of a mobile broadband network on all 2.5 GHz channels and new circumstances across the band compel the Commission to now include all portions of the 2.5 GHz spectrum in the spectrum screen.

BRS1, previously excluded from the spectrum screen based on claimed interference concerns, is now widely in use by Clearwire on its network as its substantial service filings indicate – and such deployments over BRS1 only complement Clearwire's widespread use for

¹² See in re 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, (released July 29, 2004) ("EBS/BRS R&O").

¹³ Sprint's initial comments in Docket 03-66 describe the very substantial amount of time Sprint spent working on the proposed rule changes for the 2.5 GHz band as initially filed by the Wireless Communications Association and Sprint's strong support for those proposed rules. See Comments of Sprint Corporation, filed November 14, 2002, WT RM-10569, WT Docket 03-66 (discussing at page 2 that "Sprint alone spent an estimated 2,500 hours on engineering studies and conferences, fleshing out possible rule changes and their ramifications in order to arrive at the final Proposal").

mobile broadband of the contiguous EBS A1 channels it has under lease nearly nationwide (and that are also widely in use on Clearwire deployed networks). Further, as described in more detail below, Clearwire has in the last few years cancelled most BRS1 site licensed channels nationwide as part of a process of cancelling the vast majority of its BRS site licensed channels, thereby dissolving all formerly site licensed BRS channels into Clearwire's BRS BTAs. This action appears intended to further facilitate the efficient use of all BRS in the BTAs for mobile broadband use.

EBS and BRS MBS channels are also fully and widely in use by CLWR for mobile broadband, except in rare cases such as the very small number of cases cited in the Clearwire substantial service filings.¹⁴ Clearwire's form leases are highly instructive in this respect and specifically indicate "that the Middle Band Segment Channel may be used for low power advanced wireless services."¹⁵ Further, the EBS/BRS J&K guardbands are also in use and usable for mobile telephony and broadband on the Clearwire network, and particularly where Clearwire controls all EBS-BRS in the market, and/or where there is no video usage of the MBS in the market (and particularly where there is no EBS lease in a market that allows video only usage of EBS MBS). The record on this is now fully developed based on the complete absence of comments filed by any interested party about existing or planned video use of EBS MBS and

¹⁴ For example, see EBS Licensees Petition at pp. 6-7, discussing that of 127 EBS licenses in Clearwire commercially deployed major markets, only 7 licenses are subject to video services on the EBS "4" channel MBS spectrum as reported in the substantial service filings for those licensees. Of these 7 licenses, 5 are held by the Mobile Citizen EBS Parties, 1 is licensed to Tarrant County College, which does not lease to Clearwire, and 1 is part of the Catholic Television Network licensee group, which filed an Opposition together with NEBSA in response to the EBS Licensees Petition. So the Commission may obtain a fully accurate account of all video use over the EBS MBS that may not be determined from EBS substantial service filings, Clearwire should be required to provide the Commission with details of all video only usage on EBS (and BRS) in its spectrum portfolio, including a summary of any of its EBS leases that provide the licensee has reserved any portion of its spectrum for video only use, at the licensee's option.

¹⁵ See EBS Licensees Petition, Exhibit 2, Section 5(f).

from Clearwire's substantial service filings.¹⁶ Therefore, all 194 MHz of 2.5 GHz spectrum per market (including all MBS and guardband) should be subject to the Commission's spectrum screen, unless Clearwire or another party can clearly demonstrate any MBS is definitively being used for video programming in the market and/or there are concrete plans to do so, and only those specific MBS channels in that market should be excluded from the screen calculation for the counties where such use will exist.¹⁷

In regard to any claims that the geographic licensing of 2.5 GHz (BRS or EBS) is a reason to exclude the spectrum from the screen, it has been noted that the vast majority of BRS site licenses have been cancelled by Clearwire over the last few years and dissolved into the Clearwire BRS BTAs.¹⁸ As to the same claims involving EBS, EBS GSAs cover entire population centers in markets where they are licensed and such GSAs in nearly all cases cover

¹⁶ It is noteworthy that there has been not a single commenter in this proceeding which has indicated an intent or desire to use video services (on a continued or new basis), including the Mobile Citizen EBS parties, which appear to be the single greatest remaining EBS licensees utilizing MBS channels for video services in a limited number of markets. In its Opposition filed in this proceeding, Source For Learning, Inc., also stated that: ". . . SFL initially provided video services, but has been transitioning to the provision of WiMAX services . ." See Opposition to Petition to Deny, filed February 12, 2013.

¹⁷ For example, if an A4 EBS MBS channel is determined in any market to actually be in use for video services, then only in that specific market should the A4 EBS channel and J guardband channel not be subject to the spectrum screen.

¹⁸ For example, see Clearwire cancelled BRS site licensed stations, including BRS1 channels (highlighted in **bold**) for the following representative commercially deployed major markets: Denver, CO: **WPY32**, WMY475, WQDE407, WLK321, WLW976, WNTH953, WNTH998, WNEY681; Washington, DC: **WOI93**, WHT747, WHG443, WNEY445, WNEK840, WHJ920; Baltimore, MD: WHT571, WHT631, WNEK883; New York, NY: **WQQ79**, **WJM64** (Long Island), WLK227, WLR500, WMY467, WNEL497, WHJ897, WNTQ214, WCX57 (Long Island); Los Angeles, CA: WNET335, WBB785, WHT637, WGX394, WHD479, WHT636, **WPW94**, WNTD998, WNTL542; San Francisco, CA: WHT573, WHT653, WMY498, WLK228, WHJ909, WNTA514, WNTB230, **KFF81**; San Jose, CA: WMY499, WFY976, WNEJ497, WNTM579, **WJL36**; Miami, FL: WHT638, WHJ893, WNEK346, **WLJ79**, WMI841; Atlanta, GA: WHT664, WHT663, GWG309, **WQR43**, WNTA434, WNTB872, WHJ940; Chicago, IL: WHK999, WHT562, WMX255, WNEL393, WNET334, WMH333, WNTI207, WNTI287, WNTI343; Boston, MA: WMI863, KQT48, WHJ868, **WSL33**, WNEK864, WNTB229; Philadelphia, PA: WHT643, WHT644, **WPE97**, WNEY590, WNET336; Dallas, TX: WMY464, KWU30, WHT789, WHJ958, WHJ873, WNTD967, WHT564, **WQO65**; Fort Worth, TX: KWU29, WFY900, **WJM75**; Houston, TX: WLK305, WMI812, WHT570, **WOF76**, WHJ887, WHJ946, WNEY577; Seattle, WA: WHT656, **WMI902**, WNTB226, WMI890.

the vast majority of the addressable market population. EBS whitespace licensing, while not necessary for deployment of mobile broadband today on EBS channels within licensed GSAs as Clearwire has proven, is also right around corner. As Attachment A illustrates, a national or regional footprint of any of the 5 EBS channel groups, the vast majority of which EBS spectrum for each channel group Clearwire controls, provides for a very compelling and extensive population coverage footprint.¹⁹ Any wireless operator which obtains a national or regional footprint on any one EBS channel group can utilize the spectrum to provide coverage and service to the vast majority of population located within the contiguous national or regional GSA footprint of that channel group right now, without need for any whitespace (which picks up mainly peripheral pops located in areas where demand for additional spectrum capacity is substantially less and there is other mobile broadband spectrum available on other bands). Finally, 2.5 GHz spectrum shares similar propagation characteristics as AWS and WCS (its neighbor) – that has been included in the spectrum screen.²⁰ Clearwire-Sprint’s use of the EBS since 2008 for mobile telephony and broadband has proven all 2.5 GHz, including EBS, should now be included in the spectrum screen for purposes of the public interest review of this transaction.

If the Commission includes additional 2.5 GHz in the spectrum screen and it is determined spectrum divestitures are in order (for that or any other reasons), any concerns regarding such divestitures should be rejected. Sprint and Clearwire have ample excess

¹⁹ Attachment A illustrates the contiguous continental U.S. national footprint of each of the five following EBS channels: A1, B1, C1, D1, G1. Such illustration is also representative of the contiguous national coverage of each of the full EBS channel groups.

²⁰ See in re Applications of AT&T Mobility Spectrum LLC, Memorandum Opinion and Order, WT-Docket 12-240, released December 18, 2012.

spectrum to choose to divest and have so indicated.²¹ Notwithstanding the claims of some EBS licensees,²² disruption to current services available over 2.5 GHz spectrum from the standpoint of EBS licensees whose Clearwire leases may be subject to divestiture would be extremely minimal, in that the small number of Clearwire accounts actually in use nationwide for education (with respect to those affected EBS licenses/leases) could be transitioned to another platform (either a new Sprint platform on 2.5 GHz or to the existing/new platform of the acquiring carrier). Existing accounts could also remain on the current Clearwire deployed networks (even if for a small monthly fee to be paid by the EBS licensee out of its leasing royalties or credits if it determined a compelling reason to keep the current accounts with Clearwire, including Mobile Citizen, which is a wholesaler operating pursuant to wholesale agreement with Clearwire separate from its leases and standard minimum educational capacity reservation.)²³ Mobile Citizen's current accounts would not be disrupted pursuant to its wholesale arrangement as those accounts could simply stay on any Clearwire/Sprint current or future platform per a wholesale agreement, or the transferee of its leases would be required to provide the same level of service.²⁴ Even if there was any possible disruption to an EBS licensee's accounts, affected accounts could

²¹ See EBS Licensees Petition at 4.

²² See Comments of Hispanic Information and Telecommunications Network, Inc., filed February 12, 2013, at Section III ("HITN Comments"); Opposition of EBS Parties to Petition to Deny, filed February 12, 2013 ("EBS Parties Comments"), at pp. 6-7; Opposition of School Board of Pinellas County, Florida, filed February 12, 2013 ("Pinellas Comments"), at page 6.

²³ The Mobile Citizen EBS Parties specifically indicate the accounts they access "rely on the quality and extent of the Clear WiMAX network." See Mobile Citizen EBS Comments at 5. There is no indication from any EBS party that any Clearwire accounts they have in use rely solely on their licensed EBS spectrum over the Clear network.

²⁴ Through agreements with Clearwire, the Mobile Citizen parties have rights to a wholesale agreement for accounts access, and rights in restrictions on transfer of control to refuse consent to any transfer unless the transferee can provide the same level of service upon the transfer. See Clearwire Corporation, Amendment No. 1 to Form S-1, filed with the Securities and Exchange Commission, January 8, 2007, Exhibit 10.59, at Section 3.05(b) (discussing wholesale agreement rights), and at Exhibit IIA thereof, at Section 10(A) (discussing transfer restrictions). URL:<http://www.sec.gov/Archives/edgar/data/1285551/000089102007000003/v25599a1exv10w59.txt> Many other EBS leases contain similar restrictions on transfer.

simply be transitioned to another carrier's network for minimal cost. The more widespread use of Clearwire accounts by a very small number of EBS licensees (where the vast majority of others have an extremely minimal aggregate number of accounts in use) is certainly no public interest justification to reject application of the spectrum screen to EBS broadly.²⁵

Review of educational requirements after 15 years is also no reason to exclude EBS from the spectrum screen as any carrier that acquires any EBS lease will knowingly assume those obligations (in addition to payment and all other lease obligations) and be required to work with the subject EBS licensee to adjust for its needs in 15 years. In this respect, there is presently no Commission requirement that an EBS lessee must provide further educational capacity in 15 years, nor is there any requirement an EBS licensee shall be required to reserve more than 5% of its channel capacity now or in the future, as a result of this policy. In practice, the 15 year review policy would allow an EBS licensee under the Clearwire form of lease the ability to, at best, negotiate the purchase of additional capacity/services on the operator's network for educational use. This is no valid reason to reject application of the spectrum screen to EBS.²⁶

Finally, Sprint claims in the Sprint Opposition that the Commission indicated it will not revisit a licensee's spectrum holdings pursuant to the Commission's revised spectrum screen policy.²⁷ However, Sprint and Clearwire both have acquired substantial new spectrum holdings

²⁵ Even considering Mobile Citizen's more widespread use of Clearwire accounts along with the apparent bare minimum educational usage by Clearwire for all other EBS licensees combined, the total affected number of licensees and accounts is extremely minimal to consider divestiture a "disruption" when viewed on a large scale, national basis that is required in any public interest analysis.

²⁶ Whether inclusion of EBS in the spectrum screen would somehow allow other carriers more "headroom" in the screen is a self interested claim and such claim should also be rejected. See Sprint Opposition at 30. In any event, a new maximum 30% Initial Screen threshold as proposed herein would sufficiently limit additional headroom for other wireless carriers, while minimizing any conflict with prior approvals.

²⁷ Sprint Opposition at page 31, fn. 99.

since 2008.²⁸ Clearwire has acquired over 5 billion new MHz pops of EBS in its commercially deployed markets alone since the November 2008 Sprint-Clearwire MO&O.²⁹ Further, as is discussed below, Clearwire has also acquired 42 new BRS BTAs in Auction 86, as well as additional BRS channels, after the Sprint-Clearwire MO&O. It appears none of these acquisitions has been reviewed by the Commission pursuant to its spectrum screen.

Substantial New Spectrum Aggregation Requires Public Interest Analysis

Sprint claims in its application in the above-referenced proceeding the proposed transaction will not increase the concentration of spectrum holdings in Sprint-Softbank and raises no spectrum aggregation concerns,³⁰ and claims in the Sprint Opposition the Commission reviewed Clearwire's spectrum in the Sprint-Clearwire MO&O and already approved that spectrum aggregation/concentration, and has reviewed and approved further Clearwire spectrum concentration "following" the November 2008 Sprint-Clearwire MO&O, such that no further review is required in this proceeding.³¹ Aside from fact that the last such Commission review and approval of the Sprint-Clearwire spectrum aggregation occurred contemporaneously with the

²⁸ Regardless, if the Commission includes any additional spectrum in its spectrum screen as part of its review of this transaction, all Sprint-Clearwire's spectrum would have to be fully reviewed, even if they had not acquired substantial additional spectrum since the Sprint-Clearwire MO&O, which they have.

²⁹ See Comments of EBS Licensees Supporting Verizon Request, filed February 12, 2013 ("EBS Licensee Comments"), at page 6, Exhibit 1. Although Exhibit 1 thereto lists EBS call signs representing approximately 4.5 billion MHz pops of EBS spectrum, an updated review of such acquisitions reflecting new long term lease filings by Clearwire from November 2008 through November 2012, yields over 5 billion MHz pops of new EBS spectrum long term leases to which Clearwire is a party in its commercially deployed markets alone. While some of these new long term leases may be replacing legacy leases, for all intents and purposes of a proper public interest analysis, they all must be considered new spectrum acquisitions based on, among other reasons, that they are 30 year leases of the spectrum that constitute the financial equivalent of an ownership interest in the EBS spectrum. Upon Commission request, such detailed revised information concerning these new leases will immediately be made available.

³⁰ See Joint Applications of Sprint Nextel Corporation and Softbank Corp. for Consent to Transfer of Control, WT Docket 12-343, filed November 15, 2012 ("Application"), Public Interest Statement at page 29, Amendment, filed December 20, 2012, at page 7.

³¹ Sprint Opposition at pp. 24-25, fn. 80.

Sprint-Clearwire MO&O four years ago in the March 2009 Memorandum Opinion and Order cited by Sprint relating to acquisition by Clearwire of only 4 BRS BTAs,³² Sprint's claim that this transaction will not increase concentration of Sprint-Clearwire's spectrum holdings is simply not true. Clearwire has not only acquired very substantial additional EBS spectrum since that time, including over 5 billion MHz pops in its commercially deployed markets alone, but Clearwire has also acquired substantial additional BRS BTAs in Auction 86 that were licensed in May 2010,³³ as well as other BRS channels. Specifically, Clearwire acquired 42 new BRS BTAs in Auction 86 ("New BTAs"), including major market BTAs, B293 (Miami-Ft. Lauderdale) and B488 (San Juan, PR), the vast majority of New BTA markets in which Clearwire and Sprint have very substantial additional spectrum holdings as was indicated in their 2008 2.5 GHz spectrum merger proceeding application and as is clear from Commission public data.³⁴ Clearwire has also acquired additional EBS spectrum in these BTA markets under long term leases (including adjacent market spectrum overlapping these BTAs) since the Clearwire-Sprint MO&O.³⁵

Although all Clearwire BRS acquisitions after the Sprint-Clearwire MO&O should have been reviewed pursuant to the Commission's spectrum screen, it appears many (if not all) of

³² Id. at fn. 80.

³³ See Public Notice, DA 10-837, In re Auction 86, released May 12, 2010 ("Auction 86 Grant PN").

³⁴ Id. Clearwire has also acquired additional BRS licenses since November 2008 that were also not disclosed in the Application in this proceeding. See e.g., acquisition by Clearwire of Station WLW927, Victoria, TX BRS E Group channels, approved on Public Notice, July 7, 2010.

³⁵ See e.g., EBS Licensees Comments at Exhibit 1 (listing Clearwire new EBS leases in commercially deployed markets, many of which subject licenses overlap the New BTA markets). See also the following call signs representing some of the new long term leases entered into by Clearwire in New BTA markets after the Sprint-Clearwire MO&O: KTB85 (Miami, FL "F" group), WQJI405 (Palm Beach, FL D1,D2), WHR838 (Sarasota, FL A group), WHR820 (Sarasota, FL B group), WNC891 (Sarasota, FL C group), WLX724 (Sarasota, FL D group), WHR873 (Sarasota, FL G group).

these acquisitions have not been reviewed.³⁶ In its Memorandum Opinion and Order adopted November 4, 2008 (the same day the Sprint-Clearwire MO&O was adopted) in re the Matter of Union Telephone Company and Verizon Wireless, the Commission determined that it would subject all future spectrum acquired through Commission competitive bidding proceedings to the spectrum screen review process.³⁷ A review of the Auction 86 Grant PN and Clearwire's applications for Auction 86 indicate no such review and analysis occurred.³⁸

Thus, the Commission must now review in the current proceeding in the context of its larger review of the inclusion of EBS and other BRS spectrum in the spectrum screen, Clearwire-Sprint's very substantial additional 2.5 GHz spectrum aggregation since November 2008. Where any markets are identified that exceed the Commission's spectrum aggregation guidelines pursuant to such review, the Commission must perform an in depth, case by case, review in those markets of, at minimum: (1) the total spectrum available for mobile telephony use; (2) the particular applicant's portion of available spectrum; (3) licensees in the market and their spectrum holdings; (4) licensees currently providing service in the market; (5) whether current service providers, who may be capacity constrained in the near-term, can access additional

³⁶ The Application and Sprint's Opposition in this respect (and in respect of Sprint's claims the Commission has already approved this spectrum aggregation) are plainly misleading and inaccurate in that they fail to account in any manner for the acquisition by Clearwire of the very substantial number of BRS BTAs (42) in Auction 86, in addition to other BRS channels acquired after the Sprint-Clearwire MO&O.

³⁷ See in re Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless, Applications for 700 MHz Band Licenses, Auction No. 73, *Memorandum Opinion and Order*, File Nos. 0003382435, 0003382444, released November 13, 2008, at para. 9. ("Verizon Wireless-Union MO&O").

³⁸ A review of the docket regarding the assignment of WLW297 cited at fn. 34 supra, also indicates no spectrum screen review occurred with respect to that transaction.

spectrum in the market either through auction or on the secondary market; and (6) licensees currently holding spectrum that could enter the market to provide service.³⁹

Since the Sprint-Clearwire MO&O, Clearwire-Sprint have together amassed in the vast majority of major U.S. markets well over 200 MHz of mobile wireless spectrum (and in some cases upwards to 250 MHz or more) that should be subject to the Commission's spectrum screen. Attachment B contains a list of all current Clearwire BRS and EBS spectrum holdings in 10 commercially deployed major metropolitan market areas.⁴⁰ As the data at Attachment B demonstrates, Clearwire holds nearly 100% of all 2.5 GHz spectrum covering the entirety of these 10 major metropolitan areas and 100% (194 MHz) in many of the markets. The sheer magnitude of Clearwire's current holdings (coupled with Sprint's substantial (approximate 50-60 MHz) of mobile wireless holdings in these markets) was never reviewed, analyzed or approved as part of the 2008 Sprint-Clearwire transaction proceeding.

Therefore, the Commission must perform another public interest review in this proceeding of the massive Sprint-Clearwire spectrum aggregation that has occurred since the Sprint-Clearwire MO&O. As part of that review, the Commission should require Sprint-Clearwire to amend the Application with a detailed listing of all current spectrum holdings,

³⁹ Verizon Wireless-Union MO&O at para. 18. The Commission has also described the factors to be considered in this analysis to "include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the merger; the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. In reaching determinations, we balance these factors on a market specific basis, and consider the totality of the circumstances in each market. See in re Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, released November 19, 2007, at para 51-52. ("AT&T-Dobson Order").

⁴⁰ See Attachment B, listing Clearwire's 2.5 GHz spectrum holdings in Atlanta, GA; Boston, MA; Chicago, IL; Dallas-Ft. Worth, TX; Houston, TX; Los Angeles, CA; Miami, FL; Philadelphia, PA; San Francisco/San Jose, CA; Seattle, WA.

including all BRS and EBS holdings by BTA and site license, for each CMA where they hold spectrum. Interested parties must also be provided with an opportunity to review and comment on such amended information and application.

Clearwire Form of Lease and EBS Leasing Practices Violate Commission Rules

Among several “national” EBS licensees,⁴¹ the School Board of Pinellas County Florida (“Pinellas”), and a group of approximately 30 other “local” EBS licensees representing spectrum in Clearwire deployed major markets (“Local EBS Parties”), through their counsel,⁴² filed oppositions to the EBS Licensees Petition.⁴³

The Local EBS Parties all state in their oppositions that their leases were “negotiated and executed at arm’s length and in good faith” and “satisfy their interests and comply with all Commission requirements.”⁴⁴ Neither the NEBSA/CTN Opposition nor the Local EBS Parties dispute that the Pinellas form of lease attached to the EBS Licensees Petition is a widely used Clearwire standard form of lease (nor did the Local EBS Parties dispute it is their form of Clearwire lease and that of many others).⁴⁵ The Local EBS Parties also suggest this form of

⁴¹ The “national” EBS Licensees which filed separate oppositions to the EBS Licensees Petition on February 12, 2013 are: Hispanic Information and Telecommunications Network, Inc. (“HITN Opposition”), Clarendon Foundation, Inc., (“Clarendon Opposition”) Source For Learning, Inc. (“SFL Opposition”), Mobile Citizen EBS Parties, and the Catholic Television Network (a group of local EBS licensees which are members of a “national” network) (collectively the “National EBS Parties”).

⁴² All these parties are represented by the law firm Dow Lohnes, PLLC, which also represents the National EBS Association (“NEBSA”) and Softbank Corp. (“Softbank”), the proposed transferee in this proceeding. NEBSA, along with Catholic Television Network, also filed a joint opposition in response to the EBS Licensees Petition. See Opposition to Petition to Deny, filed February 12, 2013 (“NEBSA/CTN Opposition”).

⁴³ Opposition of School Board of Pinellas County Florida, filed February 12, 2013 (“Pinellas Opposition”); Opposition of EBS Parties to Petition to Deny (“EBS Parties Opposition”), filed February 12, 2013 (collectively the “Local EBS Parties”).

⁴⁴ Pinellas Opposition at page 6; EBS Parties Opposition at page 5.

⁴⁵ Attachment C is another example of this form of lease. The lease at Attachment C is between Clearwire and School Board of Manatee County, for the EBS A and G group channels covering Sarasota-Bradenton, FL (“Sarasota Lease”). This lease is also publicly available from the school board meeting website at:

lease does not frustrate the ability of the EBS licensee to provide adequate educational usage over its EBS channels because “the lease is clearly not for 100% of the station’s spectrum. . .”⁴⁶ However, a plain reading of relevant terms of the lease yields an ambiguous and confusingly misleading conclusion whether the EBS lessor realistically could ever access the full minimum educational capacity required to be reserved (which the Local EBS Parties appear to acknowledge is not truly “reserved” once Clearwire deploys a system on 100% of the licensed spectrum). The ability of the EBS licensee under this form of lease to “buy” ‘use it or lose it’ accounts with purported credits, is simply window dressing over the reality the lease in effect transfers to Clearwire 100% of the spectrum capacity of the channels, without providing for any realistic way the licensee can ever access the full reserved capacity. Regardless whether the lease indicates Clearwire’s capacity is all other than the Licensee reserved capacity (that is not defined), what matters is how the terms of the lease are carried out in operation – which in the case of this form of lease, Clearwire is in fact leasing and using 100% of the EBS capacity (since Clearwire has deployed 100% of the spectrum), and only the minimal number of permitted accounts are actually “reserved” for the licensee.⁴⁷ In the form of lease at issue, the 20 accounts reserved capacity available to Pinellas simply does not suffice for minimum reserved capacity.

<http://www.manatee.k12.fl.us/sites/agenda/April%2026,%202010%20-%20Regular%20Meeting%20-%20Minutes%20on%20Monday,%20April%2026,%202010/E08C3731-8A30-467E-9BA9-0066EC5EF29D.pdf>

⁴⁶ Pinellas Opposition at page 4.

⁴⁷ Some of the oppositions also take issue with the EBS Licensees Petition in respect of Clearwire’s primary obligation as an EBS lessee to ensure compliance with EBS minimum educational usage requirements for the EBS spectrum it leases. See Local EBS Parties Opposition at page 3, fn. 1; Clarendon Opposition at page 2; Sprint Opposition at page 45. If an EBS licensee deployed facilities over its 5% educational reservation and had control of those facilities (and especially where the spectrum is not subject to a lease), it may be the case that the EBS licensee would assume primary responsibility for minimum educational usage compliance. However, in the case of the Clearwire leases in which Clearwire deploys a system over 100% of the EBS spectrum, the EBS licensee is fully reliant on Clearwire to provide the educational usage on its behalf as it has absolutely no control over the system (most importantly including system coverage). Therefore, Clearwire must be primarily obligated for compliance.

The lease does frustrate the EBS licensee's ability to utilize the reservation, while at the same time, minimizes the educational capacity. The Commission should require Clearwire to provide the summary of the educational reservation and capacity terms for all its EBS leases as requested in the EBS Licensees Petition.⁴⁸

Several of the National EBS Parties commented their leases were individually negotiated with Clearwire.⁴⁹ The EBS Licensees take no position with respect to whether their EBS leases frustrate compliance with Commission rules.

Clearwire's Leasing Practices Abuse Market Power and Raise Character Qualification Issues

As indicated above, the Local EBS Parties state their leases were entered into in good faith. While that is most likely true in the majority of cases, and there is no reason to believe any of the Local EBS Parties entered into any leases out of anything but good faith for their part, it is unfortunate that Clearwire has knowingly engaged in bad faith abuse of market power in its leasing practices in many respects and situations since the Commission approved the aggregation of the 2.5 GHz band into Clearwire in November 2008. It is noteworthy that the EBS Parties Opposition does not dispute the observation in the EBS Licensees Petition that Clearwire has engaged in monopsony abuse of market power, but the Local EBS Parties actually confirm there is no other competition for EBS spectrum.⁵⁰

⁴⁸ It should be noted that the Sprint Opposition grossly mischaracterizes that the form of lease discussed herein is only "a single lease agreement among thousands of Clearwire leases. . . ." Considering there are only 2,251 total active EBS licenses in the United States according to the Commission's Universal Licensing System, of which Clearwire certainly does not lease "thousands," even if they leased all of them, which they do not, this type of intentionally misleading puffery should raise questions regarding the accuracy of other of Sprint's claims and assertions in this proceeding.

⁴⁹ Clarendon Opposition at page 3; SFL Opposition at page 5; HITN Opposition at Section I.

⁵⁰ EBS Parties Opposition at pp. 6-7. The Local EBS Parties appear to take the position Clearwire is the "one stop shop" for EBS spectrum leasing. The reason for this thinking is likely because Clearwire has abused monopsony power for over 4 years setting lease payment and other terms, including with respect to many of the Local EBS Parties. The Local EBS Parties are wrong there are no other interested competitors, however. As the EBS

One example and demonstration of Clearwire's bad faith monopsony behavior and abuse of EBS licensees in the marketplace (that is conduct prohibited by Commission rules and policies) since the Sprint-Clearwire MO&O relates to an apparent Clearwire cost savings strategy to replace valid, unexpired EBS leases containing revenue share and per subscriber fee payment terms that are highly favorable to EBS licensees once Clearwire commercially deploys a market, with lower fixed payment, new long term *de facto* (30 year) leases. Undersigned counsel to the EBS Licensees has detailed information regarding at least one such representative case involving a local quasi governmental entity with a single EBS license located in a Clearwire commercially deployed market, in which case Clearwire for nearly one year knowingly concealed from the licensee substantially higher monthly per subscriber fee payments and associated reports that Clearwire had a contractual duty to pay and report to the specific EBS licensee, while at the same time Clearwire pursued and induced the EBS licensee into a new long term *de facto* lease that would pay lower payments to the licensee, and lock up its spectrum for a period of 30 years (where the EBS licensee's existing lease had 5 years remaining on the term).⁵¹ During the time the requisite higher payments (and associated material financial reports) were require to be paid to the licensee but were knowingly being concealed (a form of

Licensees Comments describe, Dish Network is currently attempting to acquire a nationwide footprint of 2.5 GHz spectrum (potentially including EBS) from Clearwire. Further, the reason additional competitors have not pursued EBS spectrum is due to Clearwire's stranglehold on the 2.5 GHz band, plain and simple, in which current market a regional or national competitor can, at best, acquire a single EBS channel in only a small number of disaggregated markets – which effectively creates no incentive for an alternative competitor to pursue any 2.5 GHz spectrum not already under Clearwire's control absent an ability to secure a contiguous footprint. Divestitures in this proceeding would alter the current landscape.

⁵¹ The EBS Licensees, through counsel, have received consent from the affected EBS licensee to note this conduct to the Commission as part of this Consolidated Reply. The EBS Licensees do not have any further information regarding this matter and they are not at liberty to disclose any additional details to the Commission regarding this confidential matter. However, immediately upon request of the Commission, undersigned counsel to the EBS Licensees, in consultation with the affected EBS licensee, shall provide additional detailed confidential information to the Commission (and Clearwire-Sprint) regarding this matter, pursuant to request for confidential treatment.

misrepresentation) by Clearwire, Clearwire paid only minimum monthly payments to the EBS licensee so that it would be unaware it was entitled to the higher payments under its existing lease and would enter into the lower payment, new long term lease. Upon information and belief, Clearwire may have engaged in similar conduct to secure new lower cost, long term leases with respect to several other EBS Licensees (including governmental units) which had a similar form of prior lease with Clearwire. Clearwire's conduct in this respect may not only demonstrate an abuse of market power and anti-competitive practices, but raises significant questions regarding Clearwire's character qualifications as an EBS lessee that the Commission should fully address in this proceeding before making any determination regarding the requested transfer of control.⁵²

As discussed in the EBS Licensees Petition, and in contrast to the comments of the Local EBS Parties, NEBSA/CTN, and the national EBS licensees which filed oppositions to the EBS Licensees Petition (collectively, "Friends of Clearwire"), Clearwire has also exercised its monopsony power to cap EBS lease payment and other terms since the Sprint-Clearwire MO&O.⁵³ As a chief case in point, the Commission should consider the case of EBS licensee School Board of Broward County, Florida ("Broward"), which experienced Clearwire's exercise of monopsony power first hand just a few months after the Commission approved Clearwire's

⁵² In the 1997 Foreign Participation Order, the Commission indicated, "[t]he public interest may therefore require, in a particular case, that we deny the application of a carrier that has engaged in adjudicated violations of Commission rules, U.S. antitrust or other competition laws, or in demonstrated fraudulent or other criminal conduct" (emphasis added). In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, IB Docket 97-142, released November 26, 1997 ("Foreign Participation Order"), at para. 53. In the Foreign Participation Order, the Commission also made clear its policies on character qualifications apply in international transfer of control proceedings, as well as with respect to domestic applicants. *Id.* at para. 53, fn.90 (citing to the Commission's Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1195-97, 1200-03 (1986), stating, "relevant non-FCC misconduct" under the Commission's character policy "includes: . . . fraudulent representations to governmental units") (emphasis added).

⁵³ EBS Licensees Petition at page 24, fn. 11.

substantial aggregation of the 2.5 GHz spectrum in November 2008. Broward is a long-time major market EBS licensee that holds the EBS B and G group authorizations for the Miami-Ft. Lauderdale, FL market.⁵⁴

According to March 16, 2010 minutes of the School Board of Broward County (“Broward Board Minutes”), Broward conducted a request for proposals for the lease of its EBS channels in April 2009, and received only one proposal on June 3, 2009, from Clearwire.⁵⁵ Notwithstanding, as of March 2010, Broward was still “in the negotiating phase with this proposer.”⁵⁶ The full text of the Broward Board Minutes state (emphais added):

On April 22, 2009, a RFP was released for the Lease of Excess Educational Broadband Services (EBS) Capacity, in order to enter into a contractual agreement for maximizing the value of Educational Broadband Service licenses granted by the Federal Communications Commission. Only one proposal was received from Clearwire Spectrum Holdings III, LLC, on June 3, 2009. The School Board of Broward County, Florida (SBBC), is currently in the negotiating phase with this proposer. SBBC is in the process of negotiating a lease for the use of EBS channels included under FCC license call signs KTZ22 and KLC80. These licenses have not been previously leased, so SBBC is free to lease them to any qualified operator or retain them for use by the district. Cirpass, LLC, is qualified to help SBBC achieve a better deal than the last offer received. Unfortunately, the unit rate of Clearwire’s offer to SBBC is about half of what they are paying to Miami-Dade Schools and Florida Atlantic University (FAU).

Clearwire recently raised \$4.3 billion in new debt and equity financing and is well positioned to pay similar compensation for Broward’s spectrum; however, competition of EBS leases dropped off after Clearwire acquired the spectrum assets of its only competitor, Sprint, in 2008. Despite our best efforts, SBBC has not been able to negotiate an improved financial offer. Under this proposed Agreement, Cirpass, LLC, shall only

⁵⁴ Broward is represented on the Executive Committee of NEBSA and its representative is Vice Chair of the organization. See http://www.nebsa.org/nebsa_officers.htm It is notable that NEBSA, though represented by the same counsel as the Local EBS Parties (and same law firm as Softbank Corp.) in this proceeding, and which indicates in its opposition in this proceeding that the organization represents the interests of EBS licensees throughout the U.S., made no comments in response to the observations in the EBS Licensees Petition concerning Clearwire’s abuse of market power with respect to EBS leasing. The Sprint Opposition is also silent on this issue.

⁵⁵ See Minutes of Regular Meeting, School Board of Broward County, Florida, March 16, 2010, at Section E-1, page 14. URL: <http://www.broward.k12.fl.us/osbr/pdf/031610m.pdf>

⁵⁶ Id.

be due a fee if the value of the lease has a greater value than the best offer for channels received as of 12/17/2009. Cirpass, LLC, will bear all its own costs and risks. The maximum fee will be limited to 10% of the actual improvement in lease value or 1% of the total value of the lease, whichever is less. If the Net Present Value (NPV) of the executed lease is equal or less than the NPV, then the success fee shall be zero.

Based on there being no ULS lease filings for these licenses, it appears Broward never agreed to these leases with Clearwire due to the monopsony below market spectrum valuations established by Clearwire after the Commission's approval of the Sprint-Clearwire 2.5 GHz combination.⁵⁷

The Broward case clearly illustrates not only that after the Sprint-Clearwire MO&O did Clearwire have market power, but that it abused that market power as a monopsony to establish and limit market prices for EBS spectrum (in the same major metropolitan areas).⁵⁸ Clearwire's abuse of market power in this case – likely in an effort to simply try and “wait out” Broward to take the below market deal – is contrary to the public interest as this conduct has resulted in Broward's valuable spectrum assets being underutilized and undeveloped for their best and highest purpose, and has inhibited Broward's ability to maximize the value of its spectrum to support its own educational mission.⁵⁹ This conduct also represents the type of anti-competitive

⁵⁷ For reference, calculations of the publicly available lease payment data concerning the Miami-Dade Schools EBS lease transaction with Clearwire cited in the Broward Board Minutes and that was entered into pursuant to a competitive bid process prior to the Clearwire-Sprint transaction (and was approved by the School Board of Miami-Dade County, Florida, on June 18, 2008), may be reviewed at the Miami-Dade School Board website. See Minutes of the School Board of Miami-Dade County, Florida, June 18, 2008, Item E-116.

URL: <http://pdfs.dadeschools.net/Bdarch/2008/Bd061808/agenda/E116rev2.PDF>
For summary of the values paid by Clearwire to Florida Atlantic University for the lease of its Miami-Ft. Lauderdale EBS spectrum, which transaction with Clearwire is also cited in the Broward Board Minutes and was also entered into pursuant to a competitive bid process prior to the Sprint-Clearwire merger proceeding, see Florida Atlantic University, Board of Trustees, Proposed Committee Action, in re Educational Broadband Service Licenses, September 10, 2008, at pages 6-7. URL: http://wise.fau.edu/bot/files/091008_II_Clearwire.pdf

⁵⁸ There are similar examples of EBS licensees electing not to enter into leases with Clearwire due to price setting by Clearwire and a lack of competitive offers for their EBS spectrum. This hardly represents a competitive spectrum market for EBS spectrum.

⁵⁹ As mentioned in footnote 50 supra, because of Clearwire's stranglehold over the 2.5 GHz band, there is no incentive for another wireless operator to pursue available channels like Broward's. As was proven by the competitive market before the Sprint-Clearwire MO&O, where there are at least two national (or regional) wireless

violations described in the Commission's Foreign Participation Order requiring denial of the Applications.⁶⁰ Allowing this transaction would be tantamount to permitting the knowing continued ability of post transaction Sprint to engage in abuse of market power as a monopsony in the EBS spectrum market.⁶¹

Clearwire Educational Usage Obligations Compliance Should be Investigated

The EBS Licensees commend the efforts of all EBS licensees participating in this proceeding (and in the U.S.) which are providing educational usage over EBS spectrum. Mobile Citizen, HITN, Clarendon and SFL all describe their efforts in this respect and highlight some of their successes in utilizing Clearwire accounts for educational use – in their oppositions and in their substantial service filings.⁶² While it is evident some EBS licensees (and in particular National EBS licensees) are making considerable efforts to utilize Clearwire accounts for

operators with plans to deploy 2.5 GHz spectrum, the incentive exists for both parties to pursue available spectrum in any market on a competitive basis. This is also the case with respect to most other U.S. spectrum bands where there at least 2 or more wireless operators holding the spectrum. The lack of two competitors in the 2.5 GHz spectrum harms EBS licensees which have not yet leased or whose leases are expiring, other wireless operators in need of spectrum that would have an incentive to pursue 2.5 GHz if there was an ability to obtain a regional or national footprint in 2.5 GHz, and the public.

⁶⁰ See footnote 52, supra.

⁶¹ Another manner in which Clearwire has used its market power to establish and maintain prices for EBS spectrum is through the exercise of the unilateral termination rights it has in nearly all its EBS leases nationwide. For example, Clearwire has many, many, EBS leases containing six (6) automatically renewing five (5) year terms (for a total possible term of 30 years), pursuant to which Clearwire has the unilateral right to terminate after any one 5 year term. The lease attached hereto at Attachment C (and the Pinellas lease), at Section 1(b), represents an example of these unilateral termination rights with respect to a lease containing three 10 year terms. Under its EBS leases, if Clearwire wishes to reduce payments to a licensee after any term, it simply provides the licensee notice of termination of the lease and any FCC rule compliance services being provided, and proposes the new lower price and other take-it-or-leave-it terms it is willing to pay. While in a competitive market with multiple buyers these terms may not be of concern, with no other buyer in the market to compete for the leases, the EBS licensee is forced to immediately accept the lower offer or face threat of discontinuance of compliance services and complete loss of lease payments.

⁶² Although the EBS Licensees Petition, and Exhibit 1 thereto, clearly indicated there were reported educational accounts or other educational usage with respect to the EBS licenses included for these national EBS licensees, these parties for some unknown reason filed unnecessary oppositions claiming their substantial service filings were being challenged – which they clearly were not.

educational use, it is noteworthy that Clearwire has not responded to the EBS Licensees Petition to explain Clearwire's process of providing educational usage over EBS and ensuring its compliance with these obligations under Commission rules and its EBS leases, nor has Clearwire (or Sprint) described in any detail any information regarding the actual educational use over the EBS spectrum Clearwire leases.

All the Friends of Clearwire filing oppositions to the EBS Licensees Petition uniformly indicate the petition is asking the FCC to set aside their substantial service filings or that it is a challenge to the substantial service filings.⁶³ They claim since all the substantial service filings certified they are in compliance with educational use requirements for substantial service purposes, that is the end of the matter. They suggest there is no reason for the Commission to perform any further review of Clearwire's actual deployment of accounts for educational usage over its network.

This response is simply a red herring. The EBS Licensees Petition does not ask the Commission to set aside its acceptance of Clearwire's substantial service filings and it does not challenge those filings. In illustrating some major anomalies in Clearwire's substantial service filings for all EBS licenses it leases in 20 of its commercially deployed markets, the petition simply points to the elephant in the room regarding the actual state of Clearwire's support and provision of educational usage (or lack thereof) as lessee and steward of the EBS spectrum.⁶⁴

While EBS licensees for whom Clearwire coordinated and/or filed substantial service filings may

⁶³ EBS Parties Opposition at page 4; NEBSA Petition/CTN Petition at page 3; SFL Opposition at page 3; Clarendon Opposition at page 2; HITN Opposition at Section II; Sprint Opposition at 48.

⁶⁴ Upon information from several EBS licensees, for substantial service compliance purposes, Clearwire simply sent a small number of wireless modems to each of them with a request the licensees use the modems for educational uses. Some of these EBS licensees are unable to use any of the modems provided by Clearwire because the deployed service area is so minimal as to allow for any signal to the devices at the licensee location(s).

have complied with substantial service, that is a different issue from whether there is bare minimum, or less than bare minimum, educational usage of EBS today.⁶⁵ It is the EBS Licensees contention there is not – and the lack of specific discussion in the substantial service filings is simply representative of a larger problem.⁶⁶

Notably, not one of the EBS parties whose substantial service filings failed to report any specific educational usage and which filed oppositions in this proceeding volunteered the number of educational usage accounts Clearwire is providing with respect to their licenses or provided any details regarding those accounts, nor did Clearwire (which did not file any opposition) provide any such information.⁶⁷ The total and complete lack of Clearwire’s transparency on this subject, coupled with the inconsistent reporting of educational usage in substantial service filings, merits further investigation by the Commission, including requiring Clearwire to provide the data proposed in the EBS Licensees Petition. Considering the extremely important

⁶⁵ A representation of some additional Clearwire “30% Coverage” substantial service filings not cited in the EBS Licensees Petition for EBS licensees in both Clearwire commercially deployed markets and other markets illustrates how the broader universe of substantial service filings may in fact reflect the actual provision of educational services by Clearwire. Substantial service filings for WHR491 (South Bend, IN), WHR777 (Cleveland, OH), WHR971 (Providence, RI), WHR977 (Wichita, KS), and WNC609 (Greeley, CO) appear to have been handled directly by Clearwire in coordination with the EBS licensees for filing at the FCC (e.g., it appears Clearwire prepared and filed the substantial service filings directly with the Commission on behalf of these licensees, as Clearwire does for many, many EBS licensees not represented by FCC counsel). The substantial service filings made by Clearwire for these five licenses reported the specific educational accounts in use because the Clearwire substantial service filing template used for nearly all Clearwire EBS lessors indicated that the EBS licensee should discuss any educational use in the relevant bottom section of the filing, just as was reported by Clearwire for the licenses in this example (and by many other EBS licensees which had accounts in use and therefore reported them in substantial service filings).

⁶⁶ The data in the immediately preceding footnote raises two central points for consideration: 1. It appears Clearwire’s standard practice (and template) for substantial service was to report any specific educational usage in the relevant section of the substantial service filing template document; and 2. It may be deduced that if Clearwire failed to provide educational usage for any EBS licensee, the substantial service filing for that licensee (whether handled and filed directly by Clearwire) is silent with respect to any specific educational use.

⁶⁷ The Sprint Opposition offered a single example of educational usage over EBS in Los Angeles by schools transmitting educational video programming, which is a legacy video use of EBS, and does not relate to provision of Clearwire accounts. Sprint Opposition at page 46.

implications of this proceeding to the current and future potential for educational use of EBS spectrum, the public interest requires a review in this proceeding of what Clearwire has done for educational usage of EBS. Mobile Citizen agrees that this proceeding is the proper venue for a “public interest examination” of “Softbank’s plans or aspirations concerning EBS”.⁶⁸ While that is certainly true and should be undertaken by the Commission in this proceeding, Clearwire’s actual performance and compliance with educational usage requires the same public interest examination first (if for no other reason so the Commission and stakeholders may gauge a baseline performance as to any possible additional commitments of future performance and compliance to be made by Softbank if the proposed transaction is to be approved).⁶⁹

As it stands now, it is completely unknown how much educational use on EBS has resulted from Clearwire’s decade long stewardship of the EBS spectrum – and the Commission should not allow Clearwire (and any EBS licensees through which Clearwire may have coordinated a response in this proceeding) to use a uniform claim that the buck stops on this issue with certifications in substantial service filings. The Commission should not ignore the elephant in the room on this issue as Clearwire’s compliance with educational use obligations goes to the very heart of whether the Commission may approve any aspect of the above-referenced transaction.⁷⁰

⁶⁸ Mobile Citizen EBS Comments at page 7.

⁶⁹ Based on the way operations are carried out by Clearwire pursuant to its EBS leases (and under Commission Secondary Spectrum Markets rules), Clearwire assumes primary compliance obligations with respect to the provision of educational usage over EBS spectrum it leases. See footnote 47, *supra*; see also EBS Licensees Petition at page 6.

⁷⁰ The parties to the Sprint Opposition claim Clearwire’s compliance with educational use obligations is not transaction specific. Sprint Opposition at page 45. However, any of Sprint or Clearwire’s compliance (or lack of compliance), with any Commission rules goes to the very question of whether the Commission may approve the transaction. See Foreign Participation Order at para. 53, footnote 52, *supra*.

Foreign Control of EBS is Impermissible

As the Sprint Opposition acknowledges, Clearwire will no longer exist after the proposed transaction is approved.⁷¹ If approved, the resulting foreign carrier substantially controlled Sprint will be the sole remaining entity with no commitment or duties to the vast educational, religious and nonprofit market place representing U.S. EBS spectrum and its constituents.⁷² Sprint's claim there should be a presumption that entry of Softbank into the U.S. telecommunications market is in public interest in this transaction should not apply⁷³ because control of the U.S. educational spectrum presents a very "exceptional circumstance" – and particularly considering this transaction proposes to allow an involuntary transfer of EBS (from the standpoint of all U.S. educational, religious and nonprofit representatives which are EBS licensees) to foreign control. If there was ever an "exceptional circumstance" requiring a detailed public interest analysis by the Commission in a merger proceeding, it is prospective foreign control of the U.S. educational spectrum – and particularly in the case where the transferor (Clearwire) already has market power (and has abused that market power) over EBS and now proposes to transfer that market power to foreign ownership.⁷⁴

⁷¹ See Sprint Opposition at page 13, stating, "Once combined, Softbank, Sprint, and Clearwire will have substantial resources. Post-transaction, Softbank/Sprint will be the third largest global wireless provided measured by mobile revenues." [emphasis added]

⁷² Even in its opposition to the EBS Licensees Petition, Sprint made no commitments or comments about its plans for education, or need, of EBS spectrum – notwithstanding that EBS will constitute half or more of the proposed post transaction entity's spectrum.

⁷³ Sprint Opposition at page 19 (citing to the Commission's Foreign Participation Order).

⁷⁴ Clearwire has not provided any notice to its EBS lessors that it is being fully acquired by Sprint/Softbank or of the pendency of this proceeding. Only select EBS licensees whom are represented by FCC attorneys may be aware of this transaction and the pending proceeding. The few EBS parties filing oppositions in this proceeding, all of which are represented by FCC counsel, do not represent the interests of the unrepresented EBS parties which are either not represented by FCC counsel and rely on Clearwire for regulatory compliance (which there are hundreds of such licensees) and/or that are completely unaware of the pending transaction or this proceeding. In keeping with its

Approval of the Transaction Conflicts With State Laws Governing Nonprofit Assets

In opposition to the EBS Licensees Petition, Sprint claims there are no potential conflicts with state nonprofit corporation laws that would be triggered by the involuntary transfer of state and local government, nonprofit and religious intangible EBS spectrum lease assets to foreign control.⁷⁵ The EBS Parties likewise contend that the proposed transaction does not violate any state's laws, and even if there was any issue respecting an EBS lease in any state, "the Commission would have no role in the determination of the issue or its remedy."⁷⁶

However, absent express federal preemption of state law, there is a presumption against the Commission's ability to usurp jurisdiction of any state to establish and carry out its own laws regarding the disposition or diversion, and protection, of nonprofit assets.⁷⁷ Neither an EBS licensee nor the Commission can preempt state law requirements concerning diversion of nonprofit assets, even where the Commission has a long standing policy to allow EBS leasing.⁷⁸ This is of particular significance in respect to EBS leasing policies since the effective date of the Commission's rules in Docket 03-66, which permitted EBS parties to enter into leases with unlimited terms (if entered into between January 10, 2005 and July 16, 2006), and up to thirty year maximum terms if entered into after July 16, 2006.⁷⁹ As discussed in the EBS Licensees

prior protection of EBS licensees, it is incumbent on the Commission to ensure the interests of any EBS licensees not participating in this proceeding are protected.

⁷⁵ Sprint Opposition at pp. 50-51.

⁷⁶ EBS Parties Opposition at page 6.

⁷⁷ See e.g., *Farina v. Nokia, Inc., et. al.*, 625 F.3d 97 (2010), at 116 ("the presence of federal regulation, however longstanding, does not by itself defeat the application of the presumption. Rather, its application "accounts for the historic presence of state law but does not rely on the absence of federal regulation."

⁷⁸ *Id.*

⁷⁹ 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,

Petition, the 30 year (or longer) EBS lease term is the financial equivalent of an ownership interest in the spectrum on the part of the lessee – and these leases therefore trigger application of many state laws prohibiting the sale or diversion of nonprofit assets.⁸⁰ This was not the same case under the Commission’s prior EBS leasing rules pursuant to which more limited 10 year, and later, 15 year, maximum lease terms were permitted (which did not confer the equivalent “ownership” in the spectrum to the lessee as does the 30 year and longer leases.⁸¹

The Sprint Opposition also incorrectly and misleadingly describes the treatment of nonprofit assets held in trust.⁸² Contrary to Sprint’s contentions, all nonprofit property is held in “trust” by nonprofits for the benefit of their state and the public missions, whether it is donated, granted to the nonprofit, and/or a formal written trust is established (pursuant to which a trustee is entrusted with oversight of trust assets).⁸³ As EBS licenses and their associated capacity are clearly “granted” to eligible nonprofits for the benefit of their educational/nonprofit purposes/missions, the intangible property flowing from the licenses is held in trust by EBS licensees for the benefit of the public respecting their nonprofit purposes. State nonprofit laws therefore do apply to EBS license grants, and for Sprint to infer they don’t flies in the face of state nonprofit laws around the U.S. and the jurisdiction State Attorneys General have over nonprofits. The “Model” Nonprofit Corp. Act cited in the Sprint Opposition is not adopted in 50

Order on Reconsideration, WT Docket No. 03-66 (“EBS/BRS Order on Reconsideration”), at paras. 268-270 (released April 27, 2006).

⁸⁰ The EBS Licensees Petition, at fn. 28, cites a few such state laws.

⁸¹ EBS/BRS Order on Reconsideration at para. 266.

⁸² Sprint Opposition at page 50.

⁸³ See *In re Roxborough Memorial Hospital*, O.C. No. 555 of 1997; 17 Fiduc. Rep. 2d 412, 423 (Pa. Phil. 1997), stating, : “[A]ll property held by a nonprofit corporation is held in trust to carry out its charitable purposes. . . All property held by a charitable nonprofit including the operating revenues, grants, donations, bequests, etc. generated therefrom, constitute property committed to charitable purposes.”

states,⁸⁴ and as the EBS Licensees Petition indicates, many states have adopted their own specific nonprofit laws concerning disposition of nonprofit assets and required procedures (including Attorney General review and court approval procedures).⁸⁵

The proposed transaction in this proceeding, if approved without consideration or compliance with any applicable state nonprofit corporation laws and procedures, would constitute an impermissible involuntary transfer of control of state and local government, religious and nonprofit EBS lease assets with respect to the applicable EBS licenses/leases subject to any such state laws. The Commission must investigate each state's nonprofit corporation laws to ensure the transfer of any EBS lease assets owned by nonprofits subject to this proceeding may be validly effected under the laws of each state.⁸⁶

⁸⁴ Sprint Opposition at fn. 159.

⁸⁵ EBS Licensees Petition at page 15, fn. 28.

⁸⁶ Any such transfer effected without following applicable state law procedures may not only constitute interference with state power to regulate nonprofit assets, but may also render any such transfers void.

Conclusion

For the foregoing reasons, the Commission should dismiss the oppositions filed in response to the EBS Licensees Petition, and should either deny the above-referenced transaction, or condition its approval on the divestiture of spectrum consistent with, and as described in, the EBS Licensees Petition, the EBS Licensees Comments, and herein.

Respectfully submitted,

By: 

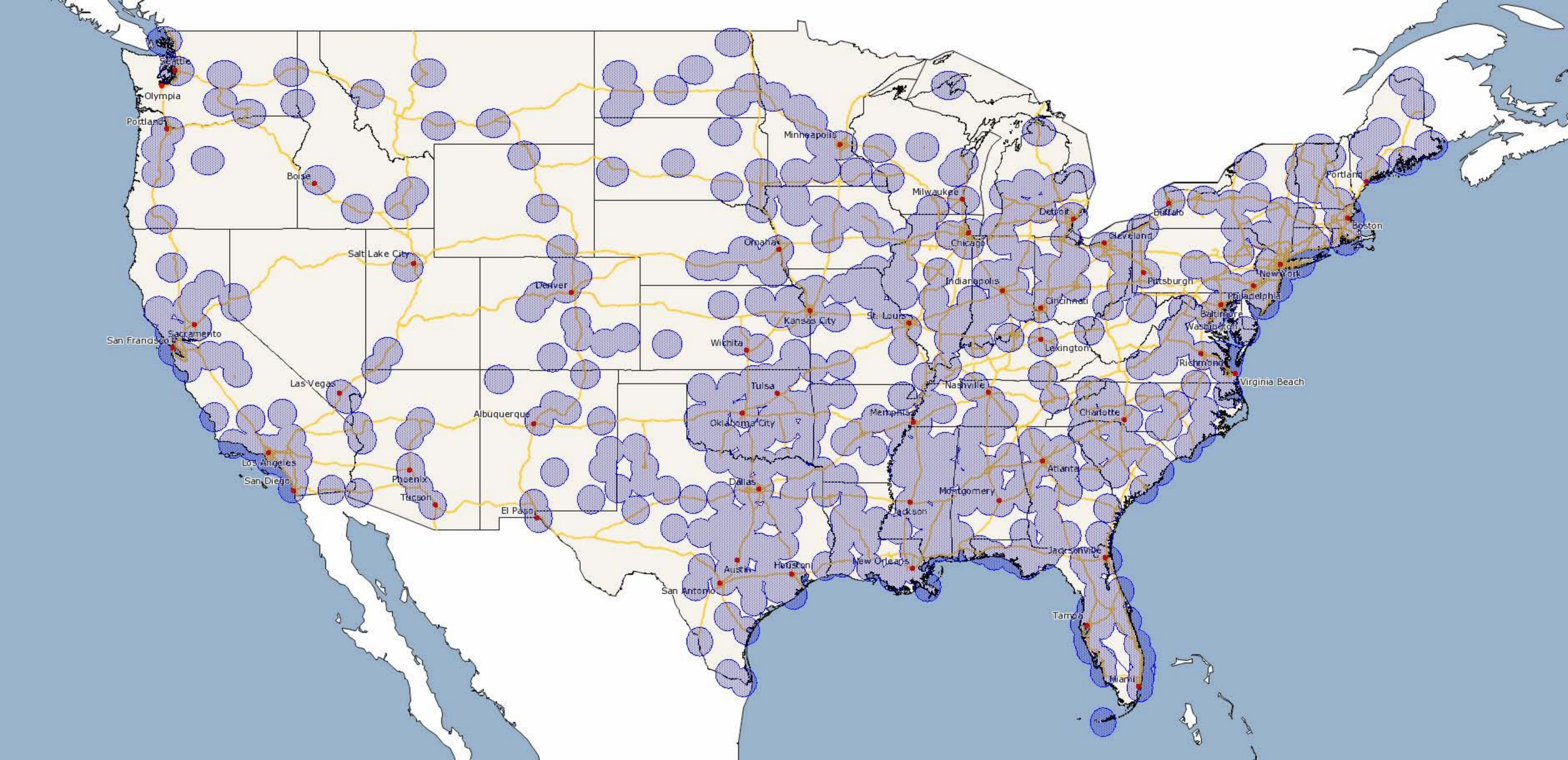
Rudolph J. Geist
RJGLaw LLC
7910 Woodmont Avenue
Suite 405
Bethesda, MD 20814
(240) 821-9850
rgeist@rjglawllc.com

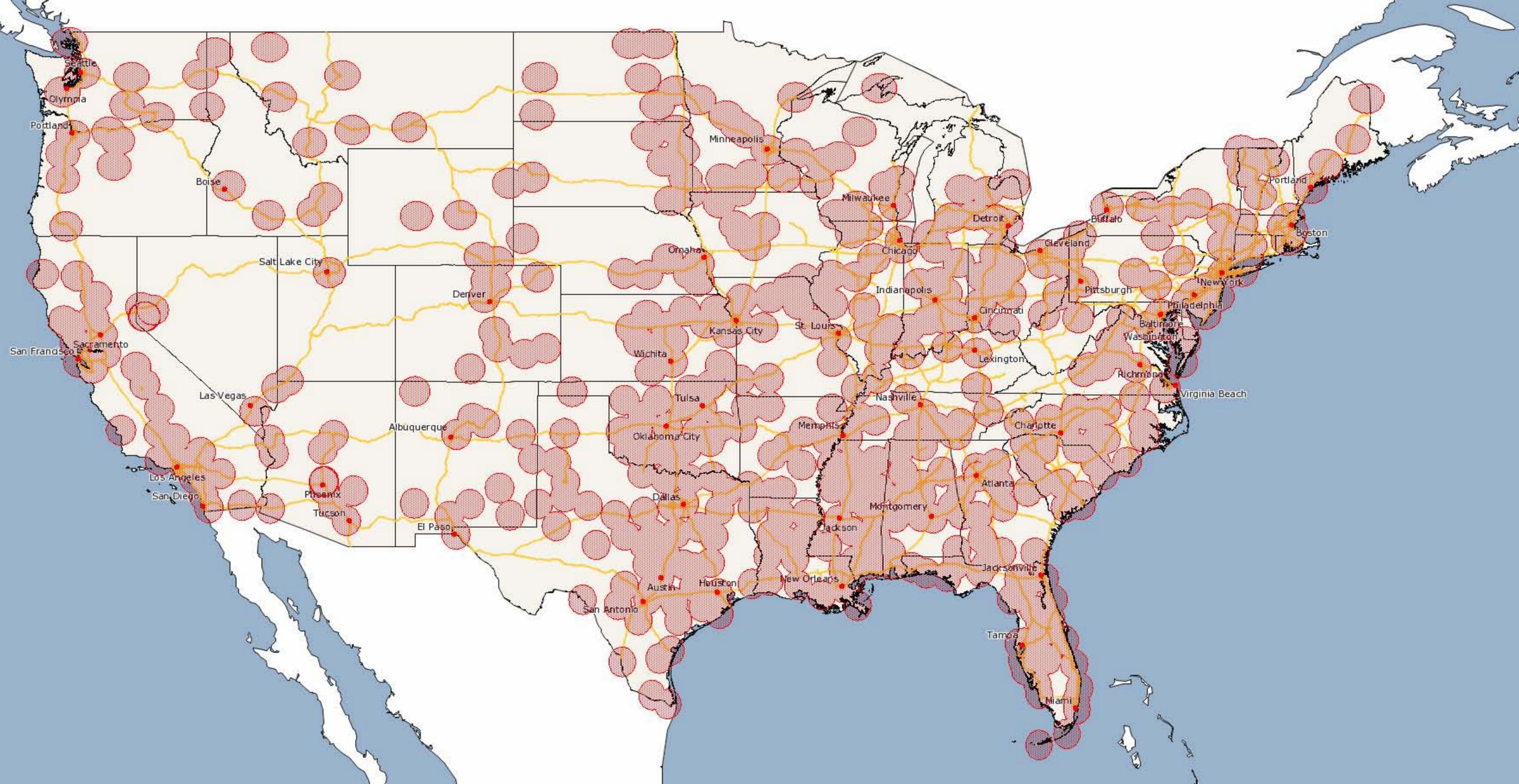
Attorney to the EBS Licensees

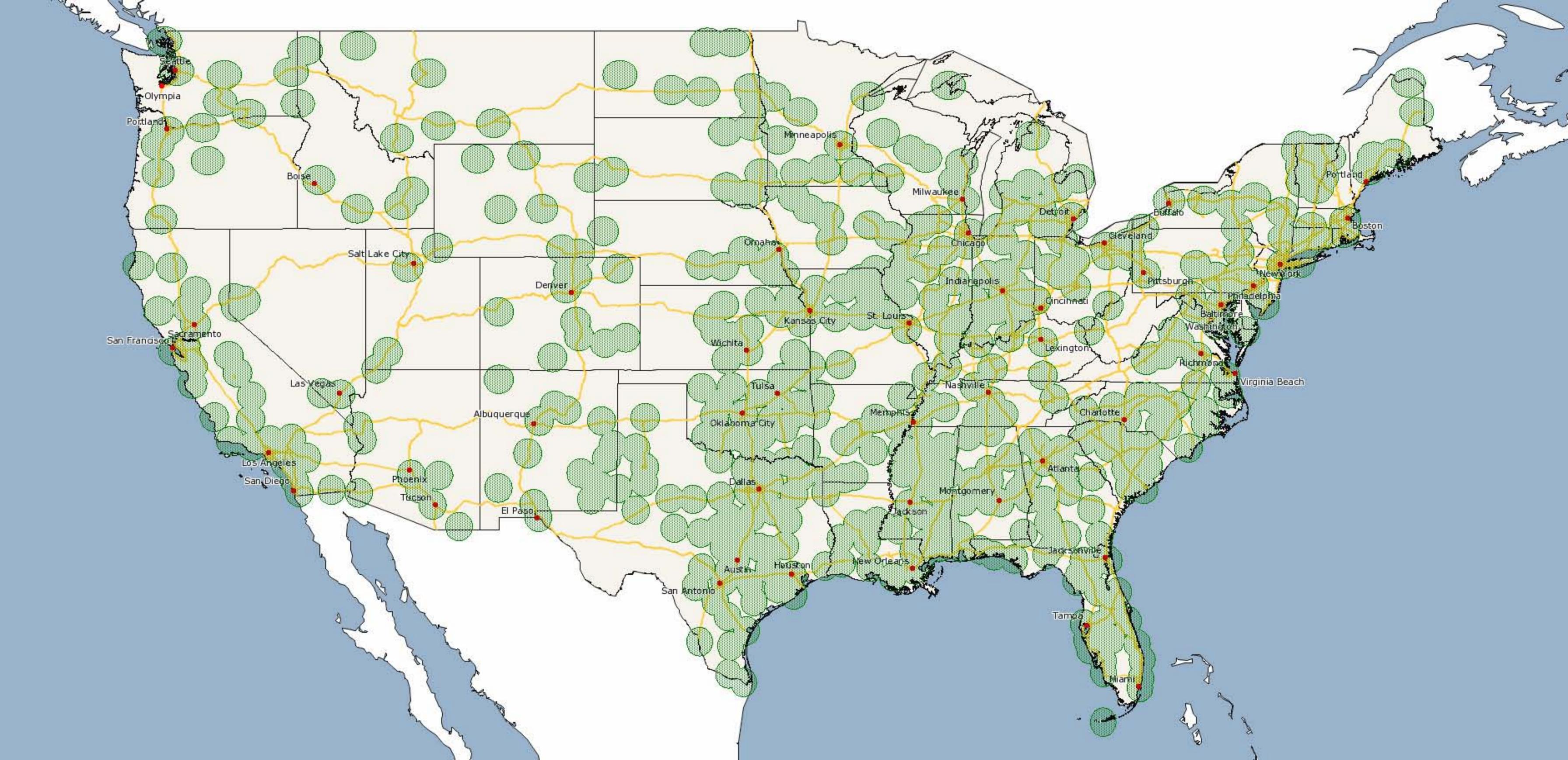
February 25, 2013

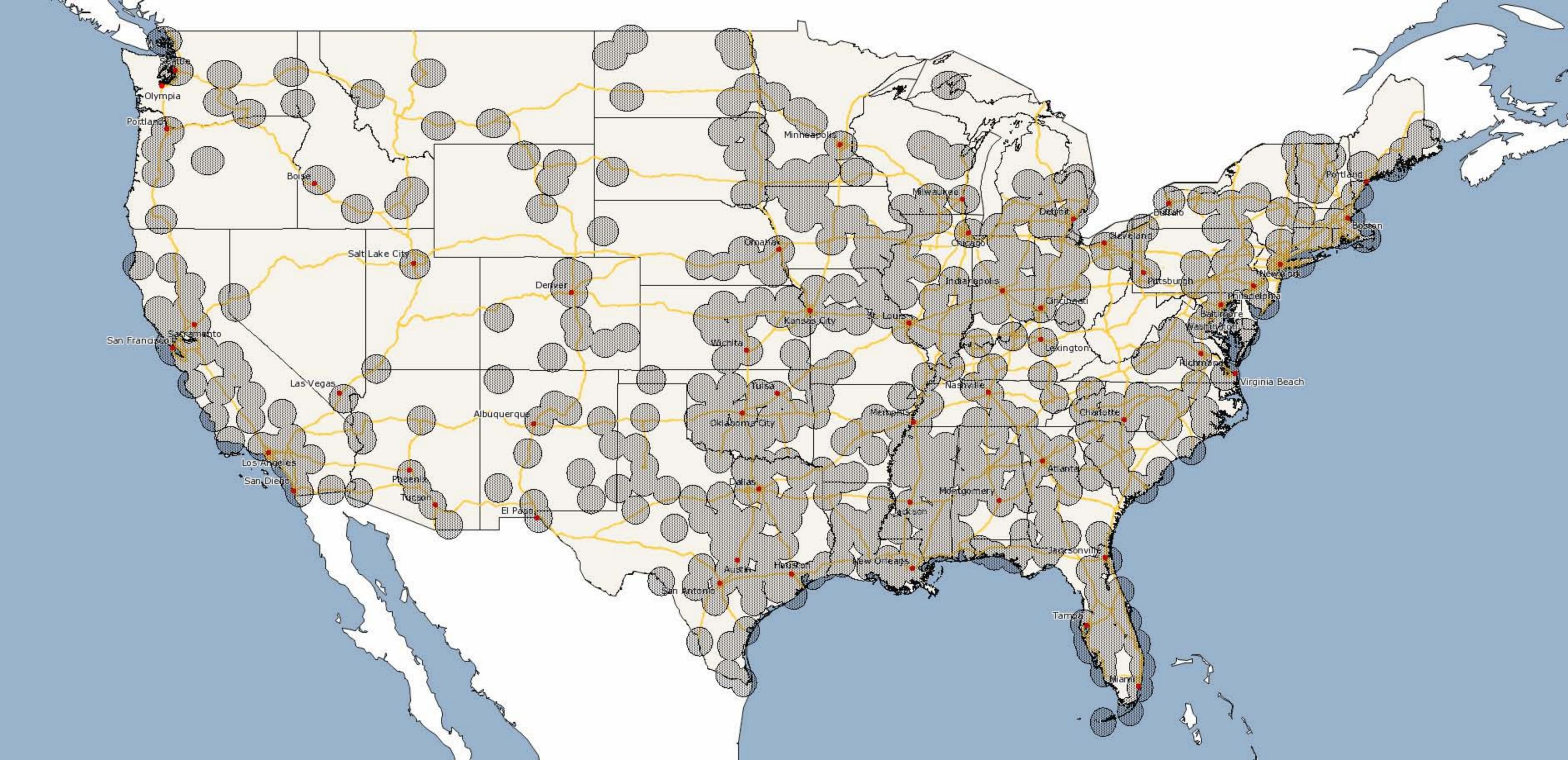
ATTACHMENT A

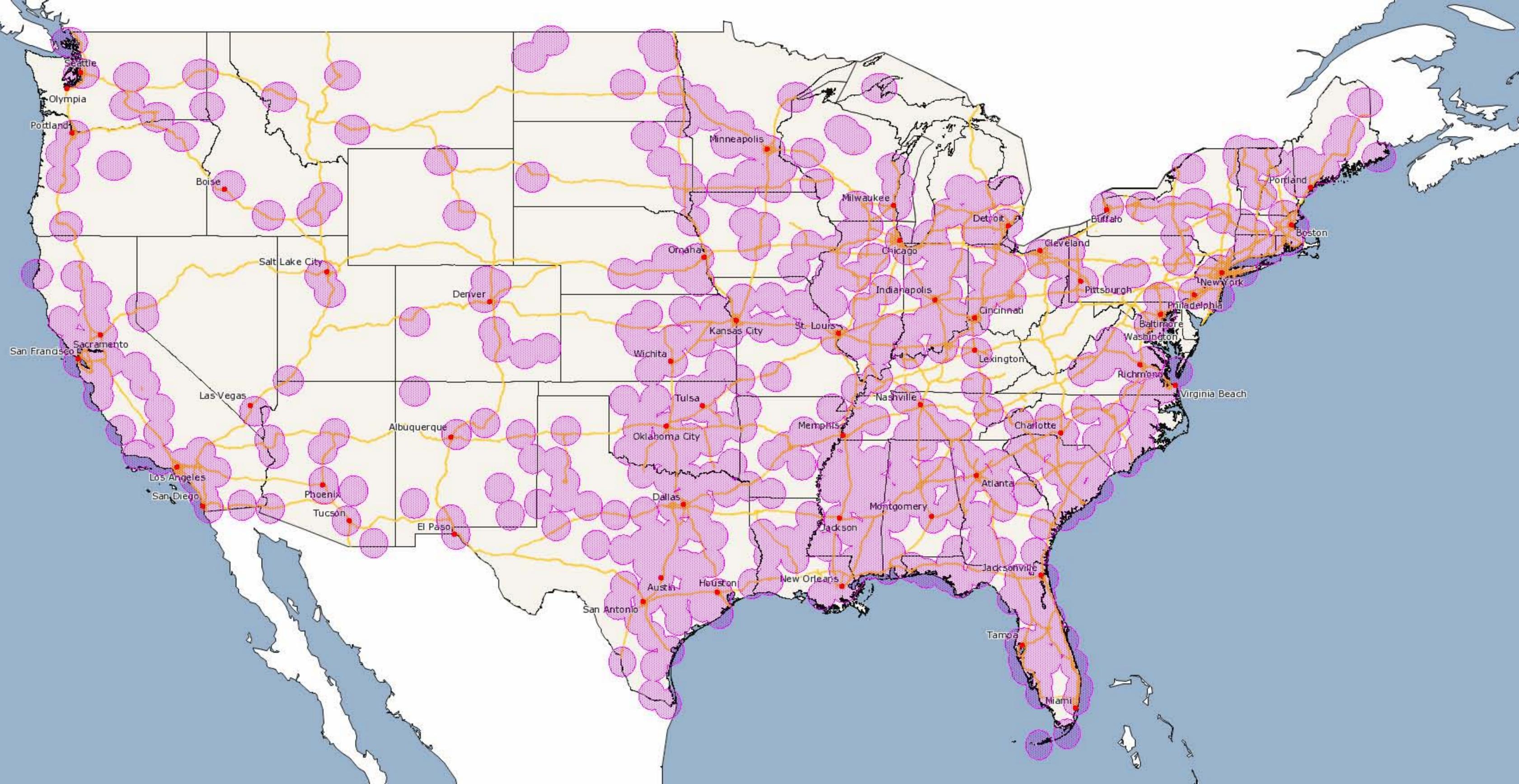
National EBS Channel Contiguous Footprints











ATTACHMENT B

Clearwire 2.5 GHz Concentration in
Commercially Deployed
Major Metropolitan Areas

| Call sign | Major Market (GSA/BTA) | PSA centerpoint town/BTA | State | Channels |
|-----------|------------------------|-----------------------------|-------|--------------------------------------|
| B024 | Atlanta, GA | BTA024 Atlanta, GA | GA | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| KV165 | Atlanta, GA | Atlanta | GA | A1,A2,A3,A4 |
| WHR755 | Atlanta, GA | Atlanta | GA | B1,B2,B3,B4 |
| WNC560 | Atlanta, GA | Atlanta | GA | C1,C2,C3,C4 |
| WNC804 | Atlanta, GA | Atlanta | GA | D1,D2,D3,D4 |
| WNC561 | Atlanta, GA | Atlanta | GA | G1,G2,G3,G4 |
| B051 | Boston, MA | BTA051 Boston, MA | MA | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| KQT47 | Boston, MA | Boston | MA | A1,A2 |
| WQCU376 | Boston, MA | Boston | MA | A3,A4 |
| KYP23 | Boston, MA | Boston | MA | B1,B2,B3,B4 |
| WND255 | Boston, MA | Boston | MA | B1,B2,B3,B4 |
| WHR758 | Boston, MA | Boston | MA | C1 |
| WBB421 | Boston, MA | Boston | MA | C2,C3,C4 |
| KVQ24 | Boston, MA | Boston | MA | D1,D2,D3,D4 |
| WND258 | Boston, MA | Boston | MA | D1,D2,D3,D4 |
| KLC85 | Boston, MA | Boston | MA | G1,G2,G3,G4 |
| B078 | Chicago, IL | BTA078 Chicago, IL | IL | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| B380 | Chicago, IL | BTA380 Rockford, IL | IL | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| KGZ66 | Chicago, IL | Chicago | IL | A1,A2,A3,A4 |
| WHR850 | Chicago, IL | Sugar Grove | IL | A1,A2,A3,A4 |
| WND289 | Chicago, IL | University Park | IL | A1,A2,A3,A4 |
| WNC724 | Chicago, IL | Rockford | IL | A2,A3,A4 |
| WHM934 | Chicago, IL | Chicago | IL | B1,B2 |
| WLX940 | Chicago, IL | South Holland | IL | B1,B2 |
| WNC748 | Chicago, IL | Rockford | IL | B1,B2,B3,B4 |
| WHR498 | Chicago, IL | Chicago | IL | B3,B4 |
| WLX476 | Chicago, IL | University Park | IL | B3,B4 |
| WAC262 | Chicago, IL | Chicago | IL | C1,C2,C3,C4 |
| WND546 | Chicago, IL | University Park | IL | C1,C2,C3,C4 |
| WLX630 | Chicago, IL | Chicago | IL | D1,D2,D3,D4 |
| WNC538 | Chicago, IL | Rockford | IL | D1,D2,D3,D4 |
| WBM648 | Chicago, IL | Chicago | IL | E1,E2,E3,E4 |
| WHG269 | Chicago, IL | Chicago | IL | G1,G2,G3,G4 |
| B101 | Dallas, TX | BTA101 Dallas-Ft. Worth, TX | TX | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WNC582 | Dallas, TX | Dallas | TX | A1,A2 |
| WHR882 | Dallas, TX | Dallas | TX | A3,A4 |
| WEF69 | Dallas, TX | Dallas | TX | B1,B2,B3,B4 |
| WNC836 | Dallas, TX | Dallas | TX | C1,C2,C3,C4 |
| WHR695 | Dallas, TX | Ennis | TX | C1,C2,C3,C4 |
| WND242 | Dallas, TX | Dallas | TX | D1,D2,D3 |
| WLX843 | Dallas, TX | Dallas | TX | D4 |
| WHR830 | Dallas, TX | Dallas | TX | G1,G2,G3 |
| WHR831 | Dallas, TX | Dallas | TX | G4 |
| WLX649 | Fort Worth, TX | Fort Worth | TX | B1,B2,B3,B4 |
| WHR883 | Fort Worth, TX | Fort Worth | TX | C1,C2,C3,C4 |
| WHR881 | Fort Worth, TX | Fort Worth | TX | D1,D2,D3,D4 |
| WNC823 | Fort Worth, TX | Fort Worth | TX | G1,G2,G3,G4 |
| B196 | Houston, TX | BTA196 Houston, TX | TX | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WHR492 | Houston, TX | Houston | TX | A1,A2,A3,A4 |
| WLX860 | Houston, TX | Wharton | TX | A1,A2,A3,A4 |
| WAU31 | Houston, TX | Houston | TX | B1,B2,B3,B4 |
| WHQ281 | Houston, TX | Houston | TX | C1,C2,C3,C4 |
| WLX792 | Houston, TX | Wharton | TX | C1,C2,C3,C4 |
| KRZ68 | Houston, TX | Houston | TX | D1,D2,D3,D4 |
| WLX754 | Houston, TX | Wharton | TX | D1,D2,D3,D4 |
| WNC208 | Houston, TX | Houston | TX | G1,G2,G3,G4 |
| WLX897 | Houston, TX | Wharton | TX | G1,G2,G3,G4 |
| B262 | Los Angeles, CA | BTA262 Los Angeles, CA | CA | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WDD655 | Los Angeles, CA | Modjeska Peak | CA | A1,A2,A3,A4 |
| WLX974 | Los Angeles, CA | Ridgecrest | CA | A1,A2,A3,A4 |
| WLX257 | Los Angeles, CA | Riverside | CA | A1,A2,A3,A4 |
| WND543 | Los Angeles, CA | Santa Paula | CA | A1,A2,A3,A4 |
| WHR463 | Los Angeles, CA | Mount Wilson | CA | A1,A4 |
| WHR505 | Los Angeles, CA | Mount Wilson | CA | A2,A3 |

| Call sign | Major Market (GSA/BTA) | PSA centerpoint town/BTA | State | Channels |
|-----------|---------------------------|--|-------|--------------------------------------|
| WHM937 | Los Angeles, CA | Riverside | CA | B1 |
| WHR854 | Los Angeles, CA | Modjeska Peak | CA | B1,B2,B3,B4 |
| KWE33 | Los Angeles, CA | Mount Wilson | CA | B1,B2,B3,B4 |
| WHR928 | Los Angeles, CA | Riverside | CA | B2,B3,B4,G2 |
| WND632 | Los Angeles, CA | Mount Wilson | CA | C1,C2,C3 |
| WSJ70 | Los Angeles, CA | Modjeska Peak | CA | C1,C2,C3,C4 |
| WGV621 | Los Angeles, CA | Mount Diablo | CA | C1,C2,C3,C4 |
| WHR502 | Los Angeles, CA | Palmdale | CA | C1,C2,C3,C4 |
| WLX367 | Los Angeles, CA | Riverside | CA | C1,C2,C3,C4 |
| WHG228 | Los Angeles, CA | Santa Paula | CA | C1,C2,C3,C4 |
| WHR802 | Los Angeles, CA | Mount Wilson | CA | C4 |
| WLX482 | Los Angeles, CA | Mount Wilson | CA | D1,D2 |
| WHR664 | Los Angeles, CA | Chatsworth | CA | D1,D2,D3,D4 |
| KZH31 | Los Angeles, CA | Modjeska Peak | CA | D1,D2,D3,D4 |
| WLX238 | Los Angeles, CA | Riverside | CA | D1,D2,D3,D4 |
| KSW92 | Los Angeles, CA | Mount Wilson | CA | D3,D4 |
| WNC705 | Los Angeles, CA | Modjeska Peak | CA | E1,E2,E3,E4 |
| WHG268 | Los Angeles, CA | Mount Wilson | CA | E1,E2,E3,E4 |
| WAQ324 | Los Angeles, CA | Santa Paula | CA | E1,E2,G1,G2,G3,G4 |
| KVP26 | Los Angeles, CA | Modjeska Peak | CA | F1,F2,F3,F4 |
| WHG229 | Los Angeles, CA | Mount Wilson | CA | F1,F2,F3,F4 |
| KSW93 | Los Angeles, CA | Mount Wilson | CA | G1,G2,G3,G4 |
| WHR929 | Los Angeles, CA | Riverside | CA | G1,G3,G4 |
| WND392 | Los Angeles, CA | Grand Terrace | CA | A1,A2,A3,A4 |
| WHR661 | Los Angeles, CA | San Bernardino | CA | A1,A2,A3,A4 |
| WHR834 | Los Angeles, CA | San Bernardino | CA | A1,A2,A3,A4 |
| WND381 | Los Angeles, CA | Grand Terrace | CA | B1 |
| WND382 | Los Angeles, CA | Grand Terrace | CA | B2,B3,B4,G2 |
| WND384 | Los Angeles, CA | Grand Terrace | CA | C1,C2,C3,C4 |
| WND385 | Los Angeles, CA | Grand Terrace | CA | D1,D2,D3,D4 |
| WND383 | Los Angeles, CA | Grand Terrace | CA | G1,G3,G4 |
| B293 | Miami-Fort Lauderdale, FL | BTA293 Miami-Fort Lauderdale, FL | FL | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WHA956 | Miami, FL | Miami-Dade | FL | A1,A2,A3,A4 |
| WHR866 | Miami, FL | Miami-Dade | FL | B1,B2,B3,B4 |
| WHG230 | Miami, FL | Miami-Dade | FL | C1,C2,C3,C4 |
| WHR790 | Miami, FL | Miami-Dade | FL | D1 |
| WQJI817 | Miami, FL | Miami-Dade | FL | D4 |
| WHT639 | Miami, FL | Miami | FL | F1,F2,F3,F4 |
| KTBB85 | Miami, FL | Miami | FL | F1,F2,F3,F4 |
| KTBB84 | Miami, FL | Miami-Dade | FL | F1,F2,F3,F4 |
| B469 | Palm Beach, FL | BTA469 West Palm Beach-Boca Raton, FL | FL | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WHR877 | Palm Beach, FL | Boca Raton | FL | A1,A2,A3 |
| WHR894 | Palm Beach, FL | Boca Raton | FL | A1,A2,A3 |
| WHR895 | Palm Beach, FL | Boca Raton | FL | A1,A2,A3,A4 |
| WHR896 | Palm Beach, FL | Boynton Beach | FL | B1,B2,B3,B4 |
| WHR901 | Palm Beach, FL | Palm Beach Gardens | FL | C1,C2,C3,C4 |
| WQJI405 | Palm Beach, FL | Boynton Beach | FL | D1,D2 |
| WQCT296 | Palm Beach, FL | Boynton Beach | FL | D3,D4 |
| B346 | Philadelphia, PA | BTA346 Philadelphia, Pa-Wilmington, De-Trenton, NJ | NJ | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WLX824 | Philadelphia, PA | Philadelphia | PA | A3,A4 |
| WLX578 | Philadelphia, PA | Philadelphia | PA | B1,B2 |
| WLX566 | Philadelphia, PA | Philadelphia | PA | B3,B4 |
| WLX822 | Philadelphia, PA | Philadelphia | PA | C1,C2 |
| WLX825 | Philadelphia, PA | Philadelphia | PA | C3,C4 |
| WLX823 | Philadelphia, PA | Philadelphia | PA | D1,D2,D3,D4 |
| WHR527 | Philadelphia, PA | Philadelphia | PA | G1,G2,G3,G4 |
| B404 | San Francisco, CA | BTA404 San Francisco-Oakland-San Jose, CA | CA | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WHG348 | San Francisco, CA | Mount San Bruno | CA | A3,A4 |
| KZB23 | San Francisco, CA | Mount San Bruno | CA | B1,B2,B3,B4 |
| KZB22 | San Francisco, CA | Mount San Bruno | CA | C1,C2,C3,C4 |
| WNC824 | San Francisco, CA | Mount San Bruno | CA | D1,D2,D3 |
| KZB24 | San Francisco, CA | Los Altos | CA | D1,D2,D3,D4 |
| KGK38 | San Francisco, CA | Los Altos | CA | E1,E2,E3,E4 |
| WHR760 | San Francisco, CA | Mount San Bruno | CA | G1,G2,G3,G4 |

| Call sign | Major Market (GSA/BTA) | PSA centerpoint town/BTA | State | Channels |
|------------------|-------------------------------|---------------------------------|--------------|--------------------------------------|
| WNTA285 | San Francisco, CA | Los Altos | CA | H3 |
| WHR466 | San Jose, CA | San Jose | CA | A1,A2,A3,A4 |
| WHG338 | San Jose, CA | San Jose | CA | B1,B2,B3,B4 |
| WHR467 | San Jose, CA | San Jose | CA | C1,C2,C3,C4 |
| KZB25 | San Jose, CA | San Jose | CA | D1,D2,D3,D4 |
| WHR460 | San Jose, CA | San Jose | CA | G1,G2,G3,G4 |
| B413 | Seattle, WA | BTA413 Seattle-Tacoma, WA | WA | 1,2,E1,E2,E3,E4,F1,F2,F3,F4,H1,H2,H3 |
| WHR528 | Seattle, WA | Seattle | WA | A1,A2,A3,A4 |
| WHR622 | Seattle, WA | Seattle | WA | B1,B2,B3,B4 |
| WNC381 | Seattle, WA | Seattle | WA | C1,C2,C3,C4 |
| WLX726 | Seattle, WA | Seattle | WA | D1,D2,D3,D4 |
| WHT657 | Seattle, WA | Seattle | WA | F1,F2,F3,F4 |

ATTACHMENT C

Clearwire Form of Lease

**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 Manatee County, 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, A2, A3, and A4 and G1, G2, G3, and G4 (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 WHR838 and WHR873 (each a “**License**” and collectively the “**Licenses**”) in the Bradenton, Florida market (the “**Market**”);

WHEREAS, Licensee and Clearwire XOHM LLC (as successor-in-interest to Wireless Cable of Florida, Inc.), an affiliate of Clearwire (“**Clearwire Affiliate**”), are parties to that certain Amended and Restated ITFS Excess Capacity Lease Agreement dated as of November 20, 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 Two Hundred Eighty-Five Thousand Eighty and 19/100 Dollars (\$285,080.19) (the “**Prepaid Fee**”). The Prepaid Fee will be made in two separate simultaneous payments: one payable to Licensee in the amount of Two Hundred Fifty Five Thousand Nine Hundred Sixty Four and 75/100 Dollars (\$255,964.75) and one payable to Dow Lohnes PLLC in the amount of Twenty Nine Thousand One Hundred Fifteen and 44/100 Dollars (\$29,115.44). 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 Manatee County

Professional Support Center
2501 63rd Avenue East
Bradenton, FL 34203
Attn: Jerry Parker

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, as such capacity may be adjusted from time to time in accordance with Subsection 5(d) below ("**Clearwire Capacity**").

(b) Licensee's Reserved Capacity. The term "**Licensee's Reserved Capacity**" shall mean (i) the capacity on the A1, A2, A3 and A4 Channels under call sign WHR838 that is required to be set aside for Licensee's use pursuant to FCC Rules, as the same may change from time to time, and (ii) all of the capacity on the G4 Channel under call sign WHR873; provided, however, that the Licensee's Reserved Capacity may be amended pursuant to Subsection 5(d) below. 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. Except in connection with its operation of the Video Transmission Equipment as provided for in Section 6(a), below, 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) Licensee's Put Option. At any time during the Term, Licensee may elect to relinquish exclusive use of the capacity on the G4 Channel under call sign WHR873, and reduce the Licensee's Reserved Capacity to no less than the minimum 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 (the "**Licensee's Put Option**"). In the event Licensee elects to exercise the Licensee's Put Option, then such capacity on the G4 Channel under call sign WHR873 shall become leased to Clearwire as Clearwire Capacity subject to the terms and conditions of this Agreement without the need for any further amendment hereto; provided, however, beginning as of the first full calendar month following Licensee's exercise of the Licensee's Put Option, and continuing through the remainder of the Term, the Monthly Fee then payable to Licensee under Subsection 2(a) above shall be increased to the amount specified in Schedule 2(a) under the column "Monthly Fee after Put Exercise." In addition, within 15 business days after Licensee's exercise of the Licensee's Put Option, Clearwire shall will pay to Licensee a one-time payment in the amount of Forty Thousand Seven Hundred Sixty-Two and 98/100 Dollars (\$40,762.98). Each Party agrees to execute such amendment or other written acknowledgement as either Party may reasonably request to document the Licensee's exercise of the Licensee's Put Option and the payments associated therewith. For the avoidance of doubt, the Licensee's Put Option may be exercised only with respect to whole Channels and not with respect to any partial Channel.

(e) 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.

(f) 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.

(g) 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.** Prior to and following the commercial launch of Clearwire's wireless system in the Market (the "**Wireless System**"), Licensee may continue to operate the transmission equipment currently in place for the G4 Channel under call sign WHR873 until Licensee exercises the Licensee's Put Option. Clearwire will operate, maintain and repair certain associated equipment, and will ensure that operation, maintenance and repair of that equipment complies in all material respects with applicable FCC Rules, in accordance with the following paragraphs (1), (2) and (3).

(1) Clearwire and Licensee acknowledge that Licensee is currently transmitting on the G4 Channel up to five (5) simultaneous digital video programming services from facilities located at Licensee's Matzke tower but operated and maintained by Clearwire under the provisions of the Original Lease. These facilities (the "**Video Transmission Equipment**") are owned by Licensee. The video programming services are fed from Licensee's studios over fiber optic connections arranged and paid for by Licensee. The programming services transmitted by Licensee on the G4 Channel are currently received at receive sites throughout the service area of the G4 Channel ("**EBS Video Sites**"), utilizing certain receive equipment also owned by Licensee ("**Video Site Equipment**").

(2) Throughout the Term of this Agreement, unless and until Licensee exercises Licensee's Put Option as specified in Section 5(d), Clearwire will, at its sole expense (but subject to Licensee's right to supervise the maintenance and operation of the equipment operating under its FCC authorizations), maintain and operate the Video Transmission Equipment in good working order in compliance with the FCC's rules and sound engineering practices. Licensee will promptly provide written notice to Clearwire if any of the Video Transmission Equipment is not maintained in compliance with the foregoing sentence. The Video Transmission Equipment may be replaced or repaired, at Clearwire's sole discretion, from time to time for maintenance or other purposes, but the title to such replacement equipment shall be transferred to Licensee and such replacement equipment shall become Video Transmission Equipment. Clearwire will have no liability to Licensee for any losses or damages Licensee may suffer due to any malfunction of the Video Transmission Equipment, unless such losses or damages result directly from any willful act or gross negligence of Clearwire or any of its employees or agents. However, regardless of the cause of any malfunction, Clearwire will use commercially reasonable efforts to restore service at the earliest possible time.

(3) Throughout the Term of this Agreement, unless and until Licensee exercises Licensee's Put Option as specified in Section 5(d), Clearwire will also, at its sole cost and expense, repair, maintain and replace, as needed, the Video Site Equipment at the EBS Video Sites from the reception antenna up to point that such Video Site Equipment is connected to a single television set or to the central signal input for an internal distribution system (the "**Demark Point**"), provided, however, that Clearwire's obligations to maintain the Video Site Equipment will be subject to Licensee arranging access for Clearwire to the EBS Video Sites. Licensee may designate locations to serve as additional EBS Video Sites locations that are within the service area of the G4 Channel, and Clearwire will coordinate with Licensee to provide and install Video Site Equipment at such additional EBS Video Sites subject to reimbursement by Licensee of Clearwire's actual costs without markup or profit. Licensee must obtain and coordinate any required approvals or permits prior to the making of any such installations. Clearwire will use commercially reasonable efforts to install the Video Site Equipment within ninety (90) days after the date Licensee certifies to Clearwire and provides such other evidence as Clearwire reasonably requests that Licensee has obtained all required approvals or permits for such installation.

(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 and owned by Clearwire, if

any, 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 specified 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 Licensee's Reserved Capacity, 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 Licensee under the Florida Public Records Act and 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.

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 License 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 License, 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 the License.

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 are 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 any court within Tampa, Florida, 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. Licensee, Clearwire, and Clearwire Affiliate each 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 the 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.

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 MANATEE COUNTY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Notice Address for Clearwire:

Notice address for Licensee:

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

School Board of Manatee County
Professional Support Center
Bradenton, FL 34205
2501 63rd Avenue East
Attn: Jerry Parker
Fax: 941-209-6887

With a copy to:

With a copy to:

Clearwire Spectrums 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

Solely for the purposes of agreeing to and acknowledging Section 21(m) regarding the termination of the Original Lease.

CLEARWIRE XOHM, LLC

By Clearwire Communications, LLC, its Manager

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 2(a)

Monthly Fee and Monthly Service Credit Schedule

| | Monthly Fee | Monthly Fee after Put Exercise | Monthly Service Credit |
|---------|--------------------|---------------------------------------|-------------------------------|
| Year 1 | \$13,227.72 | \$15,119.12 | \$2,000.00 |
| Year 2 | \$13,624.55 | \$15,572.69 | \$2,060.00 |
| Year 3 | \$14,033.29 | \$16,039.87 | \$2,121.80 |
| Year 4 | \$14,454.29 | \$16,521.07 | \$2,185.45 |
| Year 5 | \$14,887.92 | \$17,016.70 | \$2,251.02 |
| Year 6 | \$15,334.55 | \$17,527.20 | \$2,318.55 |
| Year 7 | \$15,794.59 | \$18,053.02 | \$2,388.10 |
| Year 8 | \$16,268.43 | \$18,594.61 | \$2,459.75 |
| Year 9 | \$16,756.48 | \$19,152.45 | \$2,533.54 |
| Year 10 | \$17,259.17 | \$19,727.02 | \$2,609.55 |
| Year 11 | \$17,776.95 | \$20,318.83 | \$2,687.83 |
| Year 12 | \$18,310.26 | \$20,928.40 | \$2,768.47 |
| Year 13 | \$18,859.57 | \$21,556.25 | \$2,851.52 |
| Year 14 | \$19,425.35 | \$22,202.94 | \$2,937.07 |
| Year 15 | \$20,008.11 | \$22,869.03 | \$3,025.18 |
| Year 16 | \$20,608.36 | \$23,555.10 | \$3,115.93 |
| Year 17 | \$21,226.61 | \$24,261.75 | \$3,209.41 |
| Year 18 | \$21,863.41 | \$24,989.60 | \$3,305.70 |
| Year 19 | \$22,519.31 | \$25,739.29 | \$3,404.87 |
| Year 20 | \$23,194.89 | \$26,511.47 | \$3,507.01 |
| Year 21 | \$23,890.73 | \$27,306.81 | \$3,612.22 |
| Year 22 | \$24,607.46 | \$28,126.02 | \$3,720.59 |
| Year 23 | \$25,345.68 | \$28,969.80 | \$3,832.21 |
| Year 24 | \$26,106.05 | \$29,838.89 | \$3,947.17 |
| Year 25 | \$26,889.23 | \$30,734.06 | \$4,065.59 |
| Year 26 | \$27,695.91 | \$31,656.08 | \$4,187.56 |
| Year 27 | \$28,526.79 | \$32,605.76 | \$4,313.18 |
| Year 28 | \$29,382.59 | \$33,583.94 | \$4,442.58 |
| Year 29 | \$30,264.07 | \$34,591.45 | \$4,575.86 |
| Year 30 | \$31,171.99 | \$35,629.20 | \$4,713.13 |

EXHIBIT A

IRS Form W-9

EXHIBIT B

License GSA Map

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February 2013 a copy of the foregoing *Consolidated Reply to Oppositions* 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 electronic mail, unless otherwise noted:

Nadja Sodos-Wallace
Clearwire Spectrum Holdings, LLC
1250 Eye Street, NW, Suite 901
Washington, DC 20005
nadja.sodoswallace@clearwire.com

Howard J. Symons
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, PC
701 Pennsylvania Ave., NW, Suite 900
Washington, DC 20004
HJSymons@mintz.com
Counsel to Clearwire Corporation

Regina Keeney
Lawler, Metzger, Keeney & Logan, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
gkeeney@lawlermetzger.com
Counsel to Sprint Nextel Corporation

John R. Feore
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036
jfeore@dowlohn.es.com
*Counsel to Softbank Corp., Starburst I, Inc.
and Starburst II, Inc.*

Todd D. Gray
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036
tgray@dowlohn.es.com
*Counsel to the EBS Parties, National EBS
Association, School Board of Pinellas County,
Florida and Tarrant County College*

Viet D. Dinh
Bancroft PLLC
1919 M Street, NW, Suite 470
Washington, DC 20036
vdinh@bancroftpllc.com
Counsel for Crest Financial Limited

Evan Carb
Law Offices of Evan D Carb, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 22182
Carblaw@verizon.net
*Counsel to Hispanic Information and
Telecommunications Network, Inc.*

Brandon Sazue
Crow Creek Sioux Tribe
P.O. Box 50
Fort Thompson, South Dakota 57339
UtilitiesAuthority@
CrowCreekSiouxTribe.com

Chris Gleason and Aaron Sokolik
Taran Asset Management
527 Madison Avenue
New York, NY 10022
chris.gleason@taranasset.com

Stephen E. Coran
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, D.C. 20006-1809
scoran@lermansenter.com
Counsel to Clarendon Foundation, Inc.

*via First Class Mail

Rebecca Rini
Jonathan E. Allen
Rini O'Neil, PC
1200 New Hampshire Avenue, NW, Suite 800
Washington, D.C. 20036
rrini@telecommediatechlaw.com
jallen@telecommediatechlaw.com
Counsel to The Source for Learning, Inc.

Sam Schiffman, Chief Strategist
Pac-West Telecomm, Inc.
6500 River Place Boulevard
Building 2, Suite 200
Austin, TX 78730
regulatory@pacwest.com
*On behalf of nWire, LLC, Pac-West Telecomm,
Inc., and Tex-Link Communications, Inc.*

Debbie Goldman
George Kohl
Communications Workers of America
501 Third Street, NW
Washington, DC 20001
dgoldman@cwa-union.org

Pantelis Michalopoulos
Christopher Bjornson
Andrew W. Guhr
Step toe & Johnson LLP
1330 Connecticut Ave. NW
Washington, DC 20036
pmichalo@step toe.com
Counsel to DISH Network L.L.C.

Catherine R. Sloan
Computer & Communications Industry Assoc.
900 17th Street, NW, Suite 1100
Washington, DC 20006
csloan@ccianet.org

Paul Goodman
The Greenlining Institute
1918 University Avenue, Second Floor
Berkeley, CA 94704
paulg@greenlining.org

Stefanie A. Brand
Christopher J. White
New Jersey Division of Rate Counsel
P.O. Box 46005
Newark, NJ 07101
njratepayer@rpa.state.nj.us

John T. Scott, III
Catherine M. Hilke
Verizon
1300 I Street, NW, Suite 400 West
Washington, DC 20005
john.scott@verizonwireless.com

Edwin N. Lavergne
Fish & Richardson P.C.
1425 K Street, NW, Suite 1100
Washington, DC 20005
lavergne@fr.com
Counsel to The Catholic Television Network

John B. Schwartz
EBS Licensees
P.O. Box 6060
Boulder, CO 80306
schwartz@usa.net

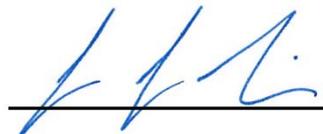
James C. Falvey, Esq.
Justin L. Faulb, Esq.
Eckert Seamans Cherin & Mellot, LLC
1717 Pennsylvania Avenue, N.W
12th Floor
Washington, D.C. 20006
jfalvey@eckertseamans.com
jfaulb@eckertseamans.com
Counsel for Line Systems, Inc.

*via First Class Mail

Steven A. Zecola*
108 Hamilton Rd.
Sterling, VA 20165

Gordon H. Smith*
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Jennifer Rockoff*
Attorney Advisor
National Security Division
U.S. Department of Justice
600 E Street NW
Washington, DC 20004



Norman Liu

*via First Class Mail